

IP DISPUTES IN E-COMMERCE- A JURISDICTIONAL DILEMMA

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“As long as different countries have different laws and cultures, there are no good principles for jurisdiction, only less bad ones. Every nation wants unity, but no nation wants to give up any of its traditions.”¹ - Carlen-Wendels

ABSTRACT

India is witnessing a digital revolution within a techno-commercial environment known as E-Commerce. This evolution which is characterised by exponential change has successfully created business opportunities for millions and is continuously redefining our economy. Along with this digital revolution, Intellectual Properties have gained importance in various fora. As both E-Commerce and Intellectual Property intersect, courts and tribunals around the world are facing challenges in determining the governing law and to ascertain jurisdiction. This paper in Part 1 provides a background to e-commerce and its evolution, also traces the intersection between Intellectual property and e-commerce. In its central theme it explains the issue of jurisdiction on the cyberspace and extension of it to ecommerce. In its conclusion it seeks solutions to this pertinent issue through case laws by courts around the world and suggests best practices suitable for the Indian domain.

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¹Carlen-Wendels, T.:Natjuridik, Stockholm, Norstedts Tryckeri AB, 2:1, 1998, P.38.

INTRODUCTION

In a world made of clearly defined physical boundaries of states, the internet is multi-jurisdictional and boundary-less. E-commerce raises the issue by the fact that one or more of the parties involved in the commercial activity may be located in different jurisdictional areas. Not only do uncertainties arise, as to where commercial activities are taking place, but the activities themselves can have intended and unintended consequences all over the world. This eventually results in uncertainty when it comes to localising the dispute, identifying the law which is applicable as well as the practicalities of the issue itself. Often, owners of intellectual properties seek to manage their rights through licensing agreements, or to enforce them against infringement through various laws. They are confronted with complex legal and specifically jurisdictional issues.

Since ancient times, each community has lived by its own law. Each state and their respective legal system are essentially responsible for determining the court with jurisdiction to decide on matters with an international element, even when the issues are pertaining and subject to international treaties.² Due to globalisation and improvement of transport and media, transactions between distinct communities have increased. As a result, conflicts tend to arise not only between private parties to the transaction, but also between the laws of their respective communities.

The Internet greatly diminishes the significance of physical location of the parties involved, because the transactions in cyber space are not geographically based. Moreover, the Internet alters the power balance between the distributors and the consumer. Previously, consumers acted on the behest of sellers as they had no other option. Today, due to the progress of technology and commerce, consumers now have instant access to enormous amounts of information and highly sophisticated technology, which gives them a wide spectrum of opportunities.

²Slovakova, Zuzana , 2008. International Private Law Issues Regarding Trademark Protection and the Internet within the EU. *Journal of International Commercial Law and Technology*, [Online]. 3, 76-83. Available at: <http://www.jiclt.com/index.php/jiclt/article/view/44> [Last accessed on 1st May 2015].

It is truly an exciting time for technology and commerce. With new innovations, and economies adapting to technological change as well as to one another, the opportunities and possibilities are truly endless.

EVOLUTION OF E-COMMERCE

The digital era has ushered in a viable, efficient, and pragmatic way of trade-‘Electronic Commerce’ or quite simply ‘E-commerce’. It would be a mistake to assume that it is a new phenomenon, as prior to the development and widespread use of the internet, other technologies based on private or closed networks were already in use to provide electronic communications between commercial entities which in turn were used to enter into binding agreements or contracts.³

The term ‘E-commerce’ has, in the last few years, achieved widespread recognition, becoming a highly visible symbol in the contemporary language of the information technology culture that has brought profound changes in the final years of the last millennium.⁴ Though the term ‘E-commerce’ has been defined by many, it is generally termed as the use of computers and Information Technology to transact business by and between entities and individuals. Online markets of e-commerce have transformed the way business is conducted today between businesses (B2B), between consumers (C2C), and also between the businesses and consumers (B2C and C2B).

