
PRINCIPLE OF TERRITORIALITY IN IPR/COPYRIGHT LAWS & ITS CHALLENGES

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ABSTRACT

This chapter critically examines the principle of territoriality in copyright law, contextualizing it within the broader framework of intellectual property (IP) rights. It begins by unpacking the foundational notion of territoriality, which asserts that IP rights are confined within national borders, thereby limiting their enforcement and recognition across jurisdictions. The chapter then explores how this principle interacts with the global nature of creative industries and digital dissemination. Special emphasis is placed on the role of multilateral treaties—such as the Berne Convention, TRIPS, and WIPO-administered agreements—in attempting to harmonize standards and mitigate the restrictive implications of territorial limitations. Despite these efforts, territoriality remains a deeply embedded principle, challenged by emerging concepts like extraterritoriality and the realities of cross-border infringement. The chapter further investigates legal and practical loopholes inherent in the territorial framework, and how these impact enforcement strategies. Finally, it assesses the broader effects of territoriality on investment law, copyright infringement litigation, and the commercialization of creative works, particularly in the music and film industries, where territorial licensing and market segmentation are prevalent. Through this analysis, the chapter underscores the growing tension between national legal doctrines and the borderless nature of digital content, calling for a re-evaluation of territoriality in light of global IP governance.

Meaning of the Principle: Understanding Territoriality in Copyright Law

The relationship between copyrights and territorial jurisdiction is rather complex. This complexity arises partly because works that can be copyrighted do not have to be in a physical format, allowing them to manifest in observable formats across various physical locations simultaneously. Alternatively, a work might exist in a tangible sense without being physically located anywhere specific.

A second and even more challenging factor contributing to this complexity is that copyrights, while often regarded as a form of "property," doesn't allow for genuine ownership of the respective works.¹

The Territoriality principle of copyright law essentially claims that the safeguarding of copyrighted materials is regulated by the legal framework of the nation where the protection is requested or applied. In essence, this principle confines copyright protection within the jurisdictional boundaries of a country or region. Consequently, the laws of copyright of one country do not automatically apply in another unless international treaties or agreements create exceptions.

Historically, the territorial nature of copyright law stems from the broader principle of state sovereignty, which allows each nation to set its own legal standards and frameworks regarding intellectual property protection. This ensures that works created within a country are regulated by that country's copyright laws. If a creator wishes to protect their work in another country, they must comply with that country's legal and administrative requirements for copyright protection.

The principle of territoriality regarding copyright law and related rights established in Art. 5 of the Berne Convention, and upheld as fundamental tenet of EU copyright regulation by the Court of Justice (CJEU) in its 2005 Lagardère decision, indicates that each Member nation/ State provides and acknowledges copyright works protection within its own borders based on national laws. Consequently, copyrights are obtained and enforced individually within each of

¹ Polčák, R. (2020). Territoriality of Copyright Law. In: Szczepanik, P., Zahrádka, P., Macek, J., Stepan, P. (eds) Digital Peripheries. Springer Series in Media Industries. Springer, Cham.

the 28 Member States.²

International agreements like the **Berne Convention for the Protection of Literary and Artistic Works (1886)** and the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1995)**³ were established to mitigate the limitations of territoriality. These treaties created frameworks to ensure a baseline of protection for copyrighted works across borders while respecting national legal systems. Under these agreements, member states commit to providing foreign works with the same level of protection as their own nationals (national treatment) and adhering to substantive minimum rights. However, enforcement mechanisms, term lengths, and the scope of protection remain contingent on the domestic laws of individual states.

In practice, territoriality means that copyright protection is inherently "local" and depends on the jurisdiction where the work is utilized, enforced, or litigated. Copyright holders must engage with each jurisdiction individually to secure and enforce their rights.

Intellectual Property Rights and Territoriality

Patents, trademarks, copyrights, and other intellectual property (IP) rights are frequently described as **"territorial in character."**⁴ This territoriality is often assumed to be self-evident, requiring little justification. However, this notion has increasingly come under scrutiny in light of globalization, technological advancements, and the increasing interconnectedness of economies.

