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JURISDICTIONAL CHALLENGES IN IPR DISPUTES IN CYBERSPACE: JUDICIAL TRENDS

Supriya Malviya¹

Abstract

This study explores the jurisdictional challenges inherent in intellectual property rights (IPR) disputes within the context of cyberspace, analyzing judicial trends across various jurisdictions. As the digital landscape transcends traditional geographical boundaries, courts grapple with complex issues of jurisdiction, enforcement, and applicable law in cases involving online intellectual property disputes. The research delves into key judicial decisions and trends that highlight how courts navigate the complexities of cross-border IPR conflicts. It examines the effectiveness of current legal frameworks and suggests potential reforms to address emerging challenges in a globalized digital environment. Key topics include extraterritorial jurisdiction, international treaties, enforcement mechanisms, and the role of technological advancements in shaping legal responses. This study provides a comprehensive overview of how judicial systems are adapting to the evolving landscape of cyberspace and offers insights into potential pathways for resolving jurisdictional issues in IPR disputes.

Keywords: *Jurisdictional Challenges, IPR, Cross-Border Disputes, Enforcement Mechanisms, Technological Advancements*

¹ Supriya Malviya, Graduate, B.A.LL.B.(Hons.), Maharashtra National Law University, Nagpur.

Introduction

The increasing importance of cyberspace in commerce is driving up demands on intellectual property protection.² Some experts suggest that intellectual property laws in cyberspace need a complete overhaul, while others believe that minor adjustments to existing laws are sufficient. Clearly, intellectual property issues in cyberspace are challenging traditional concepts of protection and enforcement, regardless of one's viewpoint on the matter.³ During this transitional period, courts are grappling with these novel challenges while balancing established intellectual property principles with the realities of modern technology.

Increasing internet usage and the cross-border exchange of “information and business transactions”, numerous legal issues have emerged. This article focuses on one significant issue: the jurisdiction of courts in handling intellectual property rights (IPR) disputes arising from online commercial transactions. Within the broader realm of IPR, the emphasis will be on trademark disputes, which have seen the most significant developments.

The legal community has faced challenges in balancing public access to new media with the need to protect authors' rights. New media technologies, such as photocopiers, which allow for rapid and cost-effective reproduction of written materials, and video recorders, which do the same for video content, have intensified conflicts between these interests. The rise of online business has further amplified these tensions, as digital works can be easily downloaded, shared via mailing lists, posted on bulletin boards, and copied for personal use. Digital formats enable near-perfect replication of texts, images, sounds, data, and computer programs.

Traditionally, jurisdictional issues involve determining whether a court has territorial, financial, or subject matter authority to hear a case. The internet complicates territorial jurisdiction due to its borderless nature—there are no physical boundaries within or between countries.⁴ The physical computer has given way to “cyberspace”, a virtual realm where information is stored and transmitted across the web. This raises questions about the 'location' of information in this virtual space. Jurisdiction is a preliminary concern, as challenges to jurisdiction can arise at the outset of a case and must be addressed before proceeding with the matter.⁵

² Alexander C. Gavis, “The Offering and Distribution of Securities in Cyberspace: A Review of Regulatory and Industry Initiatives”, Vol I *Business Law Journal* 317, 319 n.6 (1995).

³ Neil Weinstock Netanel, “Copyright, and a Democratic Civil Society”, 106 *YALE Law Journal* 283 (1996).

⁴ Pankaj Jain and Pandey Sangeet Rai, “Copyright and Trademark Laws relating to Computers” at IX (*EBC*), 187 (2005).

⁵ *L. Charan Das v. Gur Saran Das Kapur*, AIR 1935 ALL310.

The Concept of Internet Jurisdiction

The nature of Internet can be expressed as being multi – jurisdictional because of its flexibility to be accessed from any corner of the world. One of the primary theories relating to internet jurisdiction was laid down in *Burger King v. Rudzewicz*.⁶ Here, the Court observed that jurisdiction could not be ignored merely because the Defendant did not physically enter the forum state. The purposeful ailment is satisfied further in the landmark case of *International Shoe v. Washington*.⁷ The rule of minimum contact can very well be illustrated from the case of *Panavision Int'l. L.P. v. Toppen*.⁸ Here, an Illinois resident, was an individual who attempts to profit from the Internet by reserving and later reselling or licensing Domain Names back to the companies that spent millions of dollars developing the goodwill of the trademark. The “California Court” held that jurisdiction was proper because Toeppen’s out – of – state conduct as intended to, and did, result in harmful effects in California. The Court found that the Defendant with the forum state.

