
DEFAMATION WITHOUT BORDERS: REGULATING JURISDICTIONAL OVERREACH IN THE DIGITAL AGE

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ABSTRACT

The growth of digital communication has significantly reshaped the law of defamation by allowing information to move across geographical boundaries with unprecedented speed and reach. As a result, courts are increasingly confronted with complex questions regarding jurisdiction in cases involving online defamation that spans multiple territories. Traditional rules of jurisdiction, which are based on physical presence and localized injury, are proving insufficient in addressing disputes arising in a borderless digital environment. This paper analyses how jurisdiction is determined in cross-border online defamation cases, with particular attention to legal principles such as the effects test, the place of publication rule, and the concept of minimum contacts.

By examining important judicial decisions such as *Calder v. Jones*¹, *Dow Jones & Co Inc v Gutnick*², and *Richardson v Schwarzenegger*³. The paper demonstrates how different legal systems have adopted varying approaches to resolve jurisdictional issues. It also considers the growing practice of forum shopping and the rise of libel tourism, where claimants deliberately select jurisdictions that are more favorable to their claims, often resulting in excessive assertions of jurisdiction and potential restrictions on free expression.⁴

In addition, the paper discusses the Indian legal position, highlighting the absence of a well-defined framework governing jurisdiction in online defamation matters, which may lead to an overly broad exercise of judicial authority. It argues for the development of a more balanced and principled approach that adequately safeguards both the right to reputation and freedom of speech. The paper concludes by emphasizing the importance of evolving international norms and structured jurisdictional guidelines to address the challenges posed by defamation in the digital era.

Keywords: Online Defamation, Jurisdiction, Forum Shopping, Freedom of Speech, Conflict of Laws, Cyber Law.

¹ *Calder v. Jones*, 465 U.S. 783 (1984).

² *Dow Jones & Co. Inc. v. Gutnick*, (2002) 210 CLR 575 (Austl.).

³ *Richardson v. Schwarzenegger*, [2004] EWHC 2422 (QB).

⁴ Jerca Kramberger Škerl, *Jurisdiction in On-line Defamation and Violations of Privacy: In Search of a Right Balance*, 9 *Lexonomica* 87 (2017).

<https://www.researchgate.net/publication/331983093_Jurisdiction_in_On-line_Defamation_and_Violations_of_Privacy_In_Search_of_a_Right_Balance>

I. INTRODUCTION

The internet has revolutionized communication by eliminating geographical barriers, allowing information to be disseminated globally within seconds. While this has enhanced freedom of expression, it has also amplified the potential for reputational harm. A defamatory statement posted online can be accessed in multiple jurisdictions simultaneously, raising a critical legal question: which court has the authority to adjudicate such disputes?⁵

Traditional defamation law is territorially grounded, meaning that jurisdiction is typically determined based on where the harm occurs or where the defendant resides. However, in the digital context, harm can occur in multiple locations at once. This creates the risk of jurisdictional overreach, where courts assert authority even when the connection to the dispute is minimal.

This paper analyses the evolving jurisprudence on jurisdiction in online defamation, focusing on three major issues:

- Determination of jurisdiction in cross-border cases
- The rise of forum shopping and libel tourism
- Balancing free speech with protection of reputation

II. CONCEPT OF ONLINE DEFAMATION AND JURISDICTION

Online defamation generally means making a false statement about a person on the internet that damages their reputation in the eyes of others. In today's digital world, this can happen through various platforms such as social media posts, blogs, online articles, and news websites. Unlike traditional forms of defamation, which are usually limited to a particular place or audience, online content can be accessed from anywhere in the world.⁶ This makes it difficult to decide which court

⁵ Sudhanshu Ranjan, *Online Defamation (Maulana Azad Nat'l Urdu Univ., Dep't of Law) (n.d.)*, available at, <<https://manuu.edu.in/sites/default/files/School-of-Law/Publication/Dr-Sudhanshu/ONLINE-DEFAMATION.pdf?>>

⁶ Jerca Kramberger Škerl, *Jurisdiction in On-line Defamation and Violations of Privacy: In Search of a Right Balance*, 9 *Lexonomica* 87 (2017).