The concept of territoriality in IP encompasses several key aspects:

An intellectual property right is recognized only within the authority of the state that granted it, as it is essentially objective. The exclusive right applies only to actions taking place within the designated territory.⁵ There is none singular global right that safeguards intangible property. Rather, there exists a multitude of over 150 territorial rights that originate from

² Briefing European Parliamentary research Service , "EU copyright reform: Revisiting the principle of territoriality". pp. 3

³ Khamidovich, N. F. (2024). The Impact Of International Intellectual Property Law On National Law. *Frontline Social Sciences and History Journal*

⁴ M.Kampelman." The United States and International Copyright", 41 (1947) *American Journal Of International Law*,pp.406,410-411.

⁵ A. Bogisch, *Brief History of the First 25 Years of the World Intellectual Property Organization (World Intellectual Property Organization, Geneva, 1992)* pp. 7-8

national or regional jurisdictions, which cover technical inventions, literary and artistic creations, trademarks, and more. An innovation or creative piece may receive protection in one nation while lacking it in another, as these rights operate independently of one another. The diversity of property laws reflects the range of intellectual property rights that exist.

Based on comparative research, the concept of objective territoriality has received broad recognition from the EU and its Member States, such as Germany and the Netherlands, in addition to other European nations like Switzerland, as well as common law jurisdictions globally, including Japan and the United States, all of which endorse the objectives of this principle of territoriality.⁶

Even when the same subject matter is involved, the territorially limited rights can be owned by different people because they are independent of one another.⁷ National legislation can not only provide the same rights to inventions, creative works, and other creations for various individuals, but it can also limit the protection given to its citizens, extending it to foreigners only in specific cases, such as local publishing or production obligations, or based on reciprocity conditions (subjective territoriality).

This can be understood and put down in the following points for one's understanding as:-

1. Objective Territoriality

An IPR is only valid within a geographical boundaries of the nation that granted it. This principle limits the rights of the holder to actions occurring within the designated territory. For instance, the safeguarding of a copyrighted creation in one nation does not inherently carry over to another nation unless particular treaties or agreements are in place.

2. Fragmented Nature of IP Rights:

Instead of a single, global, unified right, intellectual property protection comprises a collection of more than 150 territorial rights. These rights are granted independently by

⁶ H. Sacks, "Crisis in International Copyright : The Protocol Regarding Developing Countries" (1969) *Journal of Business Law*, p. 26.

⁷ Ibid

national or regional authorities, creating a scenario where the same invention, creative work, or trademark may be protected in one jurisdiction but not in another.

3. Subjective Territoriality

Some national laws grant rights exclusively to their citizens or impose local requirements (such as publication or production within the jurisdiction) before extending protection to foreign nationals. These restrictions underscore the sovereign authority of states in shaping their IP laws.

The Role of Multilateral Treaties in Mitigating Territorial Limitations

Since the late 19th century, a system of multilateral treaties has been formed to get around these limitations and provide right-holders with protection on a global basis. The two key aspects are the principle of national treatment, which dictates that each nation is required to provide the rights specified in the treaties to the citizens of other contracting states, and the guarantee of fundamental minimum rights.⁸ Therefore, IP protection is limited in a territorial and individual sense, which is a fact that is confirmed by international law in the area of IP.

These agreements are also used to rationalize the denial of protection for foreigners according to national laws, which allows such protection would diminish the motivation for third nations to participate in this multilateral framework and offer protection to other nationals in exchange. Considering that there are 164 signatories to the Berne Convention and 173 contracting states to the Paris Convention concerning industrial property, it is reasonable to assert that the notions of objective and subjective territoriality are widely recognized.

Efforts to create a system that would protect intellectual property (IP) worldwide in line with a single nation's legal framework have been largely unsuccessful.⁹ The concept of territoriality, which has roots in both domestic and international law, has an effect on how IP regulations conflict with one another.¹⁰

⁸ P. Drahos, "Global property rights in information" The story of TRIPS at the GATT." 13 (1995) *Prometheus*, pp.6-19.