Approaches to Cyberspace Jurisdiction

Some of the important approaches towards internet jurisdiction are as follows: -

(a) Determining Personal jurisdiction by applying ‘minimum contacts’

As far back as in the year 1945 the Supreme Court of the USA established and enhanced the scope of personal jurisdiction through had purposefully availed himself of the privilege of acting in the Forum state or causing a consequence in the Forum State. The “*Purposeful availment*” test assures that a non – resident Defendant will be aware that it could be sued in the Forum state.⁹

(b) Refusing personal jurisdiction on account of Insufficient contacts:

The vast interconnectivity of the Internet cannot be the only reason for extending purposeful availment over every Defendant. Extending personal jurisdiction indefinitely by “the judicial system over out – of – state parties with little other contact than e – mail or website presence in a state can led to establishment of personal jurisdiction in any state. It is thus important for fair administration of justice, that Courts take a close look at whether the Internet Defendant is truly purposefully availing another jurisdiction.

In *Cybersell Inc. v. Cybersell Inc.*¹⁰, there was a dispute over a service mark between two corporations, one at Orlando and another at Arizona. The issue in controversy here was whether mere use of a website by the Florida corporation was sufficient to grant the Court jurisdiction. The Court held that it would not

⁶ *Burger King v. Rudzewicz*, 471 US 176 (1985).

⁷ *International Show v. Washington*, 326 US 310 (1945).

⁸ *Panavision Int'l L.P. v. Toppen*, 938 F Supp 616 (CD Ca 1996).

⁹ *World-Wide Volkswagen Corp. v. Woodson*, 444 US 286 (1980) at p.297.

¹⁰ *Cybersell Inc. v. Cybersell Inc.*, 44 USPQ 2d 1770, WL 754467 (WDNC 1997).

confirm with “*traditional notions of fair play and substantial justice*”¹¹ for Arizona to exercise personal jurisdiction over an allegedly infringing Florida website advertiser who has no contacts with Arizona other than maintaining a home page that is accessible to Arizonans, and to everyone else, over the Internet.

(c) The Sliding Scale Framework

Refusing jurisdiction on account of insufficient contacts is something that depends on a case-to-case basis. Courts in some online infringement cases have found the existence of a website alone sufficient to grant personal jurisdiction, but only after subjectively analysing the “*interactivity*” offered by the site.

To resolve the preliminary issues relating to jurisdiction in cyberspace, the Courts have started applying the sliding scale framework. The sliding scale framework was first developed by the United States District Court for the Western District of Pennsylvania in *Zippo Manufacturing Co. v. Zippo Dot Com. Inc.*¹² The framework is based on the premise that the likelihood of constitutional exercise of personal jurisdiction is directly proportionate to the nature and quality of commercial activity being conducted by an entity over the Internet. There are three different categories of Internet activity on the Zippo sliding scale.

(d) Real and Substantial test

The real and substantial connection test may, however, be applied in infringement disputes where the Defendant may not necessarily be the website owner. “*Section 3(e) of the Court Jurisdiction and Proceedings Transfer Act of Canada*” provides for such a test. Under this test, in order to determine whether any Court has jurisdiction or not, it is important to determine whether there is any real and substantial connection of the province and the facts on which the proceeding against the Defendant is based. The approach of permitting a suit where there is a real and substantial connection with the action provides a reasonable balance between the rights of the parties. Consequently, the Court must then consider the reasonableness of assertion of jurisdiction and great care must be exercised while extending jurisdiction to the international field.

(e) Jurisdiction based on Domicile

This basis of exercising jurisdiction is prevalent in the UK. Applying this rule to typical actions for abusive registration of Domain Names, jurisdiction would depend on the domicile of the registrant of the Domain Name and not upon the country where the “*Domain Name Registrar*” is based.¹³ Thus, it is appropriate to deal with an English hijacker in England, whether he has registered a .com name or a Domain Name indicating some other country. If the claimant does not have registered or common law

¹¹ *Darby v. Compagnie Nationale Air France*, 769 F Supp. 1255 at p. 1262 (SDNY 1991).

