

Issues of Jurisdiction in Intellectual Property Violations

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The importance of intellectual property has grown enormously in the knowledge driven economy. The establishment of World Trade Organization (WTO) and various international instruments for harmonization of minimum standards for protection of Intellectual Property Rights have played a pivotal role in the development of this field in the recent years. Intellectual Property is a creation of human intellect and forms an integral part of our life. Starting with an alarm clock that annoys us in the morning to an interesting novel that makes us dream at night, we are surrounded by the fruits of human creativity and inventions. In simple terms Intellectual Property is a product of human intellect, skill and labour.

IPRs are the rights given to people over the creation of their mind. Rights granted under various heads of intellectual property give an exclusive right over the use of creation for a limited period of time. Intellectual Property Rights serve to protect inventions, business name, creative and artistic expressions. Intellectual property rights, being imperative tools for the economic and industrial development of the nation, the laws protecting them have assumed great importance in the era of globalization and privatization.

Globalization and commercialization of intellectual property activities have created multiple challenges. The process of globalization has not only paved way for evolution of international norms for protection of intellectual property but has also changed the face of the law protecting it. The trend of progressive harmonization of Intellectual Property laws will lead to greater simplification and expediency in acquisition and protection of intellectual property. The world has witnessed that the International convention on the Trade Related Aspects of Intellectual Property Rights (TRIPs) has brought certain fundamental changes in the world of intellectual property.

Each state and its legal system is essentially responsible for determining the court with jurisdiction to decide on matters with an international element, even where these issues are also the subject of international treaties [1]. The concept of territoriality is inseparable from jurisdiction. It is often said that intellectual property rights are territorial by nature. By the territoriality principle it is meant that the intellectual property rights are limited to the territory of the state that grants it. Such territorially limited rights are independent of each other and they are available at the same time for the same innovative work in more than one country. The principle of territoriality as rooted in the municipal and international law create complex situation in case of protection and infringement of intellectual property rights. The principle of territoriality is being questioned with the advent of digitalization and globalization of trade and commerce where the scope of protection is not limited to a particular territory.

Protecting intellectual property in the global markets poses serious challenges as infringement in case of Intellectual property are frequently connected to more than one State, either because the infringer or the right holder is located abroad or because the infringement has been committed in a different State. In these situations, to file a complaint, it is essential to determine which courts have jurisdiction over the case. The rules that determine court's authority to deal with the case are known as jurisdictional rules. Jurisdictional rules are never decisive on the merits of the case. However, such rules provides for where to look

for the decisions. Jurisdictional rules provides for the nexus between the state, activity and the person involved in any litigation. As provided in the Hallsbury's Law of England [2]. "By jurisdiction is meant the authority by which a court has to decide matters that are litigated before it or to or to take cognizance of matters presented to it in a formal way for its decision. The limits of this authority are imposed by statute or chapter or commission under which the court is constituted and may be extended or restricted by similar means. If no restrictions or limitations are imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind or nature of the actions or the matters of which a particular court has cognizance or as to the area over which the jurisdiction extends, or it may partake of both these characteristics"

The ever escalating importance of intellectual property in international and domestic commerce is remarkable. Most obvious are the impact of electronic commerce and the growth of internet as a selling medium, a forum that transcends national boundaries and bears no physical location on 'Main Street' [3]. It is an axiomatic principle of Law that intellectual property and the rules governing intellectual property cannot be detached from territoriality. Commercialization and infringement of intellectual property in true sense have become multi territorial. The notion of territoriality as applied in the classical framework of conflict analysis is ambiguous [4].

The impact of Jurisdictional problems is not limited to a particular branch of Law. It affects the very foundation of the frame work of the substantive and procedural laws. Consequently the jurisdictional challenges in today's age of fast communication, has invited various view points for its resolution including significant changes in the existing legal framework. Internet being one of the most significant changes in the field of information technology requires more than mere adjustment in the law governing it. One cannot overlook the requirement of appropriate changes in the law. Failure to do so would lead to new complex legal issues. Complex legal issues like jurisdictional issues that call for appropriate solutions require right approach of academicians, judiciary and legislator for suggesting the potential range of solution. The solutions should not prove to be counterproductive opening path for further conflicts and confusions. To arrive at such conclusion one has to go beyond the formal legal reasoning that requires inductive and deductive reasoning by relying on precedents, legal principles and statutes. This may not be appropriate to keep pace with technological changes that are taking place rapidly. With the

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diversity of Laws of each country increasing every year, most protective measures require for the intangibles assets needs to be revisited. In case of any dispute involving a worldwide market, there are more than two hundred potential laws applicable for the assessment of the principle on territoriality. In this regard it is a great challenge to mould and precisely apply the existing legal frame work for better protection of Intellectual Property worldwide.

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