⁹ M. Getlan, "TRIPS and Future of Section 301 : A comparative Study in Trade Dispute Resoulution", 34 (1995) *Columbia journal of Transnational Law*, pp. 173,179

¹⁰ M.Blakeney, *Trade Related Aspects of Intellectual Property Rights* (Sweet & Maxwell, London, 1996) Ch.1.

Even if both parties are from the same jurisdiction and the patents involved associated with the same invention, English and American courts have denied assertion of subject matter jurisdiction over infringement claims related to foreign IP rights due to worries about interfering with the sovereign choices of other nations regarding the granting or denial of intellectual property protection.¹¹ Even if the dispute involves foreign copyrights, which exist without a formal action like registration, this is still true.

Aside from the early German patent legislation, courts in continental Europe have shown a greater readiness to decide on matters involving foreign intellectual property infringement, as long as they possess the necessary jurisdiction, particularly in the jurisdiction where the defendant resides.¹² Courts may not decline to hear cases involving foreign IP rights if they have universal jurisdiction, in accordance with EU rules on international jurisdiction.

Even so, courts within the EU are required to follow the distinct, though largely standardised, intellectual property laws of the Member States. The territorial nature of these rights influences the jurisdictional framework. Specifically, disputes related to the registration or validity of patents, copyrights, and other rights that necessitate registration are solely within the jurisdiction of the courts in the country where those IP rights were registered.¹³

Given that the courts in the country where the registration occurs typically have specialized knowledge and the highest level of proficiency in settling disputes involving national administrative entities.

The European Court of Justice has upheld the principle of exclusive jurisdiction even when the invalidity of the right is only raised as a defence in an infringement matter.. Thus, the court basically ruled against the prospect of grouping EU-wide lawsuits involving transnational IP infringement. Additionally, only infringements that take place in that region are subject to the decision-making authority of the courts with particular jurisdiction there.¹⁴

¹¹ M.Blakeney , “The Role of intellectual Property Law in Regional Commerical Unions in Europe and Asia”, 16 (1998) *Prometheus* ,pp.341,349.

¹² M.Blakeney , “The Role of intellectual Property Law in Regional Commerical Unions in Europe and Asia”, 16 (1998) *Prometheus* ,pp.341,349.

¹³ The Report of the Working Group on Intellectual Property Rights, *Intellectual property and the National Information Infrastructure* (Information Infrastructure Taskforce, United States of America , Sept. 1995

¹⁴ International Chamber of Commerce , “E-commerce roles , rules and responsibilities : A roadmap” , June 4 , 1998, p.11

This can be summarised as: To overcome the challenges posed by territoriality, a series of multilateral treaties have developed since the late 1800s. Important agreements like the Berne Convention and the Paris Convention for the Protection of Industrial Property seek to establish worldwide standards/levels for IP protection. These treaties include two fundamental principles:

- **National Treatment:** Mandating that member countries offer the same degree of protection to foreign creations as they do to their own.
- **Minimum Standards:** Establishing baseline rights and protections for creators across jurisdictions.

Regardless of these initiatives, the territorial aspect of intellectual property law continues to be a key characteristic. International treaties do not eliminate territoriality but instead function within its framework. For instance, while the Berne Convention ensures automatic protection for foreign works without the need for formalities, enforcement mechanisms and detailed rights still depend on domestic legal systems.

Challenges to Territoriality in IP Law

Efforts to create a unified system for global IP protection under a single national law of origin have largely failed due to the complexities of balancing national sovereignty with international cooperation. The fragmented and territorial nature of IP rights poses challenges in cross-border disputes and enforcement, particularly in cases involving:

1. Foreign IP Infringements

English and American courts, for instance, have traditionally refused to exercise subject matter jurisdiction over foreign IP rights due to concerns about interfering with another country's sovereignty. This is true even when disputes involve copyrights, which do not require formal registration.

