
JURISDICTIONAL CONFLICTS IN CROSS-BORDER INTELLECTUAL PROPERTY DISPUTES (COPYRIGHT AND TRADEMARK)

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ABSTRACT

The globalization of trade and the rise of the digital economy have transformed the landscape of intellectual property (IP) protection, giving rise to increasingly complex cross-border disputes¹. Advances in technology have enabled the rapid distribution of creative works, goods, and services across multiple jurisdictions, allowing copyrighted content and trademarks to be accessed, reproduced, and exploited internationally with unprecedented ease. While these developments offer significant opportunities for innovation and commerce, they also intensify the potential for infringement beyond national boundaries, challenging the traditional territorial nature of IP rights.

This paper examines the legal tensions that arise when a single act of infringement produces effects in multiple countries. Copyrighted works such as software, films, and music, as well as trademarks representing brand identities, can be infringed through online platforms, counterfeit sales, or targeted advertising that crosses borders². Such circumstances create overlapping claims of jurisdiction, where courts in different states may assert authority based on the location of the infringing act, the nationality of the parties involved, or the site of harm. These conflicts can result in parallel proceedings, conflicting judgments, increased litigation costs, and strategic forum shopping.

The study addresses key questions concerning how courts determine jurisdiction in cross-border copyright and trademark disputes, the factors contributing to jurisdictional conflicts, and the effectiveness of existing international treaties and regional regulations in providing clarity and coordination. It argues that despite the territorial limitations of IP rights,

¹ Don Brasher et al., *High-Tech Exports Grew Nearly Three Times Faster Than Global Trade in 2025 to Almost USD 5 Trillion, Boosted by the Artificial Intelligence Buildout*, World Intellectual Property Organization (WIPO) Global Innovation Index Blog (Feb. 23, 2026), <https://www.wipo.int/en/web/global-innovation-index/w/blogs/2026/high-tech-exports-2025>

² Copyright Infringement Explained: Understanding Legal Boundaries and Rights, *Law Notes by TheLaw.Institute* (Nov. 3, 2025), <https://thelaw.institute/copyright-and-related-rights/copyright-infringement-legal-boundaries-rights/>

modern commercial realities necessitate clearer legal standards and stronger international cooperation to manage cross-border disputes effectively³. The paper highlights the urgent need for reforms that balance the protection of rights holders with procedural efficiency, ensuring that IP enforcement keeps pace with the globalized and digitalized nature of contemporary commerce.

Keywords: cross-border disputes, intellectual property, copyright, trademark, jurisdiction, territoriality, digital commerce, forum shopping, international coordination, enforcement

1. Introduction

1.1. Background and Context

In recent decades, the combination of globalization and the digital revolution has transformed the way goods, services, and creative content circulate across the world. Advances in technology have enabled businesses to operate seamlessly beyond national borders, and consumers now have access to products and content from virtually any country through online platforms, e-commerce marketplaces, and streaming services⁴. This interconnected environment, while creating tremendous opportunities for innovation and commerce, has also amplified the potential for the exploitation of intellectual property (IP) rights across multiple jurisdictions. Creative works, brand identities, and technological innovations that were once confined to a single country can now be accessed, copied, or distributed internationally with minimal effort.

As the digital economy expands, disputes over IP rights increasingly have a cross-border dimension. Copyrighted content such as music, films, software, and literary works can be reproduced and shared globally almost instantaneously⁵. Similarly, trademarks, which represent a business's brand identity, can be infringed upon through online sales, counterfeit goods, and misleading advertising targeting consumers in multiple countries. The proliferation of such disputes reflects the tension between the global reach of digital commerce and the

³ Kopal Tewari, *Cross Border Intellectual Property Disputes: Challenges and Legal Strategies for Global Businesses*, Vol. V, Issue I Indian Journal of Integrated Research in Law 603–612 (2025), <https://ijirl.com/wp-content/uploads/2025/02/CROSS-BORDER-INTELLECTUAL-PROPERTY-DISPUTES-CHALLENGES-AND-LEGAL-STRATEGIES-FOR-GLOBAL-BUSINESSES.pdf>

⁴ Stephen Ezell & Stefan Koester, *Transforming Global Trade and Development With Digital Technologies*, Information Technology & Innovation Foundation (May 8, 2023), <https://itif.org/publications/2023/05/08/transforming-global-trade-and-development-with-digital-technologies/>

⁵ Akshat Dev & Himanshu Singh, *Intellectual Property Rights in the Digital Age: Challenges and Solutions*, Vol. V Iss. VI Indian J. of Law & Legal Research (Dec. 25, 2023), <https://www.ijllr.com/post/intellectual-property-rights-in-the-digital-age-challenges-and-solutions>

traditionally national scope of IP protection⁶. Courts and authorities around the world are increasingly faced with cases in which infringement is not limited to one jurisdiction, but spans multiple territories, raising complex legal questions about which country's laws should apply and which courts have authority to adjudicate.

1.2. The Core Problem

At the heart of these disputes lies a fundamental legal tension: intellectual property rights are inherently territorial⁷. A copyright or trademark registered in one country grants protection only within that country's borders. However, the internet and global commerce have made it possible for a single infringing act to have effects in numerous countries simultaneously⁸. This situation gives rise to overlapping claims of jurisdiction, as multiple courts may assert the authority to hear a case based on the location of the infringing act, the nationality of the parties, or the place where harm occurred. Such overlaps increase the risk of parallel proceedings in different countries, which can lead to conflicting judgments, double liability, or strategic forum shopping by rights holders seeking the most favorable legal environment.

1.3. Research Questions

This paper seeks to explore the following key questions⁹: How do courts determine jurisdiction in cross-border copyright and trademark disputes? What factors contribute to jurisdictional conflicts in these cases? To what extent do existing international frameworks, such as treaties and regional regulations, adequately address these challenges? Finally, what reforms or legal mechanisms could improve clarity, coordination, and enforceability in cross-border IP litigation?