has the authority to hear a case, because the harm may be felt in multiple locations at the same time. To deal with this issue, courts have developed certain principles to determine jurisdiction in such cases. One important principle is the “place of publication” rule, which means that defamation occurs wherever the content is read or accessed⁷, as seen in *Dow Jones & Co Inc v Gutnick*, where the court held that downloading and reading the material amounts to publication. Another approach is the “effects test,” established in *Calder v. Jones*, which focuses on whether the defendant’s actions were directed at a particular place and caused harm there. This test helps limit jurisdiction to situations where there is a clear connection between the act and the forum.⁸ Additionally, courts also apply the “minimum contacts” test, especially in the United States, to check whether the defendant has enough connection with the jurisdiction to justify legal proceedings.⁹ These principles attempt to balance fairness to both parties, but in practice, they often create confusion because the internet does not follow traditional territorial boundaries. As a result, determining jurisdiction in online defamation cases continues to remain a complex and evolving issue (Garnett, *Internet Defamation Law*, 2003).¹⁰

III. JURISDICTIONAL APPROACHES ACROSS COUNTRIES

Different countries follow different approaches when it comes to deciding jurisdiction in online defamation cases, and this often leads to confusion in cross-border disputes. In the United States, the approach is mainly based on constitutional principles of due process, which aim to ensure fairness to the defendant. A well-known case in this context is *Calder v. Jones*, where the court introduced what is called the “effects test.” According to this test, a court can take jurisdiction if the defendant has intentionally directed their actions towards a particular place and the harmful effects are felt there.¹¹ In simple terms, it is not enough that the content is accessible everywhere; there must be a clear intention to target that specific location, and the harm caused must also be predictable. This approach helps prevent unnecessary harassment of defendants by avoiding cases being filed in places that have only a weak connection to the dispute. However, at the same time,

⁷ *Developments in the Law—State-Court Jurisdiction*, 73 *Harv. L. Rev.* 909 (1960).

⁸ *Calder v. Jones*, 465 U.S. 783, 789–90 (1984). < <https://supreme.justia.com/cases/federal/us/465/783/> >

⁹ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

¹⁰ Niloufer Selvadurai, *The Proper Basis for Exercising Jurisdiction in Internet Disputes: Strengthening State Boundaries or Moving Towards Unification?*, 12 *Int’l J.L. & Info. Tech.* 29 (2004).

¹¹ *Calder v. Jones*, 465 U.S. 783 (1984). < <https://supreme.justia.com/cases/federal/us/465/783/> >

it can make it harder for victims to seek justice if they cannot prove that they were specifically targeted.

In contrast, Australia follows a broader approach, as seen in *Dow Jones & Co Inc v Gutnick*. In this case, the court held that defamation takes place where the material is downloaded and read by the audience.¹² This means that publication is not limited to where the content was originally uploaded, but also includes every place where it is accessed. As a result, a person whose reputation is harmed can file a case in any location where the content was read and caused damage. While this approach is more favorable to plaintiffs, it has been criticized because it can expose publishers to legal action in multiple countries at the same time, even if their connection to those places is very limited.

The United Kingdom has also traditionally followed a plaintiff-friendly approach by allowing jurisdiction wherever the defamatory content is accessed and causes harm. This can be seen in *Richardson v Schwarzenegger*, where the court accepted jurisdiction mainly because the claimant lived in the UK and her reputation was affected there.¹³ Over time, this approach led to what is known as “libel tourism,” where people started filing defamation cases in the UK even when the dispute had only a minor connection to the country, simply because the laws were more favorable to them. To control this problem, the UK introduced the Defamation Act 2013, which requires courts to ensure that England is clearly the most appropriate place to hear the case before accepting jurisdiction.

In India, the situation is still developing, and there is no specific law that clearly deals with jurisdiction in online defamation cases. Courts generally rely on Section 19 of the Civil Procedure Code¹⁴, which allows a case to be filed either where the wrong was committed or where the harm occurred. In the context of the internet, Indian courts have often taken a broad view by saying that jurisdiction exists wherever the defamatory content can be accessed. While this makes it easier for victims to approach courts, it also creates the risk of very wide jurisdiction, where a person can be

¹² *Dow Jones & Co. Inc. v. Gutnick*, (2002) 210 CLR 575 (Austl.).
< https://law.unimelb.edu.au/data/assets/pdf_file/0007/1680343/Garnett.pdf>

¹³ *Richardson v. Schwarzenegger*, [2004] EWHC 2422 (QB).

¹⁴ *Code of Civil Procedure*, 1908, § 19 (India).

sued in multiple places without a strong connection to those locations. This lack of clear guidelines makes the law uncertain and sometimes unfair, especially in cross-border situations.

