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Browsers Beware: Avoiding Legal Entanglements on the Internet

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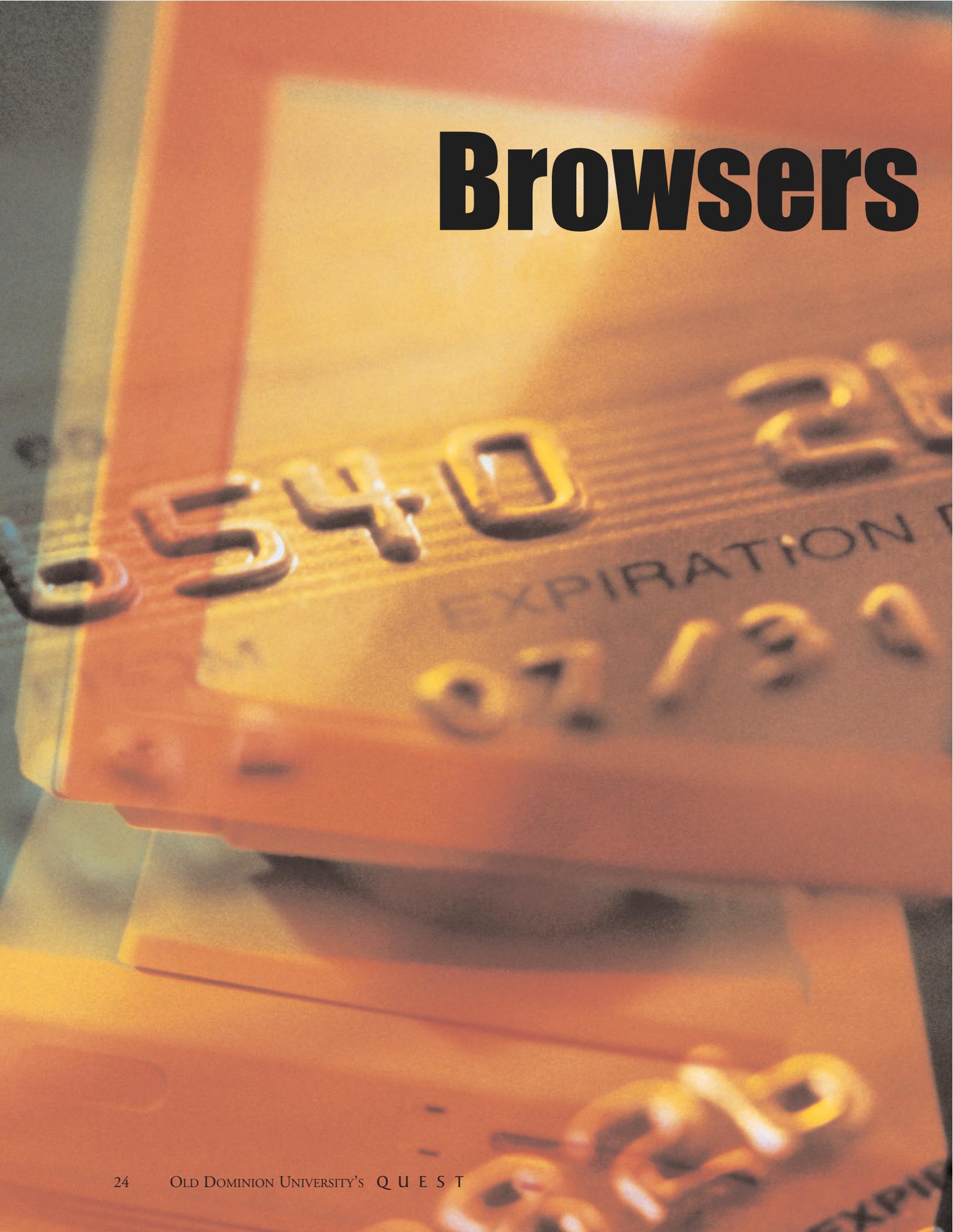
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Browsers



Beware:

AVOIDING LEGAL ENTANGLEMENTS ON THE INTERNET

BY MICHAEL ZUGELDER, THERESA FLAHERTY AND JAMES JOHNSON

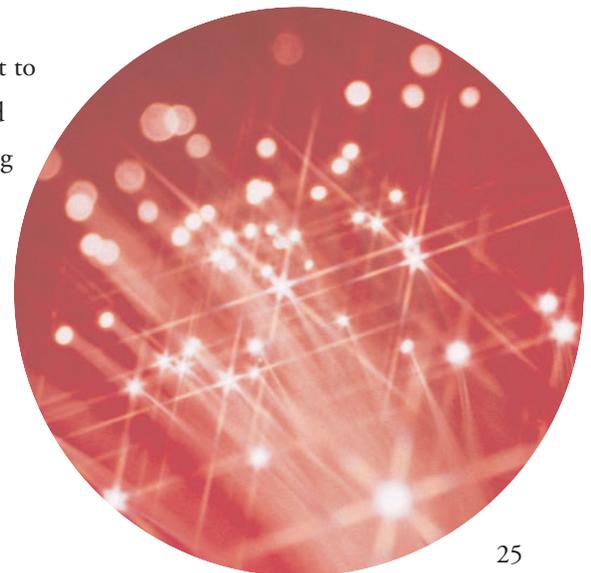
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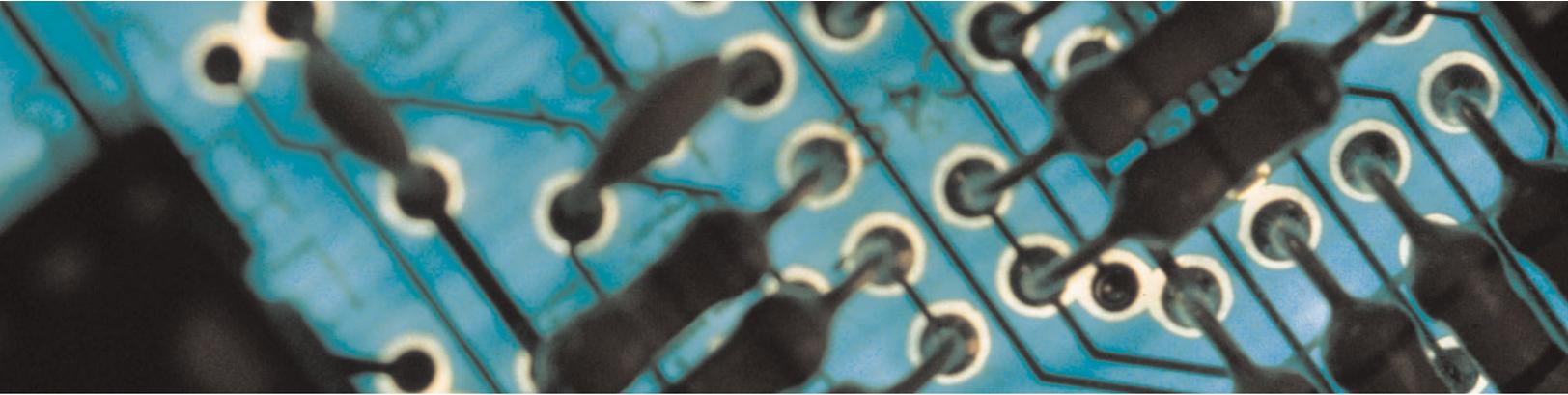
hen Chicago resident David Loundy ordered a compact disk on the Internet from a British Web site, he received an e-mail confirming his order. Loundy expected to pay the advertised price of £8.99, or about \$14. When he was subsequently charged £12.99, Loundy was incensed. He argued that he had accepted the set price of £8.99 and insisted that he pay no more for the disk. But when Loundy filed suit in England under the Consumer Protection Act of 1987, he was told that the Act did not apply to him because, under English common law, the place of the offense is not where the ad originates, but where it is read.

According to law in Loundy's home state of Illinois, the seller's action would have been viewed as an unfair trade practice or breach of contract. Loundy eventually decided that it would be too costly to seek redress in a U.S. court, even if an Illinois judge agreed to accept jurisdiction over the case.

This incident underscores the fact that there is no international treaty governing Internet-based advertising and the prevention of unfair and deceptive trade practices, such as unsubstantiated advertising claims, false endorsements and omitted information. Statements made by firms on their Internet sites may fall within the laws of many nations, not just those of their home country — or, as in the case cited above, domestic law might not even apply to an international transaction.

Because e-commerce is still very new worldwide, common standards have yet to evolve. Legal remedies in the case of a dispute can be, at best, time-consuming and expensive. To make matters even more complicated, many governments in emerging markets and transitional economies are reforming their political and legal systems, creating a judicial minefield in which even local businesses and experts are unsure about the application and scope of the law. With the Internet at the frontier of international business, the lack of a global regulatory system means that multiple and contradictory national laws may apply to the same transaction.