2. Jurisdictional Limitations

Continental European courts have been hearing cases involving foreign IP rights, provided the courts are generally competent to handle the matter. The European Union's jurisdictional rules, however, still limit courts' authority to infringe upon the exclusive

competence of the jurisdiction where the IP rights are registered.

3. Exclusive Jurisdiction over Registration

Conflicts concerning the registration or legitimacy of intellectual property rights, such as patents, are generally subject to the exclusive jurisdiction of the courts in the country of registration. For instance, the European Court of Justice (ECJ) has reaffirmed this principle to prevent situations of overlapping jurisdictional disputes.

Loopholes of the Principle : Exemptions to the Territoriality Principle in Copyright Legislation

The application of domestic law beyond national borders has been a contentious issue in significant areas of public law, such as taxation and antitrust regulations. However, with the advent of digital technology and the internet in the early 1990s, the concept of extraterritoriality was first utilized in disputes related to intellectual property.

The idea of territoriality has been challenged, while unilateral solutions to this issue have been prompted by the need to effectively adapt the fragmented global intellectual property system to widespread communication.

It is hard to envision the possibility of extraterritoriality in this legal domain, considering the conceptual uniformity of territoriality across substantive, international, and private international IP law.

The presumption that a substantive protection has a territorially/jurisdictional limited reach is not always valid, is the answer. Considering how at least two nations are impacted by a transnational television broadcast, namely the nation from which the signals originate and the nation from which the viewers receive them. The broadcaster can readily be held responsible for breaches of copyright, in both the country where the transmission occurs and the nation where it is received.

Both laws can assert that they control neighbourhood activity and effects. However, every choice made under either of the two rules necessarily has an impact on the viewership or broadcaster in the other territory.

The territoriality principle has a weakness in private international law that enables extraterritorial effects to happen. Courts in the country where the supposed infringement occurred can adjudicate transnational IP violations according to the local *lex loci protectionis*.

The place of the defendant's supposed infringing actions is a standardized *de facto* connecting factor that these regulations do not address. Rather, they depend on "the law of the country" "where" or "for which" protection is requested or asserted, along with flexible legal concepts of "infringement" according to the *lex fori* to determine jurisdiction.

The accepted view and worldwide court practise are that these rules operate as follows:

The plaintiff makes a case that the defendant's actions breached IP rights someplace as a result of a specific conduct.¹⁵ Which IP rights, such as German or American patents or copyrights, have been violated must be specified in the demand for protection.¹⁶ This claim is sufficient to establish jurisdiction with the courts in these nations and to permit the use of their protective legislation.

The relevant substantive IP regulation will next be used to determine whether the action in question genuinely constitutes an infringement.¹⁷ Extraterritoriality becomes relevant at this particular moment.¹⁸ A defendant operating in country B can be held liable under the intellectual property law of country A if the applicable IP law of the protected country A specifies that both extraterritorial and local activities/effects are considered infringement. Norms surrounding open-ended conflicts therefore facilitate extraterritoriality. But in the end, it is a result of substantive IP law extending internationally. The underlying presumption that IP systems are constrained by national borders is disproved in these instances.

Despite being a cornerstone of intellectual property law, the **Principle of Territoriality** is not without its flaws. Several challenges and loopholes complicate the global enforcement and

¹⁵ J.W. Nickel, *Making Sense of Human Rights* (University of California Press, Berkeley, 1987) pp. 66-67

¹⁶ H.J Steiner and P. Alston, *International Human Rights in Context* (Clarendon Press, Oxford, 1996) p.121

¹⁷ H.G Schermers, "The International protection of the right to property", in F. Matscher and H.Petzold (eds.), *Protecting Human Rights: The European Dimension* (Carl Heymanns Verlag KG, Koln,1988) pp.565-580.