⁶ Carlos Góes & Eddy Bekkers, *The Impact of Geopolitical Conflicts on Trade, Growth, and Innovation*, World Trade Org. Staff Working Paper ERSD-2022-9, at (July 4, 2022), <https://doi.org/10.30875/25189808-2022-9>

⁷ Anay Amin, *Territorial Jurisdiction in Intellectual Property Cases: A Judicial Overview*, LiveLaw (Aug. 2, 2021), <https://www.livelaw.in/law-firms/law-firm-articles-/territorial-jurisdiction-intellectual-property-law-178674>

⁸ Eleonora Rosati, *The Localization of IP Infringements in the Online Environment: From Web 2.0 to Web 3.0 and the Metaverse*, World Intellectual Property Org., Building Respect for IP Div. (Sept. 2023), <https://www.wipo.int/export/sites/www/respect-for-ip/en/docs/case-study-the-localization-of-ip-infringement.pdf>

⁹ Ariba Kadri, *Jurisdictional Challenges in Cross-Border Disputes: Navigating the Complexities*, Indian J.L. & Legal Rsch. (Mar. 29, 2024), <https://www.ijllr.com/post/jurisdictional-challenges-in-cross-border-disputes-navigating-the-complexities>

1.4. Thesis Statement

Although intellectual property rights are limited by national borders, the realities of modern commerce mean that infringing acts often transcend these boundaries, creating complex jurisdictional issues¹⁰. The absence of harmonized global rules results in inconsistent judicial outcomes, increased litigation costs, and challenges in enforcement, underscoring the urgent need for greater international coordination and clearer legal standards to manage cross-border IP disputes effectively.

2. Nature of Intellectual Property and the Territoriality Principle

Intellectual property (IP) rights are inherently territorial, meaning that they are created, recognized, and enforced according to the laws of a specific state¹¹. Unlike property rights over physical objects, which can sometimes be claimed or recognized across borders through international conventions or treaties, IP rights exist primarily within the jurisdiction that grants them. For example, a copyright registered under the laws of the United States confers protection only within U.S. territory; outside the U.S., the same work may be subject to different rules or may require separate registration for protection¹². Similarly, a trademark valid in one country does not automatically grant the same rights in another country, even if the mark is identical. This separation underscores the principle that each country retains sovereignty over its own legal system, including the grant and enforcement of IP rights.

The principle of territoriality is central to understanding the limitations of IP law¹³. Under this principle, a country's courts can generally adjudicate only acts of infringement that occur within its own borders. Consequently, an act that may constitute infringement in one jurisdiction might not be recognized as such in another¹⁴. For example, publishing a copyrighted work online from one country may be legal locally but could violate copyright

¹⁰ Ashta Siddhi Nagar & Dr. Mudra Singh, *Challenges in Enforcing Intellectual Property Across Jurisdiction in Digital Age*, 16 Int'l J. Sci. & Advanced Tech. 1 (Apr.–June 2025), <https://www.ijst.org/papers/2025/2/4177.pdf>

¹¹ Aryaman Nehra & Kanika Tyagi, *Principle of Territoriality in IPR/Copyright Laws & Its Challenges*, Indian Journal of Law & Legal Research (Apr. 17, 2025), <https://www.ijllr.com/post/principle-of-territoriality-in-ipr-copyright-laws-its-challenges>

¹² *International Laws - Copyright Resources to Support Publishing and Teaching*, University of Pennsylvania Libraries (last updated Aug. 18, 2025), <https://guides.library.upenn.edu/copyright/international>

¹³ Zheng (Sophia) Tang, *Territoriality and Intellectual Property Infringement Proceedings*, 12 Korean J. Int'l & Comp. L. 97 (2024), available at https://brill.com/downloadpdf/view/journals/kjic/12/1/article-p97_9.pdf

¹⁴ Vijay Pal Dalmia, *Cause of Action and Determination of Jurisdiction in Intellectual Property Rights Cases in India*, Mondaq (Nov. 30, 2022), <https://www.mondaq.com/india/trademark/1255596/cause-of-action-and-determination-of-jurisdiction-in-intellectual-property-rights-cases-in-india>

laws in countries where access occurs without authorization. Territoriality, therefore, inherently limits the extraterritorial application of IP laws: one state cannot simply apply its own IP rules to acts occurring entirely abroad. While treaties like the Berne Convention or TRIPS Agreement establish minimum standards of protection and facilitate international recognition, they do not extend the territorial reach of domestic IP laws beyond a country's borders¹⁵.

The rise of globalization and digital commerce has introduced significant tension between territoriality and modern cross-border IP challenges¹⁶. With the internet, infringing content can be created in one jurisdiction and accessed instantaneously worldwide. A single act such as uploading a copyrighted video or offering counterfeit goods for sale online can simultaneously affect multiple jurisdictions, making it unclear which country's courts should exercise jurisdiction¹⁷. This creates a conflict between state sovereignty, which limits the application of domestic law to national borders, and the practical need to enforce rights effectively in an interconnected global market. Courts have increasingly had to grapple with questions such as whether to base jurisdiction on the location of the server, the residence of the infringer, or the place where the harm occurs.

This tension highlights a broader problem: traditional territorial principles, designed for a pre-digital era, are often ill-suited for cross-border infringements¹⁸. The challenge lies in balancing respect for national sovereignty with the practical realities of protecting IP in a globalized environment. Without mechanisms to coordinate enforcement or harmonize rules on jurisdiction, rights holders may face inconsistent outcomes, and infringers may exploit gaps between jurisdictions. In essence, the territorial nature of IP and the principle of territoriality provide a legal framework grounded in state authority, but they also generate significant challenges in the digital age, necessitating innovative legal interpretations and international

¹⁵International Copyright Treaties and Their Implications, *IPLawObserver.com*, <https://iplawobserver.com/international-copyright-treaties-and-their-implications/>

¹⁶ Jiaxin Li, *The Legal Regulation of Cross-Border E-Commerce: Challenges and Opportunities in the Globalization Era*, Innovation Economics and Management Research, Vol. 8, at [page] (2024), available at <https://www.isccac.org/d/file/articles/2024-11-26/1b9d6396578a55607dff5a1757fe2917.pdf>

¹⁷ U.S. Dep't of Homeland Sec., *Combating Trafficking in Counterfeit and Pirated Goods: Report to the President of the United States* (Jan. 24, 2020), https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf

¹⁸ Saachi Dhingra, *The Territoriality Principle in Indian Trademark Law: A National Perspective*, Record of Law (Feb. 6, 2025), <https://recordoflaw.in/the-territoriality-principle-in-indian-trademark-law-a-national-perspective/>

cooperation¹⁹.

3. Legal Framework Governing Jurisdiction in Cross-Border IP Disputes

When intellectual property disputes cross national borders, determining which court has the authority to hear a case becomes a critical challenge²⁰. Jurisdictional issues in cross-border IP litigation are particularly complex because IP rights are territorial in nature, yet infringement can easily occur across multiple countries, especially in the digital age. To understand how courts and legal systems approach these disputes, it is useful to examine domestic jurisdictional rules, relevant international instruments, and regional frameworks.