Rising incomes, leading to a better standard of living and a greater variety of goods and services that are openly available is making buying online more attractive and convenient for consumers all over the country. Witnessing a digital revolution as well as advancements in the fields of mobile operating systems and related technologies, e-commerce has carved out a niche sector for itself.

In 2011, the number of digital buyers was estimated at 14.5 million nationwide. This number rose to 19.2 million in 2012 and forecasts predict that the number will exceed 40 million by

³Chris Reed, Gavin Sutter, John Angel (Ed.), Computer Law, 331 (5TH Ed, 2004).

Electronic Data Interchange (‘EDI’), a system of electronic communications between commercial parties where the communication takes place over a closed system and are governed by a set of previously agreed contracts, was perhaps the most commonly used technology. Other communications systems existed and continue to exist within certain defined industries, and these too constitute a form of ‘e-commerce’.

⁴ Rodney D. Ryder , Intellectual Property and the Internet, 20, (1st Ed., 2002)

2016. In 2012, the average B2C e-commerce sales per digital buyer in India amounted to 632 U.S. dollars, up from 597 U.S. dollars a year earlier. This figure is expected to increase in the future and reach 724 U.S. dollars in 2016.⁵ While the global scenario remains thus, e-commerce business in India is still at a nascent stage, but is set involve many more customers and grow significantly in the near future.⁶ If recent projections are anything to go by, the e-commerce market in India is really set to become one of the largest in the world. E-commerce in India has not only created a new sector of business all together but has managed to prove that it is beneficial to both buyers and sellers in the market. Though certain issues exist, they are sure to be ironed out in the near future with newer technologies and an ever increasing internet user base in the country. With investment and capital flowing greater than ever from within and outside the country, e-commerce as a business model is here to stay.

IP AND E- COMMERCE: A CORRELATION

Intellectual Property is an intangible property or asset, just as valuable as and often more valuable than physical or real property. It consists of new ideas, original expressions, distinctive names, and appearance that make products unique and valuable.⁷ Intellectual property is protected in the form of patents, trademarks, copyrights, industrial designs, and geographical indications. It also refers to the protection of utility models, trade dress and layout-designs or topographies of integrated circuits, where such protection exists.

IP has become a central element in economic and cultural policy in a world in which the source wealth is increasingly intellectual as opposed to physical, and in which markets are distributed across the world. The discipline of IP is not only concerned with the establishment of rights, but also with the definition of the proper scope of those rights and their relation with other areas of public policy.⁸

⁵Statista . 2015. Retail E-Commerce Sales in India . [Online] Available at:<http://www.statista.com/statistics/289770/india-retail-e-commerce-sales/>. [Last accessed on 22nd April 2015].

⁶Aparna Viswanathan, *Cyber Law, Indian and International Perspectives*, 276, (1ST Ed. 2012).

⁷World Intellectual Property Organisation . 2014. *Understanding how Intellectual Property relates to E-Commerce*. [Online] Available at: http://www.wipo.int/sme/en/e_commerce/ip_ecommerce.htm. [Last accessed on 24th April 2015].

⁸ *Supra* n 4.P.64.

There are several reasons why IP and e-commerce are important to each other. E-commerce, more than other business systems, often involves selling products and services that are based on IP and its licensing. Music, pictures, photos, software, designs, training modules, systems, etc. can all be traded through e-commerce, in which case, IP is the main component of value in the transaction.⁹ IP is important because the things of value that are traded on the Internet must be protected, using technological security systems and IP laws, or else they could possibly be stolen or pirated and eventually, whole businesses could be destroyed.¹⁰ Though Intellectual property is of many kinds, the two main areas to be affected by the advent of the internet age along with e-commerce are the laws of Copyright and Trademarks. Jurisdiction, a cardinal prerequisite for any court to try a case at hand, also attains prominence as a major issue in this regard. In a fundamental respect, the international character of electronic commerce raises questions for the nature of traditional legal systems in general, and intellectual property law in particular. Both are based on notions of sovereignty and territoriality. The Internet, in contrast, largely ignores distinctions based on territorial borders. Laws regarding these issues in various jurisdictions are mostly incompatible. Hence opportunities are as boundless as threats. This has led to The World Intellectual Property Organisation (WIPO) often terming the internet as ‘the world’s biggest copy machine’.¹¹

