



# The top five – globalization and the law – predictions for the first half of the twenty-first century

Cynthia M. Gayton

*School of Engineering and Applied Sciences,  
The George Washington University, Washington, DC, USA*

## Abstract

**Purpose** – The purpose of this paper is to outline what the author believes will be the top five legal issues relating to globalization and business for the first 50 years of the twenty-first century.

**Design/methodology/approach** – This is a wrap-up paper articulating the author's opinion about what she considers to be the top five legal issues that will be face in the first half of the twenty-first century.

**Findings** – The paper reveals cooperative censorship; intellectual property treaty harmonization domination by developing country interpretations; international tribunal dispute resolution clauses; return of the law merchant; and eminent domain or public utility – the future for dominant search engines/content aggregators as the possible top five legal issues pertaining to businesses and globalization.

**Originality/value** – The paper presents an interesting prediction of the top five legal issues relating to globalization and business for the first 50 years of the twenty-first century.

**Keywords** Globalization, Law, Intellectual property, Censorship, Search engines

**Paper type** Viewpoint

These top five legal issues pertaining to businesses and globalization are obviously subjective and, therefore, have no authoritative basis other than my own opinion. Following is an outline of what I believe will be the top five legal issues for the first 50 years of the twenty-first century:

- (1) cooperative censorship;
- (2) intellectual property treaty harmonization domination by developing country interpretations;
- (3) international tribunal dispute resolution clauses;
- (4) return of the law merchant; and
- (5) eminent domain or public utility – the future for dominant search engines/content aggregators.



## Cooperative censorship

By “cooperative censorship,” I mean that business and governments will work together to limit knowledge available to the public. There is significant evidence of this trend. Some existing search engines and web sites have cooperated with governments to

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restrict their citizens' and others' access to online content which may lead to perceived incendiary conduct. As access to online resources increases and becomes available to otherwise closed governments, businesses who design search engines, as well as content aggregators for text, videos and images ("SE/CAs") will continue to bow to international government pressure. In the past, similar cooperation was restricted to wartime. I believe, however, that businesses will work directly with governments to restrict information whether or not there is an ongoing national security assertion.

Another form of cooperative censorship is burying results in the bowels of a search and pushing forward paid results regardless of relevance. For online search and content businesses, this makes sense, and I applaud the model. Unfortunately, as consumers become more and more dependent on search engines and other online content for research purposes, you can rest assured that unless the information appears within the first ten hits, the average researcher will look no further. Relevant and important knowledge may never see the light of day (see Sweeney, 2001; Kesaris, 1977).

### **Intellectual property treaty harmonization**

Intellectual property treaty harmonization efforts (such as the Patent Law Treaty) have been dominated by the USA, Europe, and in some respects, Japan. Cultural differences will play an important role in the future as developing countries turn into developed ones. These countries will demand intellectual property regimes that more accurately reflect their property ownership culture which may be in conflict with the established private property concept put forward by the incumbent nations (see Gayton, 2006a).

### **International tribunal dispute resolution clauses**

Globalization will require even run-of-the-mill contracts to contain international tribunal dispute resolution clauses. The USA has been the dispute resolution venue of choice for many multi-party/multi-national contracts for several decades. As the USA's financial dominance ratchets down, multi-national businesses will look for more favorable dispute resolution venues that are more geographically convenient with perhaps a more stable currency (Doak Bishop and Hoyt, n.d.).

### **Return of the law merchant**

The "law merchant" or *lex mercatoria* is a custom-based trade system which depends in large part on common trade understandings between the parties to a business transaction. The law merchant started as a medieval trading system developed in Europe. I think it will become more prominent in the future because its purpose is to allow the merchants themselves to come up with resolutions to trading problems and relies on concepts of ethical behavior, trust, and quick results.

Litigation remains the dispute resolution method of choice in the USA. However, other nations may choose to revive and strengthen the law merchant framework to facilitate faster trade management which incorporates local trade custom. In the USA, we have codified several components of the law merchant system in the Uniform Commercial Code (UCC). The United Nations Convention on Contracts for the International Sale of Goods or UNCISG, is the international equivalent to the US UCC and has been ratified by at least 70 countries (see Bewes, 1923).

**Eminent domain or public utility – the future for dominant search engines/content aggregators**

The flip-side of SE/CA dominance and cooperative censorship is the possibility that SE/CAs will become public utilities, so integral will they become to our lives. A company's service sometimes becomes a public utility once it has been established that it is a "natural monopoly" or an "essential commodity". Once a business becomes a public utility, it is subject to government regulation. In the USA, railroads, highways, electricity, water supplies, etc., were at one time all private enterprises not subject to government regulation.

In the future, an argument may be made that dominant SE/CAs have established so much control over the SE/CA market that it has become an essential commodity that would be available for the public benefit and not for profit.

Market dominance by such a global entity may raise regulation beyond the laws of the business' domicile to international regulation. If the claim is ever made that a dominant SE/CA is an international public utility, the business and related technology may become subject to an international treaty, similar to the United Nations Convention on the Law of the Sea (UNCLOS) and the Outer Space Treaty, where governments agreed to the regulation of the ocean and space "commons". Will access to knowledge via dominant SE/CAs become an international "commons" to which everyone is entitled to access?

Another possibility is that the US government will convert dominant SE/CA businesses into public property via its eminent domain authority. Usually, eminent domain procedures are limited to the taking of private property for "legitimate public purposes" such as roads, schools, and public utilities. Permitted by the 5th Amendment, the government may assert a right to private property, but must provide "just compensation" to the owner. The government has asserted eminent domain over intellectual property, such as trademarks and patents, if it serves the government's interests. Conceivably, the government may wield its authority to control SE/CAs in their entirety to secure public use into the future allowing the now government-owned businesses to negotiate directly with international entities.

The reason why I think either of these may be a possibility for the future is that global online search is a powerful knowledge tool. Relying on the fortunes of a for-profit business to maintain and continue such a resource may be considered ill-advised (see Gayton, 2006b).

These legal issues present substantive challenges for free market, free speech and private property supporters. On the other hand, these issues present exciting opportunities to learn about alternative intellectual property regimes, trade customs and global cooperation. We will see how it unfolds!

This is my last submission to *VINE: The Journal of Information and Knowledge Management Systems* under the considerate and forgiving editorship of Dr Michael Stankosky. It has been a great privilege. Thank you for reading.

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#### About the author



Cynthia Gayton holds a Bachelor of Arts degree in International Affairs from The George Washington University and a Juris Doctor degree from George Mason University in Arlington. She is a member of both the State Bar of Virginia and the District of Columbia Bar and is a practicing attorney in the corporate law and intellectual property fields. In addition, she is an adjunct professor of engineering law at The George Washington University School of Engineering and Applied Sciences. Previously, she worked as an attorney at Morgan Lewis & Bockius, concentrating in complex antitrust litigation and as associate counsel at the American Institute of Architects. She is the author of *Legal Aspects of Engineering*, 8th edition released in March 2008 by Kendall/Hunt publishers. Cynthia Gayton can be contacted at [cgayton@gwu.edu](mailto:cgayton@gwu.edu)

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