3.1. Domestic Jurisdictional Rules

At the domestic level, courts rely on established principles of jurisdiction to determine whether they can hear a case. The first key element is subject-matter jurisdiction, which refers to a court's authority over the type of legal issue presented²¹. For instance, intellectual property disputes are often handled in specialized courts, or at least under specialized procedural rules, to ensure judges with relevant expertise are deciding the case. Without proper subject-matter jurisdiction, a court cannot issue a binding judgment, making this a threshold requirement in any IP dispute²².

Next is personal jurisdiction, which concerns a court's power over the parties involved. In cross-border cases, personal jurisdiction can become complicated when defendants are located outside the forum state²³. Courts often ask whether the defendant has sufficient contacts with the forum to justify the exercise of authority. In some countries, the "effects doctrine" is used, where jurisdiction is claimed if the alleged infringement causes substantial harm within the

¹⁹ *Understanding the Territorial Principle in Intellectual Property Protection*, SION IP (May 6, 2025), <https://sion-ip.com/en/blog/understanding-the-territorial-principle-in-intellectual-property-protection/>

²⁰ *Understanding Jurisdiction in Cross-Border Intellectual Property Disputes*, Advocelo (June 21, 2024), <https://advocelo.com/jurisdiction-in-cross-border-intellectual-property-disputes/>

²¹ Lavanya Goinka, *General Principles Affecting the Jurisdiction of Courts and the Extent of Exclusion*, LEGALINDIA (Nov. 7, 2023), <https://www.legalindia.com/general-principles-affecting-the-jurisdiction-of-courts-and-the-extent-of-exclusion/>

²² Bhatt & Joshi Associates, *Jurisdiction of Courts: A Comprehensive Analysis of Provisions and Jurisprudence*, Bhatt & Joshi Associates (Apr. 21, 2022), <https://bhattandjoshiassociates.com/jurisdiction-of-courts-a-comprehensive-analysis-of-provisions-and-jurisprudence/>

²³ Alberto Sierra, Jr., *Understanding Personal Jurisdiction: What It Is and Why It Matters* (Dec. 12, 2024), <https://ortegagroup.law/understanding-personal-jurisdiction-what-it-is-and-why-it-matters/>

forum state, even if the infringing act originated elsewhere²⁴.

Long-arm statutes are another important domestic tool. These laws allow courts to reach defendants who are physically outside the jurisdiction but whose actions have direct consequences within it²⁵. For example, a company based abroad that sells counterfeit products online targeting consumers in the forum state may fall under the reach of such statutes. Long-arm provisions are particularly relevant for internet-based copyright and trademark disputes, where the location of the infringing act is not always clear.

Where applicable, the minimum contacts doctrine further shapes the exercise of jurisdiction²⁶. Originating in U.S. law, this principle requires that a defendant must have purposeful contacts with the forum state so that maintaining the lawsuit does not violate notions of fair play and substantial justice²⁷. Courts assess factors such as business presence, targeted marketing, or online accessibility to determine whether asserting jurisdiction is reasonable. While the details differ among jurisdictions, the underlying goal is to balance the plaintiff's interest in obtaining a remedy with the defendant's due process rights.

3.2. *International Instruments*

While domestic rules govern the mechanics of jurisdiction, several international treaties establish substantive standards for IP protection, indirectly influencing cross-border disputes. The Berne Convention for the Protection of Literary and Artistic Works sets minimum standards for copyright protection across member states, ensuring that works originating in one country receive recognition abroad²⁸. Similarly, the Paris Convention for the Protection of Industrial Property extends basic protections to trademarks, patents, and other industrial property across member countries²⁹. Both conventions primarily harmonize the scope of rights and remedies but do not provide clear rules on which country's courts can hear disputes.

²⁴ *Effects Doctrine*, The Legal Beaver (Sept. 10, 2024), <https://legalbeaver.ca/2024/09/10/effects-doctrine/>

²⁵ Understanding Long-Arm Statutes and Their Application in Jurisdictional Matters, *Legiforge*, Feb. 16, 2024, <https://legiforge.com/long-arm-statutes-and-their-application/>

²⁶ Himanshu Sharma & Ritiraj, *Minimum Contact Theory*, Mondaq (Sept. 11, 2013), <https://www.mondaq.com/india/contracts-and-commercial-law/262030/minimum-contact-theory>

²⁷ *Long-Arm Statute*, *JRank: Jurisdiction, Court, Zippo, and Defendant*, <https://law.jrank.org/pages/8361/Long-Arm-Statute.html>

²⁸ *The Berne Convention 1886: A Comprehensive Guide to International Copyright Protection*, KanoonPedia (Jul. 15, 2025), <https://kanoonpedia.com/berne-convention-1886-complete-guide-copyright/>

²⁹ Rohit Belakud, *Salient Features of the Paris Convention, 1883*, THELEGALQNA (Sept. 14, 2024), <https://thelegalqna.com/salient-features-of-the-paris-convention-1883/>

The TRIPS Agreement, administered under the World Trade Organization, further strengthens these obligations by combining aspects of copyright, trademark, and patent law with enforcement requirements³⁰. It obliges member states to provide effective legal remedies against infringement. However, like the Berne and Paris Conventions, TRIPS focuses on substantive law rather than jurisdictional competence. As a result, even though these treaties create common minimum standards for IP rights, they leave courts to navigate jurisdictional questions independently, leading to potential conflicts in cross-border cases³¹.

3.3. Regional Instruments

Regional instruments, particularly in the European Union, provide a more structured approach to jurisdiction in IP disputes. The Brussels I Regulation (Recast) establishes rules on which courts in EU member states can hear civil and commercial disputes, including IP cases³². It emphasizes predictability and cooperation among courts, reducing the risk of parallel proceedings and conflicting judgments. Key principles include recognizing jurisdiction where the defendant is domiciled or where the harmful event occurs.

In the context of IP disputes, EU courts often apply the place of harmful event doctrine, which allows plaintiffs to sue in the country where the infringing act produced its effects, such as lost revenue or reputational damage³³. This approach is particularly relevant for online infringements, where the content may be uploaded in one country but accessed and consumed in many others. Specialized jurisdiction rules in the EU also account for IP-specific factors, such as the territorial nature of rights, providing a nuanced framework that balances the interests of rights holders and defendants.