JURISDICTION AND THE INTERNET

The very base of the issue with internet jurisdiction is the presence of multiple parties in various parts of the world who have only a virtual nexus with each other. In such a situation, if a party wishes to initiate a suit against another, the problem of territorial jurisdiction arises. Traditional requirements generally encompass two areas; Firstly, the place where the defendant resides, or secondly, where the cause of action arises. However, in the context of the internet, both these are difficult to establish with any certainty. Even a childishly simple transaction can give rise to a mind-boggling issue of Jurisdiction on the internet. For example, ‘A’, situated in India, decides to download an article from a website, and pays for it via

⁹WIPO. 2013. Understanding How Intellectual Property (IP) Relates to E-Commerce. [Online] Available at: http://www.wipo.int/sme/en/e_commerce/ip_ecommerce.htm. [Last accessed on 29th April 15].

¹⁰Supra n. 7.

¹¹International Bureau of WIPO . 2013. *The Advantages of Adherence to WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)*. [Online] Available at:http://www.wipo.int/export/sites/www/copyright/en/activities/pdf/advantages_wct_wppt.pdf. [Last accessed on 25th March 2015].

electronic-payment. Subsequently, he is not able to perform the download. He wants to initiate a legal suit against the owner of the site. However, the owner of the site is situated in Thailand. The site itself is based out of a server in Brazil. Now the question arises as to whether the aggrieved party should approach the courts of Brazil, Thailand or India for his grievances to be redressed. Issues of this nature have contributed to the complete confusion and contradictions that plague judicial decisions in the arena of internet jurisdiction.¹²

Laws to prescribe Jurisdiction and adjudicate disputes historically have been based on territorial principles. If a country found a person to be within its territory, it exercised jurisdiction over that person.¹³ The Internet pays no heed to physical location of the parties because transactions in cyber space are not geographically based. Moreover, the Internet alters the power balance between distributor and consumer, because consumers now have instant access to enormous amounts of information and highly sophisticated analytical tools.¹⁴

The laws of a nation may have extra-territorial impact extending the jurisdiction beyond the sovereign and territorial limits of that nation. This in particular is a problem as the internet as a medium does not explicitly recognize sovereignty and territorial limitations. There exists no international jurisdiction law for a uniform and universal application, and such questions are generally regarded as matters of conflict of laws or private international law. To further explain, the contents of a website may be legal in one country whereas it may be illegal in another. Due to an absence of a uniform jurisdiction code, legal practitioners are generally left with a conflict of law.

APPLYING PRIVATE INTERNATIONAL LAW TO E-COMMERCE DISPUTES

Private International law, also known as ‘conflict of law’ rules or ‘choice of law’ rules is concerned with disputes between individuals or companies of different countries or between individuals/companies and the state.¹⁵ In the words of Dicey and Morris, English private international law is that branch of law of England which:

¹²NandanKamath, Law relating to Computers, Internet & E-commerce, 25, (2nd Ed., 2002).

¹³*Supra* n. 4. P.139.

¹⁴*Supra* n. 4. P.140.

¹⁵*Supra* n. 6. P.294.

‘consists of rules which do not directly determine the rights and liabilities of particular persons but which determine the limit of the jurisdiction to be exercised by the English courts and also the choice of the body of law, whether domestic law of England or the law of any foreign country by reference to which English courts are to determine different matters brought to them for decision’.¹⁶

In the internet era, a single copyright work can be rendered available everywhere to anyone with an internet connection. The ‘foreign elements’ in any dispute concerning the exploitation of the work are likely to be numerous.¹⁷ Hence the need for private international law exists. Though it has an international aspect Private International Law, is essentially a branch of municipal or domestic laws.