IV. FORUM SHOPPING AND LIBEL TOURISM

In online defamation cases, forum shopping and libel tourism have become major issues. Forum shopping happens when a person files a case in a court that is more favorable to them, even if that place has only a weak connection to the case. Since online content can be accessed anywhere, plaintiffs get many options to choose from. Libel tourism is a more extreme form of this, where cases are filed in countries known for strict defamation laws, like the UK before reforms. For example, in *Richardson v Schwarzenegger*¹⁵, the court accepted jurisdiction because the claimant's reputation was affected in the UK. Such practices can be unfair to defendants and may also affect freedom of speech, as people may fear legal action in different countries. To control this, laws like the UK Defamation Act 2013 now require courts to check whether the forum is truly appropriate. Overall, there is a need to balance fair access to justice with preventing misuse of jurisdiction (Briggs, 2019; Svantesson, 2016).¹⁶

V. CONFLICT OF LAWS IN ONLINE DEFAMATION

In cases of online defamation that cross national borders, one of the biggest challenges is the conflict of laws, because more than one legal system may be involved. This creates confusion about which country's law should apply, how judgments should be enforced, and whether a decision given in one country will be recognized in another. Since online content can be accessed globally, the same defamatory statement may affect a person's reputation in different places, each having its own legal rules. To deal with this, courts have developed different approaches. One common method is *lex loci delicti*, which means applying the law of the place where the harm occurred. This approach focuses on where the injury to reputation is felt, but it can lead to multiple applicable laws in internet cases.¹⁷ Another approach is the "most significant relationship" test,

¹⁵ *Richardson v. Schwarzenegger*, [2004] EWHC 2422 (QB).

¹⁶ David S. Ardia, *Reputation in a Networked World: Revisiting the Social Foundations of Defamation Law*, 45 *Rutgers L.J.* 261 (2017), < <https://www.tandfonline.com/doi/abs/10.1080/10811680.2021.1856601?> >

¹⁷ Shubhamgi Upmanyu, *Cyber Defamation in India: Issues and Challenges*, *IPLEADERS* (June 1, 2019), available at *Cyber Defamation in India: Issues and Challenges*

which tries to identify the country that has the closest connection to the dispute by considering factors like the parties involved, the place of publication, and where the impact is strongest. In Europe, courts often use the “centre of interests” approach, which allows a person to file a case in the place where their reputation is mainly established, as seen in cases like *eDate Advertising GmbH v X*. While these approaches aim to provide solutions, the lack of uniform rules across countries creates uncertainty and makes it difficult for both plaintiffs and defendants to predict where a case should be filed and which law will apply (Svantesson, *Private International Law and the Internet*, 2016).¹⁸

VI. BALANCING FREE SPEECH AND REPUTATION

One of the most important challenges in online defamation law is finding the right balance between freedom of expression and the right to reputation. Freedom of speech allows individuals, journalists, and media organizations to share opinions, report news, and participate in public discussions, which is essential in a democratic society. At the same time, a person’s reputation is also a valuable right that needs protection from false and harmful statements. The difficulty arises because strong defamation laws and wide jurisdictional powers can sometimes restrict free speech. This leads to what is known as the “chilling effect,” where people avoid expressing their views or publishing information out of fear of being sued in different countries. For example, journalists and online platforms may hesitate to publish investigative reports if they risk facing legal action in multiple jurisdictions with strict defamation laws. This can negatively affect public discourse and access to information. On the other hand, it is equally important that individuals whose reputations are genuinely harmed by defamatory content have access to effective remedies. If the law becomes too restrictive, victims may find it difficult to seek justice, especially when the harm is serious and widespread. Therefore, neither extreme approach allowing unlimited jurisdiction nor imposing strict limitations is suitable. A balanced approach is necessary, where courts ensure that there is a real and substantial connection to the case before exercising jurisdiction, while also protecting both freedom of speech and the right to reputation. This balance has been emphasized

¹⁸ *eDate Advertising GmbH v. X & Olivier Martinez v. MGN Ltd., Joined Cases C-509/09 & C-161/10, ECLI:EU:C:2011:685 (Ct. Just. Eur. Union Oct. 25, 2011).*

in various legal discussions and judgments, recognizing that both rights are equally important in the digital age (Barendt, *Freedom of Speech*, 2005).

