

Jurisdiction in cross-border copyright infringement cases

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Propositions accompanying the PhD dissertation

Jurisdiction in Cross-border Copyright Infringement Cases Rethinking the Approach of the Court of Justice of the European Union

by Birgit van Houtert-Rebero

1. Considering the CJEU's role as law-finder, the CJEU's combination of the *locus protectionis*, 'likelihood of damage' and mosaic approach to jurisdiction under Article 7(2) Brussels Ibis Regulation in cross-border copyright infringement disputes can be considered as illegitimate judicial activism since it undermines the principles underlying this special jurisdiction rule.
2. Adopting the 'directed activities' criterion and mosaic approach to jurisdiction in cross-border copyright infringement cases will generally entail predictability; a close connection between the dispute and the court; balance the interests between the litigants; balance the broader interests of copyright holders, users of information and traders; and suits the territorial principle related to copyrights.
3. While the *locus protectionis* requirement has to be satisfied to establish liability in cross-border copyright infringement cases, it can be an implicit criterion to establish jurisdiction under Article 7(2) Brussels Ibis Regulation in view of the principles of non-formality and national treatment as laid down in the Berne Convention of the Protection of Literary and Artistic Works of 1979.
4. The CJEU's approach to jurisdiction based on alleged damage caused by copyright infringing activities committed by a third party could be regarded as strict liability at jurisdictional level; this third party-based approach to jurisdiction has been rejected by the Supreme Court of the United States of America in tort cases.
5. To enhance sound administration of justice, address online copyright piracy and copyright havens, balance the interests between the litigants and the broader interests involved, the court of the *Erfolgsort* should obtain 'full' jurisdiction in case alleged ubiquitous copyright infringements have been directed to the forum state and caused flagrant substantial damage in that state in relation to the entire infringement as this approach yields predictability and a strong territorial connection between the dispute and the court.
6. In light of the principle of international comity, the exercise of 'full' jurisdiction of the court of the *Erfolgsort* under Article 7(2) Brussels Ibis Regulation in cross-border copyright infringement disputes may in practice be limited to the assessment of alleged damage caused within the European Union and to issue an injunction concerning infringing activities that occurred within the European Union as long as there is no uniform copyright law at world-wide level or the conflict-of-laws rule *lex loci protectionis*, laid down in Article 8(1) Rome II, has not been accepted world-wide.

7. At the review of the Geo-blocking Regulation by 23 March 2020, the European Union should consider that the internal market, particularly the cross-border e-commerce, may be negatively affected by the fact that the traders' tools to prevent jurisdiction in cross-border consumer disputes and copyright infringement disputes have frequently been reduced as they are often not allowed anymore to block their online interfaces or use other forms of discrimination based on customers' nationality, place of residence or place of establishment within the European Union.
8. A result of the increasing protection of environmental rights, the rights of future generations are becoming more important.
9. With respect to the application of artificial intelligence by the judicial system, it is relevant to monitor the quality of judgments and the compliance with the principles of procedural law and human rights.
10. India is an example of a democracy that frequently flouts human rights such as the protection of discrimination based on religion.
11. Writing a dissertation is like forging a Japanese sword since it requires precision, patience and perseverance.