¹⁸ F.G Jacobs and R.C.A White, *The European Convention on Human Rights*, 2nd ed. (Clarendon Press, Oxford, 1996) pp. 246-247

protection of copyright, especially in an increasingly interconnected digital landscape. Some of these issues are:

1. Inconsistent Legal Protections

One of the most prominent weaknesses of the territoriality principle is the lack of uniformity in copyright laws across nations. Each country has the autonomy to establish its own standards for protection, which results in substantial disparities. For instance:

- **Copyright Duration:** In some jurisdictions, Copyright can endure for 50 years following the author's passing, whereas in some cases, it can be extended to 70 years or longer.
- **Threshold for Originality:** The level of creativity or originality required for protection can vary significantly between countries.
- **Exceptions to Copyright:** Fair use in the U.S. may allow uses that would not be permissible under fair dealing rules in countries like the UK or Canada. These inconsistencies create confusion and potential exploitation, as creators may find their works inadequately protected in some jurisdictions compared to others.

2. Cross-border Piracy

The rise of digital technologies and the internet has exacerbated cross-border copyright infringements.¹⁹ Piracy is now a global issue, with infringing content often uploaded in one country and consumed in another. Enforcement becomes challenging due to:

- **Jurisdictional Limitations:** Legal action must usually be pursued in the country where the infringement occurs, which can be both costly and time-consuming.
- **Weak Legal Systems:** Some countries may lack robust intellectual property laws or enforcement mechanisms, making them safe havens for pirates.

¹⁹ Almeida, F. (2024). Causes of Failure of Open Innovation Practices in Small- and Medium-Sized Enterprises. *Administrative Sciences*, 14(3), 50.

- **Asymmetrical Protections:** Foreign works may receive less protection than domestic works in certain jurisdictions, further complicating enforcement.

3. Digital distribution and Global Access

Platforms like YouTube, Netflix, and Spotify allow for near-instant global sharing and consumption of copyrighted content. However, the territorial principle complicates international licensing and enforcement:

- **Geographical Restrictions:** A work licensed for one country might still be accessed in another where it is not licensed, leading to unauthorized use.
- **Streaming Platforms:** Platforms often employ geo-blocking, but this can be circumvented through VPNs or proxies, undermining territorial licensing agreements.
- **Fragmented Licensing Models:** Content creators and distributors face challenges in negotiating multiple, overlapping licenses across territories, increasing administrative burdens.

4. Foreign Jurisdiction and Enforcement issues

Even when a copyright holder secures protection in a foreign jurisdiction, enforcing those rights can prove difficult. Key challenges include:

- **Cost of Litigation:** Pursuing legal claims in foreign jurisdictions can be prohibitively expensive, especially for smaller creators or entities.
- **Weak IP Frameworks:** Some countries have underdeveloped legal frameworks, making enforcement nearly impossible.
- **Cultural and Legal Differences:** Varying interpretations of copyright laws and enforcement standards can hinder effective legal recourse.

5. Jurisdictional Complications

When disputes involve parties from multiple countries, the territoriality principle often results in complex jurisdictional questions. Key issues include:

- **Forum Shopping:** Parties may seek jurisdictions more favourable to their case, leading to strategic delays or inefficiencies.
- **Overlapping Jurisdictions:** Courts may struggle to determine which jurisdiction has the authority to hear a case, causing prolonged litigation.
- **Fragmented Decisions:** Disputes involving multiple jurisdictions can lead to inconsistent rulings, creating uncertainty for rights holders.

Extraterritoriality as a Challenge to Territoriality

With the conventional conception of sovereignty being challenged, there has emerged the issue of the extraterritorial enforcement of laws in the realm of the Internet. In this context, the term "extraterritoriality" denotes regulatory measures that, due to the transnational characteristics of the information network, have implications that extend well beyond the boundaries of the governing state.²⁰

The **extraterritorial application of national copyright laws** has emerged as a contentious topic, particularly with the advent of the internet and globalization. While the principle of territoriality limits the scope of copyright protection to a specific jurisdiction, modern realities have introduced scenarios where actions in one country affect rights in another.

1. Transnational Activities and Spillovers

Consider a transnational television broadcast. Both the states of origin (where the signal is transmitted) and the country of reception (where viewers consume the content) are affected. In such cases:

- **Dual Accountability:** Broadcasters can be held accountable for copyright violations under the laws of both countries.
- **Jurisdictional Overlap:** Each jurisdiction claims the right to regulate local activities and their effects, often leading to conflicting rulings.