There is extensive Indian jurisdiction on the issues of whether contracting parties can choose the law applicable to a contract and whether that choice is conclusive, whether there are any limits on the parties’ right to select the applicable law, and what the proper law is for the contract where there is no choice of law clause in the contract.¹⁸

Further, Indian courts have addressed the issue of how foreign law is to be ascertained in cases where foreign law has been selected by the parties as the proper law of the contract. However, this line of jurisprudence does not address issues arising to the exercise of jurisdiction over a defendant operating a website due to content posted on the website or an online transaction.¹⁹ With Indian courts having developed a limited jurisprudence it is important to examine existing common law cases which lay down principles for the exercise of jurisdiction over an e-commerce dispute. These principles may be appropriately applied in Indian courts in the future to solve e-commerce disputes.

THEORIES IN JURISDICTION

The traditional approach to jurisdiction invites a court to ask whether it has the territorial, pecuniary, or subject matter jurisdiction to entertain the case brought before it. The principle of territoriality has its own limitations. A national law is territory specific and in most cases

¹⁶Dicey, Morris and Collins , Conflict of Law , 1987

¹⁷ Austin, Greame, (2001). Private International Law and Intellectual Property Rights. In WIPO forum on Private International Law and Intellectual Property. Geneva, January 30th, 2001. Geneva: WIPO. 3.

¹⁸*Supra* n. 6. P.294.

¹⁹*Id.*

shall not have extra-territorial application.²⁰ The courts have invoked various principles to ascertain jurisdiction:

In Personam Jurisdiction:

The words 'in personam' mean 'directed towards a particular person'. It refers to a right, action, judgement or entitlement that is attached to a specific person. An 'in personam' suit is one in which relief is sought against, or punishment is sought to be inflicted upon a 'specific person'.²¹ These suits are always against an individual person and only compensatory benefits are awarded.

The rules applied by the Indian Courts with regard to this matter fall under the basis of the jurisdiction under the Code of Civil Procedure, 1908 (CPC). Sections 19 and 20 of the CPC set the basis for Indian courts to exercise 'In-Personam' jurisdiction which is relevant to e-commerce disputes. Section 19, is limited to cases in which torts arising and compensation from and for the wrong done to person or to movable property. It excludes any suit filed under causes of action arising other than tort.

Section 20 of the CPC allows a defendant to defend his suit in the place where he was residing, thereby not causing inconvenience to the defendant. The Plaintiff in this case has the option to try the case either in the court which is located where the defendant works or resides or where the cause of action has arisen.

The case of Motion Pictures USA v. ICrave TV²², involving sale of copyrighted material online in the US, courts invoked this principle. The petitioner sought the intervention of the courts to restrain the activities of the defendant, a Canadian website alleging Copyright infringement Trademark Infringement and unfair competition amongst other things. The defendant was involved in the sale of copyrighted television and entertainment programs through their site. In addition to its infringing activities the defendant issued advertising space to companies in US and Canada. It was held that by infringing trademarks and copyrights within the US and advertising to American viewers, the US courts had personal jurisdiction over the case.

²⁰Karnika Seth, Computers Internet and New Technology Laws, 28, (1st Ed. 2013).

²¹Duhaime's Law Dictionary. 2015. *InPersonam Definition*. [Online] Available at:<http://www.duhaime.org/LegalDictionary/I/InPersonam.aspx>. [Last accessed on 3rd May 2015].

²² 2000 US Dist LEXIS 11670.

Theory of Minimum Contact:

Due to various legal conflicts originating from the internet, courts around the world, face the difficult question of deciding whether to develop a new body of jurisprudence to deal with a novel legal problem, or to identify analogous legal precedents that best fit the facts of the case.²³

In the late 18th century the United States Supreme Court in *Pennoyer v. Neff*²⁴ formulated two broad principles of Jurisdiction: that (1) Every state possesses exclusive Jurisdiction within its territory; and (2) no state can exercise jurisdiction over persons ‘without its territory’. Thus the state had jurisdiction is personam (over persons located in the forum state) or jurisdiction in rem (over property located in the forum state).