¹² *Zippo Manufacturing Co. v. Zippo Dot Com. Inc.*, 952 F Supp 1119 at p. 1124 (WD Pa 1997).

¹³ Kerly’s, *Law of Trademarks and Trade Names* (London Sweet & Maxwell, 2001) at 741.

rights in the domicile of the hijacker, he may be able to bring a claim under “*Section 56 (well – known marks)*¹⁴ of the 1994 Act.” Failing that, he will have to persuade a Court in his own country to exercise extra – territorial jurisdiction over the Defendant and generally this requires some substantial link between that country and the Defendant.

International and National Laws governing Intellectual Property in Cyberspace

- **International Laws:** Berne Convention (1886) protects the rights in Literary and Artistic Works, excluding daily news or press information. Special provisions are provided for developing countries. Rome Convention (1961), extended copyright protection to authors of creative works and owners of physical indicators of intellectual property, for the first time. It allows domestic implementation enacted by member countries, where the dispute is subject to the International Court of Justice for remedy unless arbitration. TRIPS (1994) is a multilateral agreement on intellectual property that covers copyrights and related rights in the widest range. WPT (1996) is for the protection of the copyright of authors in their literary and artistic works in international law. Additionally, it provides for the protection of the rights of performers and producers in international law. UDRP (1999) is for the resolution of disputes on registration and use of internet domain names.

The international treaties have a long way to go before they are capable of protecting intellectual property rights on the ground and within the nations. Until practical realization of the best practices of the treaties into domestic law takes a front seat, the standardization of protection in the intellectual property rights domain would remain a distant dream, miles away from reality.

- **National Laws:** In India, Sec.51(a)(ii)¹⁵ is very clear that exclusive rights are vested in the copyright owner and anything to the contrary constitutes copyright infringement thereof. This legal provision, in the absence of any express provision for determining the liability of internet service provider (ISP), may be interpreted to come under the purview of expression ‘any place’ and ‘permits for profit’ where ISPs allow server facilities to stockpile user data at their business locations and make available for broadcast for making profit through charging for services and advertisements. But such interpretation faces difficulty to gain ground by way of added ingredients of ‘knowledge’ and ‘due diligence’ to be fulfilled before the ISP can be held to have abetted infringement of copyright.

¹⁴ Trademarks Act 1994 of the U. K., available at http://www.opsi.gov.uk/acts/acts1994/Ukpga_19940026_en_3.htm (last visited on May 16, 2024).

¹⁵ The Copyright Act, 1957, Act no. 14 of 1957.

Information Technology (Intermediaries Guidelines) Rules 2011 and sec.79 IT Act, 2000¹⁶ grant conditional safe harbour from liability of the online intermediaries, though keeping it open for interpretation on their liability under any other civil or criminal Act. IT Act 2000 makes an intermediary non-liaible for any third-party content hosted on its site. The 2011 Guidelines provide a diligence framework to be followed by intermediaries to avail the exemption granted in Sec.79. This makes it important for proactive judicial interpretation depending on the facts of each case.

In “*Super Cassettes Industries Ltd. vs. Myspace Inc. &Anr.*”¹⁷, the Hon’ble Court held the intermediary liable for allowing viewing and sharing images over the intellectual property ownership of Super Cassettes. The case pronounced judicial activism by granting precedence to the Indian Copyright Act, 1957 over the safe havens of IT Act, 2000, through reading sec.81 in conjunction with and over sec.79 (IT Act).

Sec.14¹⁸ elucidates what constitutes exclusive rights. The Hon’ble HC of Calcutta had recently passed an ex-parte injunction at the instance of the petitioners “*Phonographic Performance Ltd. (PPL), Indian Music Industry (IMI), and Sagarika Music Pvt. Ltd.*”, to restrict an array of “*ISPs namely Dishnet Wireless Ltd, Reliance Wimax Ltd, Hathway Cable & Datacom Pvt Ltd, Hughes Communications Ltd India, Tata Teleservices (Maharashtra) Ltd, Reliance Communications Infrastructure Ltd, Wipro Ltd, Sify Technologies Ltd, Bharti Airtel Ltd, Vodafone India Ltd, and BG Broadband India Pvt Ltd.,*” from providing access to www.songs.pk.