²⁰ Svantesson, D. J. B. (2015). A jurisprudential justification for extraterritoriality in (private) international law. *Santa Clara Journal of International Law*, 13(1), 517–571.

2. Private International Law and Extraterritorial Jurisdiction

Judicial bodies can claim authority over international intellectual property conflicts by utilizing the *lex loci protectionis*, which refers to the legal framework of the nation where protection is desired. This introduces:

- **Standardized Connecting Factors:** Courts rely on factors like the defendant's behavior or the location of the alleged infringement to establish jurisdiction.
- **Extraterritorial Implications:** Substantive IP laws in one country may extend to actions in another if those actions have significant effects on the protected rights.

3. Challenges to the Territorial Premise

Cases involving cross-border infringement challenge the assumption that IP rights are confined to national borders. Examples include:

- **Digital Piracy:** Uploading copyrighted works on a server in one country and distributing them globally.
- **International Licensing:** Disputes over licensing terms when content is accessible in unintended territories.

Effects of the Principle on Investment Law , Copyright Infringement : Music and Movies

Investment Law

While the idea of territoriality continues to play a significant role in the integration of intellectual property into international trade law (although to a diminished extent), certain scholars have raised alarms that including intellectual property in investment agreements (like bilateral investment treaties and the investment sections of free trade agreements) might pose risks.²¹

The notion of territoriality could be influenced in a minimum of two manners by integrating intellectual property within the scope of international investment law and the process of

²¹ R.B Lillich, "Global Protection of Human Rights", in Theodor Meron (ed.), *Human Rights in International Law; Legal and Policy Issues* (Clarendon Press, Oxford, 1984,1992 reprint) pp. 115-170,157

treating intellectual property as an asset.

To start, free trade agreements frequently include provisions that require the participating nations to implement standards that surpass the fundamental criteria established by the TRIPS Agreement or to waive specific flexibilities permitted to a WTO member under the TRIPS Agreement, especially in circumstances where a developed country is paired with a developing country (these are often referred to as TRIPS-plus provisions).

The explicit inclusion of TRIPS-plus provisions in an agreement could limit a country's capacity to create national intellectual property laws that meet particular social objectives. Nonetheless, it is possible to incorporate specific provisions that recognize a nation's policy flexibility and safeguard its regulatory power over intellectual property within a bilateral investment treaty or free trade agreement.

The Investor-State Dispute Settlement (ISDS) system is a mechanism that allows businesses to challenge regulatory measures (adopted by host nations to achieve particular societal goals)²² before international arbitration courts. Because of the potential danger and/or expense of legal action in front of an investment tribunal stemming from an investment agreement, a nation might opt not to enforce specific regulatory actions (such as those concerning intellectual property rights), which can adversely affect the country's ability to regulate.²³

The Principle of Territoriality significantly impacts investment law, particularly in industries dependent on intellectual property, including technology, entertainment, and pharmaceuticals. In terms of investment, territoriality influences both the safeguarding and the implementation of intellectual property rights, which frequently serve as essential assets in an investment portfolio.

1. **Risk and Uncertainty for Investors:** Investors in creative industries or companies dealing with intellectual property often face heightened risk due to the lack of uniform copyright protections across borders. For example, if a company develops a product in

²² Application 12633/87 *Smith Kline and French Laboratories Ltd. V The Netherlands*, 4 October 1990, (1990) 66 European Commission of Human Rights, *Decisions and Reports*, 70,80

²³ T.Campbell and W. Sadurski, (Eds.) *Freedom of Communication* (Aldershot,1994); F Schauer, *Free Speech; a philosophical enquiry* (Cambridge University Press, Cambridge,1982)

one jurisdiction but sells it globally, they may need to secure multiple copyright registrations in various countries. This creates uncertainty, as the level of protection, duration, and enforcement mechanisms may vary from one country to another.

