
Fighting Cybercrime - Globalization and the Long Arm of the U.S. Law

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In the last few years, United States law enforcement has focused increasing attention on use of the Internet to misappropriate assets of U.S. companies or to defraud U.S. citizens. Congress has declared it a federal crime to misappropriate trade secrets belonging to a U.S. company, regardless of where the misappropriation takes place, or to obtain unauthorized access to a U.S. based computer system. The FBI has mounted well-publicized efforts to investigate violations of these two laws over the Internet. The SEC, FTC and several state consumer protection agencies have expressed concern about the ability of someone based outside the U.S. to make fraudulent investment offers to residents of the U.S. over the Internet and have responded to this perceived threat by pooling resources to scan web site claims and identify targets for prosecution. The U.S. Treasury Department has also upgraded its money transfer tracking facilities ("FinCEN") to allow it to observe patterns in wire transfers of currency that may signal money laundering activity. And all state and federal law enforcement agencies have considered whether the mere accessibility of a web site through Internet access in any location is a sufficient contact with their jurisdictions to allow grand jury investigations and prosecution against non-U.S. residents in a U.S. court.

The extension of U.S. criminal jurisdiction to persons and acts which have been present in the U.S. only through the Internet has been aided by the negotiation of mutual assistance treaties between the U.S. and governments of several other countries, under which U.S. law enforcement agencies can call upon their counterparts in countries where Internet-based fraud originates to execute searches, interrogate witnesses and arrest persons.

The extension of U.S. criminal jurisdiction back across the Internet represents both a risk for companies whose subsidiaries may be acting without supervision and contrary to U.S. standards of commercial conduct, as well as an opportunity for companies that are the victims of theft or unfair competition. The best response to notice of a potential problem is an internal investigation to determine the extent of a company's loss or its potential criminal exposure, followed by the adoption of a plan to engage U.S. law enforcement to help recover the loss or to assure that the company does not commit similar mistakes in the future.

For a detailed discussion of these issues, please view a PowerPoint presentation titled

"Globalization and the Long Arm of U.S. Law", which was presented this spring at a conference in London.

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