ROADBLOCKS AHEAD?

With an intensifying boom in worldwide e-commerce, the number of international disputes is likely to increase on a similar scale. Domestically, there's also plenty of litigation to go around. Virtual Works Inc. of Reston, Va., found that its use of the address "vw.net" became a legal issue when Volkswagen of America, a subsidiary of the German parent, sought an injunction claiming infringement of its trademark. In this case, a U.S. District Court denied Volkswagen's request on the grounds that holding a trademarked name does not necessarily preclude others from using it as a domain name.

In other cases, so-called "cybersquatters" have registered well-known trademarks such as Nike, Sony and McDonald's as domain names here and overseas, only to sell them back to the trademark owners for inflated sums. Although Congress has recently addressed this problem with anti-cybersquatter legislation, that law doesn't affect the problem posed worldwide and, in fact, stands in conflict with the law of some other countries.

Privacy issues are also of growing concern in the United States and abroad. When consumers browse the Internet, they often leave behind "cookies," a kind of digital footprint. These cookie files collect data about the user's identity, interests and online purchases. Cyber-marketers have developed a strong taste for cookies; the more detailed information they can glean from consumers' personal preferences, the more tailored can be the marketing. Globally, as e-commerce spreads, cookie-driven opportunities for collecting information about international customers multiply exponentially.

However, in many countries it is illegal to use online technology to gather, exchange and sell personal information. Europe, for example, has much stricter privacy laws than the United States. A European Union directive gives European consumers the right to check on data that is held about them and to prevent its use. Some Americans fear that this direc-

tive could slow the growth in transatlantic e-commerce and even result in a transatlantic trade war.

A recent poll found that most American adults believe e-businesses solicit too much personal information and that more consumers would use the Internet if their privacy were better protected. Currently, Congress is considering several bills to protect consumer privacy.

PROTECTING CONSUMERS

How then can Web marketers reassure their customers? First, Web sites should include a statement of privacy policy to acknowledge the customer's privacy rights. Second, consumers should have the right to opt out of receiving e-mailings, offers or promotions. Although the potential for gaining repeat business from that consumer is diminished, defeating one of the main purposes of Web marketing, users can be given incentives in exchange for personal information. Strategies may include price discounts, special offers, free newsletters and personalized information services.

Web marketers also should participate in programs that provide "seals of approval" for Web sites conforming to standards of privacy. In the United States, the Better Business Bureau offers a seal of approval program, at <http://www.BBBOOnLine.org>, while another site, TRUSTe, now provides site-development assistance for firms domestically and in Europe at <http://www.truste.org>.

The evolution of e-commerce is years ahead of the law's ability to handle it. Current law subjects cyber-marketers and shoppers to a patchwork of domestic and international laws, standards and regulations, many of which are inconsistent and contradictory. Unfortunately, this legal uncertainty is likely to intensify in the future.

U.S. marketers must understand that the legal principles that apply in the States do not necessarily apply globally, so it is best to avoid the possibility of facing legal proceedings

overseas. Web site operators who wish to avoid jurisdiction in foreign locations should:

- 1) Stipulate on the Web site which country's courts shall be used to resolve disputes;
- 2) Limit the site's degree of interactivity;
- 3) Limit the amount of non-Internet promotions and solicitation; and
- 4) Decline business from undesirable jurisdictions.

Consumers must be wary about making purchases from foreign Web sites that fall outside the jurisdiction of U.S. law. The old adage caveat emptor — buyer beware — applies as much to cyber-shopping as it does to shopping at

local flea markets.

Check first to determine whether or not the foreign site has a U.S.-based “mirror site” which falls under U.S. law. If so, click on it. If not, do not send any personal information or make credit card purchases unless you can be reasonably sure that it is a bona fide trader. At the very least, read the company's sales policy and check whether it belongs to a reputable business organization, such as the Better Business Bureau or its equivalent. Also, determine the legal jurisdiction governing transactions on the Web site.

Do you really want to argue your case before a foreign court in the event of a dispute?



At Old Dominion, Michael Zugelder is assistant professor of business administration and a licensed attorney; Theresa Flaherty is an assistant professor of marketing; and James Johnson is an assistant professor of management and international business. The three are co-authors of “Legal Issues Associated with International Internet Marketing” in the forthcoming issue of International Marketing Review.