Overall, understanding the legal framework governing jurisdiction in cross-border IP disputes requires examining the interplay between domestic rules, international treaties, and regional regulations. While international instruments harmonize the substantive protection of IP rights,

³⁰ The TRIPS Agreement and Its Impact on Intellectual Property Laws in India, Arooj Knowledge Base (Apr. 2, 2024), <https://arooljlaw.com/kb/the-trips-agreement-and-its-impact-on-intellectual-property-laws-in-india/>

³¹ *Decoding TRIPS: Intellectual Property in the World Trade Framework*, TheLaw.Institute (Nov. 3, 2025), <https://thelaw.institute/general-introductions-to-ip-rights/intellectual-property-world-trade-trips/>

³² Xandra Kramer, *Commission Report and Staff Working Document on Brussels I recast*, Conflict of Laws (June 2, 2025), <https://conflictoflaws.net/2025/commission-report-and-staff-working-document-on-brussels-i-recast/>

³³ Italian Court Recognises EU Court of Justice Principles on International Jurisdiction and ‘Place Where Harmful Event Occurred,’ *Pavia e Ansaldo* (Sept. 30, 2018), <https://www.pavia-ansaldo.it/en/italian-court-recognises-eu-court-of-justice-principles-on-international-jurisdiction-and-place-where-harmful-event-occurred/>

the actual determination of jurisdiction remains largely a matter of domestic and regional law³⁴. This gap highlights why disputes often arise in multiple jurisdictions simultaneously, creating challenges for courts, rights holders, and global enforcement efforts.

4. Jurisdiction in Cross-Border Copyright Disputes

4.1. Online Copyright Infringement

The digital age has transformed copyright enforcement, introducing significant challenges for courts in determining jurisdiction³⁵. Unlike traditional infringement, which occurred within tangible, national borders, online copyright violations often happen virtually, making territorial limits difficult to apply. One of the most common forms of infringement today is unauthorized streaming³⁶. For example, when copyrighted movies, music, or software are streamed from servers in one country to users in multiple other countries without permission, the infringement is not confined to a single jurisdiction. This widespread accessibility raises the question of which court has the authority to hear the case.

Another key form of online infringement is digital reproduction and distribution. Copying copyrighted works and sharing them via the internet through websites, cloud storage, or file-sharing platforms allows infringers to bypass national restrictions³⁷. This creates scenarios where multiple states could claim jurisdiction over the same act, complicating enforcement. Similarly, peer-to-peer (P2P) sharing networks, such as torrent platforms, enable users to exchange copyrighted material directly with one another across borders³⁸. In such cases, each participant could technically infringe the copyright in their own country, producing overlapping claims and a complex jurisdictional web.

³⁴ Intellectual Property Rights and International Law, *Harvard Undergraduate Law Review* (Jan. 30, 2025), <https://hulr.org/technology-and-the-law-expert-interviews/intellectual-property-rights-and-international-law>

³⁵ COPYRIGHT PROTECTION IN THE DIGITAL AGE: ISSUES AND ..., *Indian Journal of Legal Review* ["IJLR"], Vol. 5, Iss. 13 of 2025, <https://ijlr.iledu.in/wp-content/uploads/2025/11/V5I1390.pdf>

³⁶ Pavani Reddy, *Copyright Law in the Age of Streaming: Addressing Piracy and Fair Use in Digital Media*, *Le Droit India* (Oct. 20, 2024), <https://ledroitindia.in/copyright-law-in-the-age-of-streaming-addressing-piracy-and-fair-use-in-digital-media/>

³⁷ Harshita Singh Patel, *Digital Piracy and Copyright Enforcement: Approaches to Tackling Online Infringement*, *Law Jurist* (Jan. 12, 2025), <https://lawjurist.com/index.php/2025/01/12/digital-piracy-and-copyright-enforcement-approaches-to-tackling-online-infringement/>

³⁸ Wan Man Jason Fung & Avnita Lakhani, *Combating Peer-to-Peer File Sharing of Copyrighted Material Via Anti-Piracy Laws: Issues, Trends, and Solutions*, 29 *Comp. L. & Sec. Rev.* 382 (2013), <https://doi.org/10.1016/j.clsr.2013.05.006>

4.2. Determining Jurisdiction

When a copyright dispute arises online, courts face the challenge of determining which jurisdiction is proper. Traditionally, copyright law relies on territorial principles, meaning that the infringement must occur within a state's borders³⁹. In the digital context, several factors are considered:

1. **Place of uploading** – This considers the location where the infringing material was initially uploaded⁴⁰. If the upload occurred in Country A, courts there may assert jurisdiction even if the content is accessible globally.
2. **Place of server location** – Many courts also look at where the server hosting the copyrighted material is physically situated⁴¹. For example, a website hosted on servers in Germany but accessible worldwide could bring the case within German jurisdiction.
3. **Place of accessibility** – Courts sometimes adopt a broader “availability” approach, asserting jurisdiction wherever the infringing content can be accessed⁴². This approach is particularly relevant for works accessible online without geo-blocking.
4. **Place of damage** – Finally, courts may consider where the harm to the copyright holder occurred. If a U.S.-based company suffers financial losses due to unauthorized streaming in multiple countries, U.S. courts may claim jurisdiction, even though the content was uploaded elsewhere⁴³.

Each approach has advantages and limitations. Relying on the place of uploading or server location respects traditional territoriality, but may overlook the real impact on rights holders. Conversely, the place-of-damage or accessibility approaches better protect the economic

³⁹ Wan Man Jason Fung & Avnita Lakhani, *Combatting Peer-to-Peer File Sharing of Copyrighted Material Via Anti-Piracy Laws: Issues, Trends, and Solutions*, 29 Comp. L. & Sec. Rev. 382 (2013), <https://doi.org/10.1016/j.clsr.2013.05.006>

⁴⁰ Sanidhya Bajpai, *Intermediary Liability in Copyright Claim Over User-Generated Content*, CSIPR Cell for Studies in Intellectual Property Rights (Mar. 24, 2023), <https://csipr.nliu.ac.in/copyright/intermediary-liability-in-copyright-claim-over-user-generated-content/>

⁴¹ Meaghan H. Kent, Linda J. Zirkelbach & Matthew Julyan, *Federal Courts Split on ‘Server Test’ in Copyright Infringement Cases Involving Embedded Images*, Venable (Aug. 1, 2025), <https://www.venable.com/insights/publications/2025/08/federal-courts-split-on-server-test-in-copyright>

⁴² Ajay Amitabh Suman, *Intersection of Intellectual Property Rights and the Jurisdiction of Courts in Online Disputes*, LegalServiceIndia.com, <https://www.legalserviceindia.com/legal/legal/article-19545-intersection-of-intellectual-property-rights-and-the-jurisdiction-of-courts-in-online-disputes.html>

⁴³ *Chapter 15 – Bankruptcy Basics*, U.S. Courts (last visited Mar. 4, 2026), <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics>

interests of copyright holders but risk overextending jurisdiction, raising concerns about judicial overreach.