VII. ROLE OF INTERMEDIARIES

Another important aspect of online defamation is the role played by intermediaries such as internet service providers, social media platforms, and website hosts. These intermediaries act as platforms where users publish content, but they are not always the original creators of that content. The question that arises is whether these intermediaries should be held liable for defamatory statements posted by users. Different countries follow different approaches on this issue, which further complicates jurisdiction in cross-border cases. In the United Kingdom, the case of *Godfrey v Demon Internet Service* established that an intermediary can be held liable if it fails to remove defamatory content after receiving notice about it. In this case, the court held the internet service provider responsible because it did not take action even after being informed about the defamatory material. This shows that intermediaries have a duty to act once they are aware of harmful content.

On the other hand, the United States follows a very different approach under Section 230 of the Communications Decency Act, which provides strong protection to intermediaries. This is seen in *Blumenthal v Drudge*, where the court held that online service providers are not liable for defamatory content posted by third parties. This law aims to promote free speech on the internet by protecting platforms from excessive legal responsibility. However, it also raises concerns about lack of accountability when harmful content is not removed.¹⁹

These different approaches create confusion in international cases, as a platform may be protected in one country but held liable in another. This makes it difficult to decide jurisdiction and enforce laws consistently across borders. Therefore, the role of intermediaries adds another layer of complexity to online defamation law, especially in a global digital environment where content can easily cross national boundaries.

VIII. NEED FOR REFORM

In online defamation cases, there is a growing need for reform because the current legal system

¹⁹ *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998).

faces several practical and legal problems. One major issue is the over-expansion of jurisdiction, where courts claim authority even when the connection to the case is very weak.²⁰ Since online content can be accessed from anywhere, this often allows cases to be filed in multiple places, creating confusion and unfairness. Another problem is the lack of uniform standards across countries, as each legal system follows different rules to decide jurisdiction. This leads to inconsistency and uncertainty, making it difficult for both plaintiffs and defendants to understand where a case should be filed. In addition, cross-border litigation increases costs, as parties may have to deal with multiple legal systems, lawyers, and procedures. This can be especially burdensome for defendants.²¹ At the same time, broad jurisdictional rules can create a chilling effect on freedom of speech, as individuals, journalists, and online platforms may avoid expressing opinions or publishing content due to fear of being sued in different jurisdictions.

To address these issues, certain reforms are necessary. One important step is the adoption of a clear and uniform test to determine jurisdiction. This test should consider factors such as where the defendant is located, whether the content was specifically targeted at a particular audience, and where the actual harm to reputation has occurred. Such a structured approach can help courts make fair and consistent decisions.²² Another important reform is limiting jurisdiction by requiring a real and substantial connection between the dispute and the forum. Courts should not accept cases unless there is a strong link to that place. Further, there is a need for international cooperation, such as developing treaties or model laws, to create uniform standards for handling online defamation cases across countries. This would reduce conflicts of laws and improve consistency. Finally, stricter rules should be introduced to control forum shopping, ensuring that plaintiffs cannot easily choose a jurisdiction just because it is favorable to them. Courts should carefully examine whether the chosen forum is genuinely appropriate before accepting the case. Overall, these reforms can help create a more balanced and fair system for dealing with defamation in the digital age.

²⁰ Dan Jerker B. Svantesson, *Private International Law and the Internet* 45–47 (2d ed. 2016).

²¹ Richard Garnett, *Dow Jones & Company Inc v Gutnick: An Adequate Response to Transnational Internet Defamation?*, 4 *Melb. J. Int'l L.* 196 (2003).

²² Cynthia D. Floyd, *Toward a Unified Test of Personal Jurisdiction in an Era of Internet Contacts*, 81 *Ind. L.J.* 601 (2006).

IX. CONCLUSION

The digital age has fundamentally challenged traditional notions of jurisdiction in defamation law. The global accessibility of online content has created opportunities for jurisdictional overreach, allowing plaintiffs to initiate proceedings in multiple forums with minimal connection to the dispute.

Comparative analysis reveals that while the United States adopts a restrictive approach through the “effects test,” countries like the United Kingdom and Australia have historically taken broader approaches, enabling plaintiffs to sue where harm occurs. India, lacking a clear framework, risks adopting an overly expansive jurisdictional model.

To address these challenges, there is an urgent need for a balanced and harmonized approach that limits jurisdictional overreach while ensuring effective remedies for victims. A structured test based on substantial connection, targeted harm, and fairness can help achieve this balance. Ultimately, the goal must be to protect both reputation and freedom of expression in an increasingly borderless digital world.