A new concept was laid down by the court in the case of *International Shoe v. Washington*²⁵, in the middle of 19th Century known as the ‘minimum contacts’ standard. The court ruled that a non-resident of a state may be sued in that state if the party has ‘certain minimum contacts with (the state) such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.’ This court observed that the lower courts must quantify the defendant’s contacts with the state and the relationship between the contacts before exercising personal jurisdiction.²⁶

Minimum contacts can be deduced from the fact of selling goods and providing services, maintaining office or store, entering into a contract with someone or committing a tortious act in the state. A non-resident’s minimum contact with a forum state is treated as the equivalent of territorial presence in the state and hence justifies the state’s exercise of sovereignty over the non-resident. At the same time, a non-resident’s ‘purposeful availment’ of opportunities within the state is viewed as a liability to be brought to account under that state’s jurisdiction in exchange for the protection of its laws. Hence according to this legal theory, a defendant must have ‘minimum contacts’ with the jurisdiction for a tribunal or court to try a case involving a foreign party.

According to this rules, in the United States, a defendant must not be made subject to jurisdiction unless he has availed himself of the jurisdiction, by having minimum contacts

²³KantiSaha ,Tushar , 2010. Cyberspace-Conflicting Jurisdictional Spheres of Litigating IPR Claims .*Journal of Intellectual Property Rights*, Vol 15, September 2010, , P. 364-373.

²⁴*Pennoyer v Neff*, 95 US 714 (1877).

²⁵*International Shoe v. Washington*, 326 US 310, 66 S.Ct. 154, 90 L.Ed.95 (1945).

²⁶*Supra* n. 23.

with the forum. Therefore, the question that arises is whether a company selling its products through a website to consumers in other states or countries has, by virtue of its website, availed itself of the jurisdiction of such other states or countries and thus ‘minimum contacts’ with these other jurisdictions.²⁷

The Federal District Court of Pennsylvania in the case of *Zippo Manufacturing Co. v. Zippo Dot Com Inc.*,²⁸ held that the defendant satisfied the minimum contacts rule criteria as they had entered into agreements with various internet access providers within the state of Pennsylvania, through which they had established minimum contact and also had satisfied the test under the Long-Arm statute of the State of Pennsylvania.²⁹ This statute includes both general and specific jurisdiction over out-of-state defendants. It also states that to establish general jurisdiction, a non-resident’s contacts with the forum must be continuous and substantial.

In contrast to the “In Personam Jurisdiction”, “In Rem Jurisdiction” pertains to immovable property. Hence a discussion on the same would be of no relevance to the subject under analysis.

INTERNATIONAL SCENARIO

The Territoriality question can also be answered by the ‘law of the server’ principle, i.e., application of law where the server is actually located. However, territorialisation through servers may lead to a long range of issues which would include; contents of web-pages taken from other servers in other territories, as well as links to pages located in other countries. The difficulties faced by courts in dealing with this new medium are acutely exemplified in the following decisions;

In 1996, the United States by a Federal district Court in Connecticut held that accessibility of a website, standing alone, does not form a sound basis for jurisdiction over a non-resident.³⁰

²⁷*Supra* n. 6. P.291.

²⁸ *Zippo Mfr. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997)

²⁹ The Defendant, Zippo Dot Com, a Californian Corporation operated a website and an internet news service. Zippo Dot Com had obtained the exclusive rights to use the domain names; zippo.com, zippo.net and zipponews.com on the internet. The plaintiff, a well known tobacco lighter manufacturer, filed a suit in Pennsylvania alleging trademark dilution, trademark infringement and false designation of origin under the Lanham Act. The defendant moved to dismiss for lack of personal jurisdiction.

³⁰*Inset System v. Instruction Set Inc.* , 937 F. Supp. 161 (D. Conn. 1996) .