4.3. Key Judicial Approaches

Courts have developed different tests to navigate jurisdiction in online copyright cases:

- **Targeting test:** This test evaluates whether the infringer intentionally directed their activities at a particular country⁴⁴. For instance, if a website explicitly markets copyrighted content to users in Country B, that jurisdiction can claim authority. The targeting test helps distinguish incidental online access from deliberate exploitation.
- **Effects doctrine:** Similar to targeting, the effects doctrine focuses on the consequences of an infringing act in a foreign jurisdiction⁴⁵. If an online upload causes substantial economic harm in a country, courts there may exercise jurisdiction, even if the infringer never physically entered that territory.
- **Accessibility doctrine:** This doctrine is more permissive and holds that if copyrighted content is accessible in a jurisdiction, the courts may hear the case⁴⁶. While this protects rights holders, it can lead to multiple jurisdictions asserting claims over the same act, increasing the risk of conflicting judgments.

Judicial application of these doctrines varies globally⁴⁷. European courts often emphasize the targeting test and effects doctrine to balance territorial limits with protection of copyright holders, while U.S. courts have historically given broader leeway to effects-based jurisdiction in the context of online infringement.

4.4. Challenges

Cross-border copyright disputes raise several practical and legal challenges:

⁴⁴ Dr. Balvinder Taneja, *Effects Test and International Targeting in Cyber Law*, DRB Taneja (online), <https://drbtaneja.com/effects-test-and-international-targeting-in-cyber-law/>

⁴⁵ *Antiterrorism for Official Use Only: Army Regulation for Official Use Only*, SILO, <https://silo.tips/download/antiterrorism-for-official-use-only-army-regulation-for-official-use-only-milita>.

⁴⁶ Anand Sarangam, *Emerging Legal Standards in Digital Accessibility*, 11 Int'l J. Innovative Research in Eng'g & Multidisciplinary Phys. Sci. 1 (Nov.–Dec. 2023), <https://www.ijirmps.org/papers/2023/4/231629.pdf>

⁴⁷ The Impact of the 'Effects' Doctrine on Cyber Crime Jurisdiction, *Law Notes*, TheLaw.Institute (Nov. 24, 2025), <https://thelaw.institute/regulation-of-cyberspace/impact-effects-doctrine-cyber-crime-jurisdiction/>

- **Multiplicity of jurisdictions:** The same act of online infringement may lead to lawsuits in multiple countries, forcing defendants to navigate differing procedural rules and legal standards.
- **Fragmented protection:** Since copyright law is territorially limited, plaintiffs may struggle to secure consistent remedies across jurisdictions. The lack of harmonized rules can result in uneven enforcement and potential gaps in protection.
- **Enforcement of foreign judgments:** Even when a plaintiff obtains a favorable judgment in one country, enforcing it in another can be complicated. Recognition of foreign judgments is not automatic and may be refused based on public policy, sovereignty concerns, or differences in substantive copyright law.

Overall, the intersection of digital technologies and territorial copyright creates a complex legal landscape⁴⁸. Courts must balance the rights of copyright holders against principles of national sovereignty and fairness to defendants, all while attempting to provide practical remedies for online infringement. The multiplicity of doctrines and approaches underscores the pressing need for more harmonized international standards to address cross-border copyright conflicts.

5. Jurisdiction in Cross-Border Trademark Disputes

5.1 Trademark Territoriality

Trademarks are fundamentally territorial in nature, meaning that the rights granted to a trademark owner are limited to the jurisdiction in which the mark is registered or recognized. This territorial principle ensures that a trademark owner's rights are enforceable only within the boundaries of the state that issued them. Different jurisdictions follow either a registration-based system, a use-based system, or a combination of both.

In registration-based systems, such as those in many civil law countries, the right to a trademark arises primarily through registration with the relevant national or regional trademark office⁴⁹.

⁴⁸ Aryaman Nehra & Kanika Tyagi, Principle of Territoriality in IPR/Copyright Laws & Its Challenges, *Indian Journal of Law and Legal Research* (Apr. 17, 2025), <https://www.ijlrr.com/post/principle-of-territoriality-in-ipr-copyright-laws-its-challenges>

⁴⁹ *Law Notes by The Law Institute*, How to Acquire Trademark Rights in India: Use vs Registration, The Law Institute (Oct. 10, 2025), <https://thelaw.institute/trademarks-domain-names-geographical-indications/acquire-trademark-rights-india-use-registration/>

For example, registering a trademark in the United States or the European Union gives the owner exclusive rights within that territory, even if the mark is not yet actively used in commerce. The registration serves as proof of ownership and can be enforced against any infringer within that jurisdiction.

On the other hand, use-based systems, commonly found in countries like the United States, grant rights to the party that can demonstrate actual use of the mark in commerce⁵⁰. In these systems, a trademark owner may acquire enforceable rights without formal registration, provided the mark is recognized and associated with their goods or services in the marketplace. Both systems highlight the territorial limitation of trademarks, which becomes particularly significant when infringement occurs online or across borders, creating complex jurisdictional challenges.

5.2. Online Trademark Infringement

With the growth of the internet and e-commerce, trademark disputes increasingly involve online infringement, complicating the application of territorial rules⁵¹. Three main forms of online infringement dominate cross-border disputes:

1. **Domain name disputes** – Cyber-squatting, typosquatting, and unauthorized registration of domain names containing another party's trademark have become common. For example, a person might register a domain incorporating a well-known brand to divert customers or sell the domain at a profit, raising questions about which jurisdiction can hear the case when the registrant and the trademark owner are in different countries.
2. **Keyword advertising** – In digital advertising, companies sometimes purchase keywords corresponding to competitors' trademarks to direct traffic to their own products. Jurisdictional conflicts arise when these ads are displayed in countries where the trademark is protected, even if the advertiser operates elsewhere, creating a

⁵⁰ B. Brett Heavner & Marcus H.H. Luepke, *Avoiding Trademark Pitfalls in the "Land of the Unlimited Possibilities"*, Finnegan (July/Aug. 2008), <https://www.finnegan.com/en/insights/articles/avoiding-trademark-pitfalls-in-the-land-of-the-unlimited.html>

⁵¹ Sneha, *E-Commerce & Trademark Turbulence: Navigating Infringement in Online Marketplaces*, Record of Law (Aug. 30, 2025), <https://recordoflaw.in/e-commerce-and-trademark-turbulence-navigating-infringement-in-online-marketplaces/>

“targeting” problem for courts.