2. **Licensing and Market Access:** Copyright law also affects how investors approach licensing agreements. A company seeking to expand into foreign markets may need to ensure that their intellectual property rights are protected in each new market before making significant financial commitments. The territoriality of copyright may require them to negotiate separate licensing deals or pursue individual registrations in each country where they operate. This can make international expansion more costly and complicated.
3. **Investment in Countries with Weak Enforcement:** Another challenge for investors is the potential for copyright infringement in countries where IP laws are either less stringent or less effectively enforced. Investors may hesitate to enter markets with weak IP protections, as the risk of copyright infringement and loss of revenue becomes significantly higher. This dynamic can lead to a preference for investing in jurisdictions with stronger intellectual property protections, exacerbating the inequality in global access to capital.
4. **Global Agreements and Trade Pacts:** Global pacts and trade accords, like the Berne Convention or TRIPS, attempt to mitigate the fragmentation caused by territoriality by requiring countries to adhere to certain minimum standards of copyright protection. However, despite these agreements, the principle of territoriality still requires investors to navigate a patchwork of legal systems, which can complicate investments, particularly in the entertainment and technology sectors.²⁴

In essence, the territoriality principle adds complexity to the investment environment by introducing uncertainty and inconsistencies in intellectual property protection across borders.

Copyright Infringement

"Multi"-territorial copyright claims pertain to actions or entities situated in multiple countries, yet they don't always mandate the use of a single law—the law of the forum—to address the entire dispute.

²⁴ International Treaties and Trade Agreements - Library Copyright Alliance.

The territorial aspects of copyright legislation greatly impact how copyright infringement is enforced, especially in a time when digital material can be effortlessly distributed and accessed internationally..²⁵

Copyright infringement in today's world can be due to various reasons and of various types , the various sources through which there can be a copyright infringement internationally are as follows:

1. **Cross-Border Infringement:** In today's digital world, copyright infringement can occur instantaneously across national borders. A pirated work can be distributed online, hosted in one country, and downloaded or streamed in another. The territorial principle complicates enforcement because a copyright holder must seek legal redress within the jurisdiction where the infringement is taking place. However, the process can be slow, and the results may be inconsistent depending on the strength of local copyright laws.
2. **Global Piracy Networks:** The principle of territoriality often means that copyright holders are unable to effectively combat piracy that takes place in countries with lax enforcement mechanisms. For instance, pirated movies or music may be widely available in regions where copyright enforcement is weak or non-existent, leading to revenue loss for creators and industries.
3. **Internet Platforms:** Digital platforms like YouTube, Vimeo, and various file-sharing sites often host infringing content from users across the globe. While platforms are sometimes required to remove infringing material under national laws (for example, the Digital Millennium Copyright Act in the United States), the global nature of the internet makes enforcement problematic. Even when a work is removed in one country, it may still be available in others.
4. **Extraterritorial Enforcement:** In some cases, copyright holders have sought to pursue legal action in foreign jurisdictions where the infringement occurred, despite the fact that the infringement took place outside their home country. This raises difficult questions about extraterritorial jurisdiction and the limits of national copyright laws. Courts may struggle to determine the appropriate jurisdiction to hear a case, leading to delays, increased costs, and complications.

²⁵ Jane C. Ginsburg, *Extraterritoriality and Multiterritoriality in Copyright Infringement*, 37 VA. J. INT'L. L. 587 (1997).

5. **International Cooperation:** While international treaties and conventions facilitate some cooperation, the lack of a universally agreed-upon framework for cross-border copyright enforcement means that many infringement cases are not effectively prosecuted or resolved.

Movies

The Principle of Territoriality has notable implications for the global movie industry, where international distribution, copyright protection, and enforcement are central to revenue generation.