The European Court of Justice in the case of *Shevill and Others v. Presse-Alliance SA*,³¹ held that where the Brussels convention of 1988 applies³², a defamation action may be brought both where the publication occurred and where the claimant suffered damage to his reputation. The latter place is most likely to be interpreted as where the defamatory statement was read, i.e., the location of the viewer. On that basis, ISPs (and authors) will inevitably be exposed to liability in every country in the world.³³

Indeed, under doctrines which have become prevalent in most judicial interpretations in the United States, France could not have Jurisdiction over Yahoo! Inc's auction website as the site was not located in France, was not targeted at France and, indeed, offered only a venue in which persons other than Yahoo! Inc offered goods for sale. In fact, Yahoo! Inc has a subsidiary resident in France which complies with the French law forbidding sale of Nazi-related goods on its French website, namely 'Yahoo.fr'. Climaxing a series of earlier rulings by the same court, it ordered Yahoo! Inc to put filtering systems on its United States website so as to prevent access by French residents to portions of the Yahoo! Inc auction site on which persons offer to sell World War II memorabilia containing Nazi symbols. In its initial ruling of 22nd May, 2000, the court held that the United States website for Yahoo! Inc was subject to French jurisdiction simply because it could be accessed from France.³⁴

The Australian High Court held that the place of publication to be the point of downloading. In *Dow Jones & Co Inc v. Joseph Gutnick*³⁵ the court considered that the focus of defamation is upon the damage which it causes to reputation. A defamation can only cause such harm when 'comprehended by the reader, the listener, or the observer', thus publication of a defamation is a bilateral process which can only be complete once the publisher has made the article in question available and it is available for perusal by a third party. Internet material is not available to the reader in a comprehensible form until it has been downloaded onto the computer of an individual who has acquired it from the server using an Internet browser.³⁶ The place where the information is downloaded is the place where damage to reputation may be

³¹All ER 409, CA, [1995] 2 WLR 499, ECJ.

³²Where the Brussels Convention does not apply, the English courts have the power to stay proceedings on the ground that there is sufficient connection with the Jurisdiction, eg, if the publication in England is small in comparison to worldwide publication; *Berezovsky v. Forbes Inc.*, *The Times*, 19 January, 1998.

³³Opinion of the Advocate-General Leger, *Shevill and Others v. Presse-Alliance SA*, para 56.

³⁴Ordonne du 20 November 2000, *VEJF and LICRA v Yahoo! Inc and Yahoo! France* (Tribunal de Grand Instance de Paris)

³⁵[2002] HCA 56.

³⁶Justice, S.Muralidhar, 2010. Jurisdictional Issue in Cyberspace. *The Indian Journal of Law and Technology* , Vol. 6, 2010, P.22-26.

done, and therefore, the court held as a rule, that this will be the place where the tort of defamation has been committed.³⁷

In the key case of *Dudnikov v. Chalk Vermilion Fine Arts Inc. & Ors*³⁸ on Internet jurisdiction, an action brought by plaintiffs - eBay "power sellers" of fabrics, seeking a declaratory judgment that certain of their prints do not infringe defendants' copyrights was dismissed by the United District Court of Colorado for lack of personal jurisdiction. The Appellate court reiterated the test from *International Shoe v. Washington*³⁹, that the defendants should have made minimum contacts with the state of Colorado thereby making itself available to the forum of the State which would not offend traditional notions of fair play and justice in ascertaining personal jurisdiction. It was reversed on the basis that 1) defendants sent a notice of claimed infringement (NOCI) to eBay expressly intending, and effectually acting, to suspend plaintiffs' auction in Colorado; 2) plaintiffs suit arose from the consequences of the NOCI which was incurred in Colorado; 3) for purposes of the motion, it had to be assumed defendants knew plaintiffs' business was located in Colorado; and 4) defendants could show no basis in traditional notions of fair play or substantial justice that would preclude suit in that forum.