3. **Counterfeit sales on e-commerce platforms** – Online marketplaces like Amazon or eBay facilitate sales across multiple jurisdictions⁵². When a seller offers counterfeit goods in another country, courts must determine whether they have jurisdiction based on where the products are accessible, where consumers are targeted, or where the harm is felt.

These online activities blur the territorial lines of trademark protection and often lead to disputes in multiple jurisdictions simultaneously.

5.3. Jurisdictional Tests

Courts have developed several tests to determine whether they can claim jurisdiction over cross-border trademark disputes:

1. **Targeting consumers in a particular state**⁵³ – Courts often assess whether the infringing party intentionally directed commercial activity toward consumers in the forum state. Evidence of language selection, currency, shipping options, or targeted advertising may indicate purposeful engagement with the market.
2. **Likelihood of confusion in specific markets** – In trademark law, infringement is generally assessed by the potential for consumer confusion. Jurisdictions may claim authority if the alleged infringement causes or is likely to cause confusion among consumers in their territory, even if the infringing act originated elsewhere.
3. **Commercial effects test** – This test considers the tangible effects of the infringing conduct within the forum state. For example, if a counterfeit product sold online significantly impacts sales or brand reputation in a particular jurisdiction, courts may assert jurisdiction over the foreign infringer. This approach emphasizes the practical harm experienced locally, rather than the location of the defendant.

These tests often overlap and are applied differently across jurisdictions, sometimes leading to

⁵² Are E-Commerce Platforms Liable for Selling Counterfeit Products?, Law4u (Feb. 18, 2026), <https://law4u.in/top-answer/3174/are-e-commerce-platforms-liable-for-selling-counterfeit-products>

⁵³ Targeting Customers in Specific Geographic Regions, *FasterCapital* (Apr. 12, 2025), <https://fastercapital.com/content/Targeting-customers-in-specific-geographic-regions.html>

inconsistent outcomes and forum shopping.

5.4. Domain Name Disputes

Domain name disputes are a specific area where cross-border jurisdiction becomes particularly complex. The World Intellectual Property Organization⁵⁴ (WIPO) plays a central role in providing an international forum for resolving such disputes through arbitration and mediation, especially when national courts are impractical or insufficient.

The Uniform Domain-Name Dispute-Resolution Policy (UDRP)⁵⁵, administered by WIPO under the guidance of the Internet Corporation for Assigned Names and Numbers (ICANN)⁵⁶, provides a standardized procedure for resolving disputes over domain names that are identical or confusingly similar to trademarks. The UDRP process allows trademark owners to seek transfer or cancellation of infringing domain names without going through lengthy national court proceedings.

However, the UDRP and other arbitration mechanisms have limits. They primarily address the registration of domain names and do not award damages or address broader trademark infringement issues, which may still require national court involvement. Consequently, even after a UDRP decision, parties may need to engage in litigation in multiple jurisdictions to secure full remedies, enforce rights, or prevent further infringement.

Overall, the combination of territorial trademark principles, online infringement methods, and the evolving use of international arbitration highlights the complex jurisdictional landscape of cross-border trademark disputes. Courts and arbitration bodies must balance respecting national sovereignty with providing effective protection for rights holders in a global digital environment.

6. Problems Arising from Jurisdictional Conflicts

Jurisdictional conflicts in cross-border intellectual property disputes create significant legal and

⁵⁴ *Role of WIPO (World Intellectual Property Organization) in Resolving International IP Disputes*, MichaelEdwards.uk (Apr. 4, 2019), <https://michaelledwards.uk/role-of-wipo-world-intellectual-property-organization-in-resolving-international-ip-disputes/>.

⁵⁵ WIPO Guide to the Uniform Domain Name Dispute Resolution Policy (UDRP), World Intellectual Property Org. Arbitration & Mediation Ctr., <https://www.wipo.int/amc/en/domains/guide/>

⁵⁶ Internet Corporation for Assigned Names and Numbers (ICANN), <https://www.icann.org/>

practical challenges. These problems often complicate enforcement, prolong litigation, and increase costs for both rights holders and defendants. Four key issues emerge: forum shopping, parallel proceedings, enforcement difficulties, and inconsistent standards.

6.1. Forum Shopping

One of the most common consequences of overlapping jurisdiction is forum shopping. This occurs when plaintiffs deliberately choose to file their case in a jurisdiction perceived as more favorable to their claim⁵⁷. For example, some courts may be known for awarding higher damages in copyright or trademark infringement cases, or for interpreting infringement more broadly. Rights holders may thus target these jurisdictions even if the connection to the forum is minimal. While strategically understandable from the plaintiff's perspective, forum shopping undermines the principle of fairness in litigation and can strain judicial resources in courts with only a tenuous connection to the dispute. Moreover, this practice can create a competitive imbalance, where defendants face lawsuits in multiple, potentially hostile legal systems, leading to increased costs and legal uncertainty.

6.2. Parallel Proceedings

Closely linked to forum shopping are parallel proceedings, where the same dispute is litigated simultaneously in multiple jurisdictions⁵⁸. This is particularly common in international copyright and trademark cases because infringement may occur in several countries at once. Parallel proceedings increase the risk of inconsistent judgments. For instance, one court may find infringement and award substantial damages, while another may rule no infringement occurred under its local law. Such conflicting outcomes not only frustrate the parties but can also undermine the coherence of international intellectual property law. Coordinating these proceedings is challenging, and without mechanisms for judicial cooperation, parallel litigation can prolong disputes for years and create additional financial and strategic burdens for both plaintiffs and defendants.

6.3. Enforcement Challenges

Even when a judgment is obtained, enforcing it across borders presents another layer of

⁵⁷ R Associates, *Forum Shopping Under CPC: Jurisdiction & Legal Trends*, RASSOCIATES.IN (July 12, 2025), <https://www.rassociates.in/forum-shopping-under-cpc/>

⁵⁸ Marlen Estevez Sanz, *Forum Shopping: Strategy or Abuse?*, Int'l Bar Ass'n (Apr. 4, 2025), <https://www.ibanet.org/forum-shopping-strategy-or-abuse>

difficulty. Recognition and enforcement of foreign judgments are not automatic; they typically require compliance with the local country's procedural rules. Courts may refuse enforcement if the judgment conflicts with domestic law, particularly under public policy exceptions. For instance, a judgment awarding damages for online copyright infringement in one country might be considered excessive or incompatible with another jurisdiction's legal principles. These limitations hinder the practical effectiveness of cross-border litigation, leaving rights holders with remedies that may exist only on paper unless cooperative enforcement frameworks are in place.