1. **International Distribution and Licensing:** Movies are often distributed globally through licensing agreements. These agreements are typically territorial in nature, meaning that the right to distribute a film in specific countries is sold to different entities. As a result, films may be released at different times in different regions, or be subject to different censorship, edits, or versions depending on the cultural norms of each territory.²⁶
2. **Piracy and Distribution in Unprotected Territories:** A major challenge for the movie industry under the territoriality principle is piracy. Films can be illegally copied and distributed across borders, and enforcing copyright in countries with weak protection becomes a significant issue. For example, a movie may be released in one market but pirated and shared globally, undermining the revenue streams of the original copyright holders.²⁷
3. **Digital Platforms:** The emergence of digital streaming services like Netflix and Amazon Prime Video has complicated the territorial distribution of films. While these platforms provide global access to content, the territorial licensing agreements still exist. Movies available on streaming platforms may be inaccessible in certain countries due to geographic restrictions. Copyright holders must navigate complex licensing negotiations to ensure that their films are protected in each country they are streamed.

Music

The global nature of music consumption has been deeply affected by the Principle of

²⁶ Medialawyer.com, *International Film Distribution and Copyright*, 2022.

²⁷ OECD, *Piracy of Digital Content*, 2009

Territoriality, particularly with the rise of digital streaming platforms and international music distribution.

1. **Territorial Licensing and Distribution:** Similar to the movie industry, the music industry often relies on territorial licensing agreements. This means that record labels or artists must secure separate licensing deals for different countries. Such fragmentation can lead to issues like regional exclusivity or delayed releases in certain markets, frustrating fans and complicating revenue streams.²⁸
2. **International Streaming Platforms:** Services such as Spotify, Apple Music, and YouTube have transformed the music industry. However, copyright laws remain territorial, and music tracks may not be available in all regions due to licensing restrictions. Moreover, different copyright durations and rules regarding royalties in various countries may affect how artists are compensated for international streams.
3. **Piracy and Enforcement:** Music piracy, especially in countries with weaker copyright enforcement, remains a significant challenge. Illegal downloading and sharing of music can deprive artists of revenue. Moreover, the territoriality principle makes it difficult for musicians and labels to address this issue globally, as they must seek legal recourse in each jurisdiction separately.²⁹

Strategies for Creators to Safeguard Their Works Globally³⁰

Indian creators can safeguard their creations internationally through a variety of methods:

- **Grasping global copyright regulations:** Familiarize yourself with treaties like the Berne Convention and TRIPS to ensure protection internationally.
- **Seeking legal advice:** Hire intellectual property attorneys for assistance in comprehending international copyright regulations, drafting contracts, and addressing conflicts.
- **Formal registration:** Registering works provides additional legal protection, supporting enforcement and the ability to seek damages internationally. It also improves ease of rights enforcement and strengthens the creator's credibility, assisting in negotiations with overseas

²⁸ *Tuned Global, How Music Licensing Works for Streaming Services*, 2023

²⁹ *New Music Seminar, Cross-Territory Licensing Issues and Solutions*, 2023

³⁰ Sonu Shaji - *International Copyright Protection for Indian Creators – Depenning*

distributors, publishers or partners. A registered copyright streamlines legal proceedings and damage claims, which is vital for safeguarding intellectual property around the world.

- **Participating in Collective Management Organizations (CMOs):** CMOs are entities that assist copyright holders in managing and protecting their copyrights, as well as collecting royalties for their creations. Indian creators may consider joining CMOs to oversee rights, facilitate licensing, and guarantee equitable distribution on a global scale. Given that India is a signatory to key treaties related to international copyright protection, becoming a member of these CMOs can simplify the management of essential elements across numerous countries.

Conclusion

The Territoriality principle remains a cornerstone of copyright rights/law, ensuring the intellectual property rights are enforced within national jurisdictions. However, in an increasingly globalized digital landscape, extraterritorial challenges, jurisdictional loopholes, and inconsistent enforcement mechanisms have exposed its limitations. The rigidity of territorial enforcement often hampers investment in creative industries, creating legal uncertainties that deter cross-border collaborations.

Additionally, rampant copyright infringement in the music and film industries highlights the inadequacies of traditional territorial frameworks in addressing digital piracy and unauthorized access. To mitigate these challenges, a more adaptive legal approach—integrating international cooperation, technological enforcement tools, and harmonized licensing frameworks—is necessary to balance the need for territorial control with the realities of global content distribution.