It is clear that a Napster-like network in India would fall within the ambit of this provision whereby it would be held liable for encroaching upon the exclusive copyright rights of the intellectual property rights owner through communication or facilitation of communication to the public.

Sec.51(b)(ii)¹⁹ suggests the infringement of copyright through distribution either for the purpose of business/trade or to prejudice the copyright owner. P2P network in India thereby would be distributing such work that would be prejudicial to the interests of the copyright owner, even if the component of trade/business is missing in it. Hon’ble Courts ought to be cautious while granting the defence of fair dealing for copyright infringement under Sec.52.²⁰

¹⁶ The Information Technology Act, 2000 (No. 21 of 2000), s.79.

¹⁷ *Super Cassettes Industries Ltd. vs. Myspace Inc. &Anr.*, (2011) 47 PTC 1 (Del).

¹⁸ The Copyright Act, 1957, Act no. 14 of 1957, s.14.

¹⁹ The Copyright Act, 1957, Act no. 14 of 1957, s.51(b)(ii).

²⁰ The Copyright Act, 1957, Act no. 14 of 1957, s.52.

The Indian Scenario

The Indian Courts are continuously endeavoring to enhance the scope of jurisdiction to bring within its scope the Internet related matters where the Defendant is either an out – of – state person or entity or where such an out – of – state person or entity files a suit in a foreign Court over the Indian Citizens and detains the Indian citizens for the wrongful act committed by them.

(a) Indian territorial jurisdiction over the Out – of – State Defendant

The owner of a trademark can file a civil suit in the Indian Courts of the infringement of his rights vested in such mark, if he fulfils the criteria laid down in “*Sec.134 of the Trademark Act, 1999*” which is equivalent to “*Sec.62 of the Copyright Act, 1957.*” Every suit in respect of the infringement of trademark in any work or the infringement of any other right conferred by this Act shall be instituted in the District Court. Sec.2(4) of the code of Civil Procedure provides that: District means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a ‘District Court’) and includes the local limits of the ordinary original civil jurisdiction of a High Court”. However, to determine whether the Court has jurisdiction or not the section further lays down certain criteria which provides that a District Court having jurisdiction shall include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain, in spite of anything else contained or that may have been mentioned in the Code of Civil Procedure. A suit for passing off arising out of the use by the Defendant of a trademark, which is identical with or deceptively similar to the Plaintiff’s trademark whether registered or unregistered, shall thus be instituted in a District Court having jurisdiction to try the suit. However, it does not provide the meaning of the ‘District Court. The code of Civil Procedure provides the jurisdiction of the District Court.

(b) Cause of action

CPC provides for territorial jurisdiction. Sec.20²¹ provides for jurisdiction where the suit can be instituted based on cause of action.²²

In the context of the Internet, however, it becomes very difficult to determine these above – mentioned factors to reach the out – of – state Defendants. But if the cause of action clause was to be carefully examined, it is amply clear that the Defendant’s residence or his business or his personal work of gain would be immaterial if the cause of action wholly or in part arises in India.²³ The Indian Courts would thus have the jurisdiction even though the Defendant is not a resident of India. However, it becomes

²¹ The Code of Civil Procedure, 1908.

²² The Code of Civil Procedure, 1908, s.20.

²³ *City and Industrial Development Corpn. Of Maharashtra v. R.M. Mohite & Co.* 1998 (2) Mah LR 641.