6.4. Inconsistent Standards

Finally, jurisdictional conflicts exacerbate inconsistencies in how infringement is interpreted and penalized. Different legal systems may apply divergent tests for what constitutes copyright or trademark infringement, leading to uncertainty for businesses operating internationally⁵⁹. For example, what is considered substantial reproduction under copyright law in one country may not meet the threshold in another. Similarly, courts may vary in calculating damages, with some awarding compensatory amounts and others considering punitive elements. This lack of uniformity complicates risk assessment for rights holders and reduces predictability, making it harder to develop cohesive enforcement strategies across multiple markets.

7. Possible Solutions and Reform Proposals

The challenges posed by jurisdictional conflicts in cross-border intellectual property disputes necessitate a multifaceted approach⁶⁰. While the territorial nature of IP rights cannot be entirely discarded, legal scholars and practitioners have suggested several reforms to reduce uncertainty, limit forum shopping, and enhance enforcement.

7.1. Greater International Harmonization

One of the most widely advocated solutions is the development of jurisdiction-specific international treaties. Unlike existing instruments such as the Berne Convention or TRIPS, which primarily harmonize substantive IP standards, no binding global framework currently

⁵⁹ Pulse of Patents Team, *Addressing Jurisdictional Conflicts in IP Enforcement: Challenges and Solutions*, PULSE OF PATENTS (Nov. 1, 2024), <https://pulseofpatents.com/jurisdictional-conflicts-in-ip-enforcement/>.

⁶⁰ Steven Silva, Cheryl Santiago, Cynthia Cooper & Angela Evans, *IP Disputes in Cross-Border Business Ventures*, *Journal of International Commercial Law and Technology* 3(1) 12–15 (Apr. 21, 2022), <https://jiict.com/article/ip-disputes-in-cross-border-business-ventures-31/>

addresses jurisdictional competence⁶¹. A dedicated treaty could establish uniform rules on which courts may exercise jurisdiction over cross-border IP infringements, particularly in cases involving online platforms or digital content. This would not only reduce the risk of parallel proceedings but also provide clearer guidance to litigants and courts.

Complementary to treaty-based approaches are model law proposals. These non-binding instruments, developed by organizations like WIPO, could serve as a template for national legislation, offering consistency without requiring formal ratification⁶². A model law could, for example, codify criteria for determining jurisdiction, such as the place of harm, the location of the infringer, or the targeting of consumers. By encouraging states to adopt similar rules, model laws help bridge gaps between different legal systems while respecting national sovereignty.

7.2. Clarification of Online Jurisdiction Standards

The rise of internet-based IP infringements has exposed the inadequacy of traditional territorial rules⁶³. Courts often struggle with cases where content uploaded in one country is accessible worldwide. A targeting-based framework has been proposed as a solution: jurisdiction should depend not merely on accessibility but on whether the infringer intentionally targets consumers or markets in a particular jurisdiction. This approach aligns with principles of fairness and predictability, ensuring that parties are not hauled into foreign courts without a deliberate connection to that jurisdiction.

Equally important is limiting the pure accessibility test, under which any content accessible online could trigger jurisdiction in every country⁶⁴. Such an expansive approach promotes excessive litigation and inconsistent outcomes. By refining these standards, courts can strike a balance between protecting rights holders and avoiding overreach.

⁶¹ Key International Treaties Shaping Intellectual Property Laws: Paris, Berne, WIPO, and TRIPS, *Legitimate India*, <https://legitimateindia.com/study-material/law-notes/intellectual-property-rights/key-international-treaties-shaping-intellectual-property-laws-paris-berne-wipo-and-trips/>

⁶² United Nations Commission on International Trade Law, *Frequently Asked Questions – UNCITRAL Texts*, United Nations, <https://uncitral.un.org/en/about/faq/texts>

⁶³ Rashmi Acharya, *The Rise of Intellectual Property in the Digital Age: Challenges and Opportunities*, *Lead India Law* (Sept. 5, 2025), <https://www.leadindia.law/blog/en/the-rise-of-intellectual-property-in-the-digital-age-challenges-and-opportunities/>

⁶⁴ Sidharth Nayyar, *WCAG Compliance and Accessibility Testing: A Step-by-Step Guide*, *Webability* (Jan. 4, 2026), <https://www.webability.io/blog/wcag-compliance-and-accessibility-testing-a-step-by-step-guide>

7.3. Specialized International IP Court

Some scholars advocate for a specialized international IP tribunal to handle transnational disputes. Proponents argue that such a court would provide uniformity, reduce parallel proceedings, and offer expert adjudication⁶⁵. A dedicated forum could also issue enforceable judgments recognized across borders, alleviating the enforcement difficulties common in IP cases.

However, this proposal raises sovereignty concerns. States may be reluctant to cede judicial authority to an international body, fearing limitations on domestic discretion or inconsistent integration with local legal systems. Moreover, establishing and maintaining such a court would require complex agreements on procedural rules, appellate mechanisms, and enforcement protocols.

7.4. Strengthening Alternative Dispute Resolution

Finally, alternative dispute resolution (ADR) mechanisms offer a practical route to resolving cross-border IP disputes efficiently⁶⁶. Expansion of WIPO arbitration provides parties with a neutral, specialized forum that can issue binding decisions tailored to IP cases. Similarly, cross-border mediation can help parties negotiate settlements without resorting to lengthy litigation, reducing costs and preserving business relationships. ADR mechanisms are particularly useful for small and medium-sized enterprises that may lack the resources to engage in transnational court battles.

In sum, a combination of international harmonization, clarified online jurisdiction standards, the selective use of specialized tribunals, and strengthened ADR mechanisms presents the most promising path toward resolving jurisdictional conflicts in cross-border IP disputes⁶⁷. These reforms aim to provide clarity, fairness, and predictability while respecting state sovereignty and the territorial nature of intellectual property rights.

⁶⁵ Montauray Pimenta, Machado & Vieira de Mello, *IP Courts and the Worldwide Trend toward Specialization*, Lexology (Apr. 5, 2024), <https://www.lexology.com/library/detail.aspx?g=91830b3e-a402-4a40-a1b9-fa92ab879efe>

⁶⁶ Alekha Chowdhury, *The Role of ADR in Cross-Border Commercial Disputes: Analyzing Case Laws and Challenges*, Indian J. of Law & Legal Research (June 12, 2025), <https://www.ijlrr.com/post/the-role-of-adr-in-cross-border-commercial-disputes-analyzing-case-laws-and-challenges>

⁶⁷ Navigating Jurisdictional Complexities in Online Contracting, *Law Notes by TheLaw.Institute* (Nov. 27, 2023), <https://thelaw.institute/commerce-and-cyberspace/online-contracting-jurisdictional-complexities/>

8. Critical Analysis

The existing mechanisms governing jurisdiction in cross-border intellectual property disputes provide a mixed picture in terms of effectiveness⁶⁸. On one hand, international treaties like the Berne Convention, TRIPS Agreement, and the Paris Convention offer a degree of substantive harmonization, ensuring that copyright and trademark rights receive minimum protection across jurisdictions. Similarly, regional frameworks, particularly within the European Union, establish more predictable rules for determining which courts can hear disputes. However, these instruments largely address substantive rights rather than procedural jurisdiction, leaving significant gaps in resolving conflicts where multiple courts may claim authority over the same dispute. In practice, this often results in inconsistent judgments and an increased risk of parallel litigation, undermining the predictability that IP law ideally seeks to provide.