very hard to deal with or understand the troublesome issues of Internet jurisdiction in infringement disputes, where there are usually no contracts between the two parties, i.e., the owner of the copyright and the infringer. The Indian Courts have strived to deal with the issue. The Courts have granted certain interlocutory orders in some Domain Name disputes in which the law of passing off had been applied. In *“Tatasons v. Ghasson Yacoub”*²⁴, the Defendant had registered the Domain Name ‘tatagroup.com’ in the US while the Plaintiff was a resident of India. Mukul Mudgal, J. held that since the Internet has transactional ramifications, it is the effect of the impugned transaction in India, which is the decisive factor for determining jurisdiction. The Court thus held that the Internet could be accessed in New Delhi though it had been registered in the US and thus established jurisdiction over the Defendant on the basis of part cause of action as provided in sec.20(c)CPC. Part cause of action having arisen within the jurisdiction of this Court, it cannot be said that this Court has no jurisdiction.²⁵ But if Internet jurisdiction was determined on the basis of accessibility, it would be such that all kinds of infringement disputes arising over the Internet would cling to the Indian jurisdiction. Thus, though amendment of sec.20 provides for part cause of action, it is also important that Courts interpret the term with a requirement of something more than mere accessibility. It is apparent that part cause of action can be termed as equivalent to sufficient contacts.²⁶ In order to determine the jurisdiction of Court, if in a dispute, it can be seen.

The Defendant had some kind of minimum contact within the local limits of such a District Court, as part cause of action criteria can be established. The Court in *“Yahoo! Inc. v. Akash Arora”*²⁷ rightly held that there should be something more than mere accessibility to establish part cause of action. The cause of action requirement can thus be fulfilled with reference to the sliding scale framework.²⁸ If the Plaintiff establishes that the Defendant is doing business with the local limits of jurisdiction or is in some way interacting within the local limits of such state, then the Courts of such state can enhance the scope of jurisdiction on such out-of-state Defendants. While, the Delhi HC, in the landmark case of *“Banyan Tree Holding (P) Ltd v. A. Murali Krishna Reddy and Anr.”*²⁹ applied the rule of purposeful availment to the Indian scenario by holding that in order to establish the jurisdiction, the Plaintiff would have to show that the Defendant purposefully availed of the jurisdiction of the forum by targeting customers within the forum state, the Court also relied upon the ‘long arm’ provision contained in Sec.62(2)³⁰ which provides that the physical location of the defendant is immaterial and the case could

²⁴Tatasons v. Ghasson Yacoub, suit No. 1672 of 1999.

²⁵ Kotak Mahindra Finance Ltd. v. Parasrampuriah Synthetics Ltd., (1998) 1 Bom CJ 627.

²⁶ International Shoe Co. v. Washington, 326 U.S. 310 (1945).

²⁷ Yahoo! Inc. v. Akash Arora, (1999) 19 PTC 210 (Delhi).

²⁸ Zippo Manufacturing Co. v. Zippo Dot Com Inc., 952 F Supp 1119 at p. 1124 (WD Pa 1997).

²⁹ Banyan Tree Holding (P) Ltd v. A. Murali Krishna Reddy and Anr., 2010 (42) PTC 361.

³⁰ The Copyright Act, 1957, Act no. 14 of 1957, s.62(2).

be instituted in the local limits of a Court within which the Plaintiff, “*carries on business*”.³¹ For some, this raises concerns regarding the extraterritoriality of Indian IPR law³², however, the Courts have consistently upheld the Banyan Tree principle to give relevance to the plaintiff’s place of business in such disputes in contrast to the rules of territorial jurisdiction generally applicable to other disputes. In “*Blueberry Books & Ors. vs Google India Pvt. Ltd & Ors.*,”³³ the Delhi HC, while relying upon the decision of the SCI in “*Indian Performing Rights Society v. Sanjay Dalia*”³⁴ harmoniously construed the provisions of Sec.62³⁵ with the general provisions contained in Sec.20 of the CPC and allowed the plaintiff to institute a suit where he is having place of business. However, the Court also stressed that once it is shown that the defendant ‘*carries on business within the jurisdiction*’ of the Court, and the plaintiff, which is the copyright owner, also ‘resides’ there, jurisdiction cannot be denied. In the infringement disputes where an Indian Citizen is involved, and where the foreign national is the claimant, the foreign national can obtain a foreign judgement which would be conclusive in India. However, there are certain exceptions mentioned in Sec.13³⁶ regarding the same. It is thus very essential to note that ideally the users of the world wide web should access and communicate with the web with the awareness of the international laws as they can be liable in the foreign Courts also, if such act violates the rights of foreign nationals. The daily addition of cases in this field has necessitated a need for framing a unique, and a new legal framework with an international perspective in which much of the outcomes of the jurisdiction issue should be drawn with the result of solving such matters expeditiously in their preliminary stage. A possible innovative solution is perhaps increasingly resorting to online or international dispute resolution mechanisms provided by the “*World Intellectual Property Organization (WIPO)*” or as enshrined in the “*Uniform Domain Name Dispute Resolution Policy (UDRP)*” established by the “*Internet Corporation for Assigned Names and Numbers (ICANN)*”. The nature of these mechanisms is international in nature and presumes that the internet is a virtual space in itself, thus negating traditional jurisdiction problems giving an international character to these disputes like that of the internet itself, based on the principle what happens on the internet, stays on the internet.

³¹ The Trademark Act, 2002, s.134(2).

³² Hrishita Mukherjee, “Copyright Protection in Cyberspace-A Comparative Study of USA and India”, International Journal of Science and Research (IJSR) Vol 5 Issue 5 33 (2016).

³³ *Blueberry Books & Ors. v. Google India Pvt. Ltd & Ors.*, FAO (OS) 69/2014.

³⁴ *Indian Performing Rights Society v. Sanjay Dalia*, 2015 (10) SCC 161.

³⁵ The Copyright Act, 1957, Act no. 14 of 1957.

³⁶ The Code of Civil Procedure, 1908, s.13.

Conclusion and Suggestions

The law of intellectual property in cyberspace is on the move. The only problem for practitioners is that the direction of the move is not exactly clear at this point. As intellectual property continues to grow in value and importance in our information society, however, and as the Internet continues to grow in importance as a medium of commerce, the intersection of these two areas will be the hot spot to watch. An oft repeated quote in the context of the internet is that of Judge Nancy Gertner in *Digital Equipment Corp. v. Altavista Technology*:³⁷

*“The internet has no territorial boundaries. To paraphrase Gertrude Stein, as far as the internet is concerned, not only is there perhaps ‘no there, there,’ the ‘there’ is everywhere where there is internet access.”*³⁸

Jurisdictional challenges in intellectual property rights (IPR) disputes within cyberspace underscore the difficulties of applying traditional legal frameworks to the rapidly evolving digital landscape. As online interactions transcend national borders, the complexity of determining jurisdiction and enforcing rights becomes increasingly evident. Judicial trends reveal an ongoing struggle to adapt existing laws to the unique demands of cyberspace, resulting in varied interpretations and inconsistent resolutions. Despite efforts to address these challenges, the legal system must evolve to better align with the global nature of digital commerce and communication, ensuring that intellectual property is effectively protected, and disputes are fairly resolved.

This article examined the challenging and varied approaches that common law courts have taken to establish a clear test for jurisdiction in disputes arising from online activities. The difficulty is exacerbated by the fact that technology evolves rapidly, often outpacing legal frameworks by several steps. Currently, it seems that the law’s attempt to keep up with technological advancements is more aspirational than achievable. As Indian courts increasingly encounter cases involving foreign or extraterritorial defendants in internet transactions, they will likely continue to rely on legal precedents set by common law jurisdictions elsewhere. Just as technology itself is largely adopted from other sources, the legal principles governing it are also expected to follow a similar trajectory.

There is a significant opportunity and need for developing domestic legal frameworks. Although Indian statutory law in intellectual property rights (IPR) has been adapted to meet international standards, a similar approach is necessary for e-commerce law. Relying on legal systems to maintain the level upto the rapid “technological advancements” in internet usage will be challenging. There is a risk that without proper adaptation, we may inadvertently create additional barriers in cyberspace, leading to the development of various technologies designed to circumvent these new legal constraints. These issues

³⁷ Supra note 25.

³⁸ Supra note 32.

highlight the beginning of what is likely to be a prolonged process for lawmakers and enforcers as they work to address and manage these evolving legal challenges. To address the enumerated jurisdictional challenges, it is crucial to develop comprehensive international frameworks that facilitate cooperation and provide clear guidelines for cross-border IPR disputes. Updating national laws to define jurisdictional boundaries in cyberspace and strengthening enforcement mechanisms for foreign judgments are essential steps. Additionally, fostering global dialogue and consistency in case law, along with leveraging technological advancements, can improve the handling of IPR disputes. By promoting these measures, the legal community can enhance the management of jurisdictional issues, ensuring both efficient protection of IPR and equitable access to justice in this ever-evolving digital world.