A key concern is whether courts are overextending their jurisdiction, particularly in the context of online infringement⁶⁹. Doctrines such as the “effects test” or the “accessibility test” allow courts to assert jurisdiction over foreign actors simply because infringing content is available online in their territory. While these approaches are intended to protect rights holders against digital infringement, they can lead to excessive extraterritorial reach, effectively imposing one country’s laws on entities operating under a completely different legal system. Such overreach raises questions of fairness and the limits of sovereignty, as defendants may be subject to multiple, overlapping claims for the same conduct.

Striking a balance between protecting rights holders and preventing overreach is therefore a persistent challenge. On one hand, rights holders need effective remedies, especially in the digital environment where infringement can cause immediate and widespread harm⁷⁰. On the other, allowing courts to exercise broad extraterritorial jurisdiction risks creating legal uncertainty, imposing disproportionate burdens on defendants, and incentivizing forum shopping. This tension illustrates the practical difficulty of applying territorial principles in a

⁶⁸ A. Bennett & S. Granata, *When Private International Law Meets Intellectual Property Law: A Guide for Judges* (World Intellectual Property Organization & Hague Conference on Private International Law 2019), available at https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1053.pdf.

⁶⁹ Jurisdiction of Courts: A Comprehensive Analysis of Provisions and Jurisprudence, *Bhatt & Joshi Associates* (Sept. 26, 2023), <https://bhattandjoshiassociates.com/jurisdiction-of-courts-a-comprehensive-analysis-of-provisions-and-jurisprudence/>

⁷⁰ Rimplepreet Kaur, *Balancing Rights and Security: Constitutional Freedoms in the Age of Surveillance*, *Prime Legal* (Apr. 16, 2025), <https://blog.primelegal.in/balancing-rights-and-security-constitutional-freedoms-in-the-age-of-surveillance/>

globalized digital marketplace.

The realities of digital commerce further complicate the situation. Online platforms, streaming services, and e-commerce marketplaces operate across borders, making traditional notions of territoriality increasingly inadequate⁷¹. A single act uploading a video, selling a product can generate legal consequences in multiple jurisdictions simultaneously, each with its own standards for infringement, remedies, and damages. Courts must therefore navigate a complex web of competing legal regimes, often without clear guidance from international law.

From a normative perspective, the debate between harmonization and pluralism emerges as central. Greater harmonization could reduce uncertainty, streamline enforcement, and limit overreaching claims, but it risks imposing uniform standards that may not reflect local policy priorities⁷². Conversely, pluralism preserves national sovereignty and flexibility but perpetuates jurisdictional conflicts and inconsistent outcomes. Ultimately, a balanced approach may be necessary: one that harmonizes core procedural standards while allowing substantive law to reflect national differences, thereby protecting rights holders without undermining fairness and predictability.

10. Conclusion

The analysis of jurisdictional conflicts in cross-border intellectual property disputes underscores the tension between the territorial nature of IP rights and the borderless realities of modern commerce. This paper has argued that although intellectual property is inherently limited to national boundaries, the globalized digital environment creates overlapping claims that traditional jurisdictional principles are ill-equipped to handle. The thesis that the lack of harmonized jurisdictional rules fosters forum shopping, inconsistent judgments, and enforcement challenges remains evident throughout the discussion of both copyright and trademark disputes.

Several key findings emerge from this examination. First, the territoriality principle, while foundational to IP law, increasingly clashes with the global accessibility of digital content.

⁷¹ *The Role of E-Commerce in Cross-Border Trade and the Global Inflation Response in 2024*, INTERNATIONAL TRADE COUNCIL (Nov. 2024), <https://tradecouncil.org/wp-content/uploads/2024/11/The-Role-of-E-Commerce-in-Cross-Border-Trade-and-the-Global-Inflation-Response-in-2024.pdf>.

⁷² Paul Schiff Berman, *The Inevitable Legal Pluralism within Universal Harmonization Regimes: The Case of the CISG*, Private Law Theory (Jan. 15, 2024), <https://www.private-law-theory.org/2024/01/15/paul-berman-the-inevitable-legal-pluralism-within-universal-harmonization-regimes-the-case-of-the-cisg-4/>

Courts struggle to determine which jurisdiction is appropriate when infringement occurs simultaneously across multiple states, whether through online copyright violations or cross-border trademark misuse. Second, judicial approaches vary widely: some adopt effects-based or targeting tests, while others rely strictly on the location of harm or commercial activity. This fragmentation often leads to parallel proceedings and the possibility of contradictory judgments, placing undue burdens on rights holders and defendants alike. Third, existing international frameworks, such as the Berne Convention, TRIPS Agreement, and UDRP for domain disputes, standardize substantive protection but fall short in providing clear guidance on jurisdiction, leaving courts to navigate these conflicts with inconsistent results.

The urgency of addressing these issues has only intensified in the digital era. The proliferation of e-commerce platforms, online streaming services, and virtual marketplaces means that a single infringing act can have far-reaching consequences across multiple jurisdictions simultaneously. Without clearer rules or mechanisms for coordination, rights holders face protracted litigation, and legal uncertainty hampers both enforcement and innovation.

A balanced reform approach is therefore necessary. While complete global harmonization may be unrealistic, establishing more precise standards for online jurisdiction emphasizing targeting and commercial effects rather than mere accessibility could reduce disputes and enhance predictability. Strengthening international cooperation, including expanding WIPO arbitration and cross-border mediation, offers practical solutions without undermining national sovereignty.

Ultimately, the future of cross-border IP litigation will require a careful equilibrium between protecting the rights of creators and ensuring that jurisdictional claims do not become tools for strategic advantage. Courts, lawmakers, and international bodies must adapt to the realities of a digital, interconnected world, creating a legal environment where intellectual property can be both effectively protected and fairly adjudicated.