Minimum Contacts principle was applied by the Ninth Court of United States while analysing the case of *Cybersell Vs Cybersell Inc.*⁴⁰ The court held that the Arizona District Court could exercise personal jurisdiction over an allegedly infringing Florida website advertiser who had no contact with the forum state besides maintaining a home page which can be accessed by not only people of the forum state but by everybody on the internet. In this case of alleged service mark infringement, the court also held that 'purposeful availment' is not satisfied by the Florida based site.⁴¹ This approach was reiterated by the a US District Court in *Maritz, Inc. v. CyberGold, Inc.*,⁴² while deciding trademark infringement in a website which could be accessed within the state of Missouri and which was accessed by its citizens was enough proof of purposeful availment. The court also held that Missouri's long arm statute, which provides

³⁷*Supran* 3.

³⁸ 514 F.3d, 1063 (10th cir., 2008).

³⁹ 326 US 310, 66 S.Ct. 154, 90 L.Ed.95 (1945).

⁴⁰ 130 F. 3d 414 (9th Cir. 1997)

⁴¹*Supra* n. 4. P.179.

⁴² 947 F. Supp. 1328 (E.D. Mo. 1996)

for personal jurisdiction over a non-resident defendant, who has either transacted any business within the state or committed a tortious act within the state was successfully satisfied.⁴³

In India the precedent with relation to E-commerce, Jurisdictional and Intellectual Property Infringement related issues was laid down in *World Wrestling Entertainment, Inc. v. M/s.Reshma Collection & Ors.*,⁴⁴ This case, involved a plaintiff company incorporated under the laws of the State of Delaware, USA engaged in the business of licensing and sale of branded consumer products. The defendant was a company incorporated in Mumbai. The Delhi High Court while reversing the order of a single judge laid down that jurisdiction in e-commerce cases involving trademark and copyright disputes would be determined by the buyer's place of residence.⁴⁵

The Division bench relied on the three pronged tests laid down by the Supreme court in *Dhodha House v. S.K. Maingi*⁴⁶, namely:-

*“(1) The agent must be a special agent who attends exclusively to the business of the principal and carries it on in the name of the principal and not a general agent who does business for any one that pays him. (2) The person acting as agent must be an agent in the strict sense of the term. (3) To constitute “carrying on business” at a certain place, the essential part of the business must take place in that place.*⁴⁷

To determine whether the plaintiff could be said to “carry on business” in a particular place the SC had interpreted the expression “carries on business” given in Section 134(2)⁴⁸ and Section 62(2)⁴⁹ of the Trade Marks Act and the Copyright Act respectively.⁵⁰

Based on the above reasoning of the Supreme Court, the Delhi High Court opined that plaintiff could be said to carry on his business to an extent in Delhi and therefore, fulfilled the condition “carrying on business” as laid down in the Dhodha case. The Court was of the view

⁴³*Supra* n. 4. P.179.

⁴⁴*World Wrestling Entertainment, Inc. v. M/s. Reshma Collections.* (FAO (OS) 506/2013)

⁴⁵AnkitRastogi, Indian Case Laws. 2014. *WORLD WRESTLING ENTERTAINMENT INC. V. M/S. RESHMA COLLECTION*. [Online] Available at: <https://indiancaselaws.wordpress.com/2014/10/19/world-wrestling-entertainment-inc-v-ms-reshma-collection-2/>. [Last accessed on 29th April 2015].

⁴⁶AIR 2006 SC 370

⁴⁷*Id.*

⁴⁸The Trade Marks Act, 1999.

⁴⁹The Indian Copyright Act, 1956.

⁵⁰DevikaAgarwal/ SpicyIP. 2014. *Jurisdiction in E-Commerce IP Disputes*. [Online] Available at:<http://spicyip.com/2014/10/jurisdiction-in-e-commerce-ip-disputes.html>. [Last accessed on 20th April 15].

that “due to advancements in technology and the rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence.”⁵¹

⁵¹World Wrestling Entertainment, Inc. v. M/s. Reshma Collections. (FAO (OS) 506/2013)

CONCLUSION

E-Commerce has grown from a small sector of trade, to establishing its own economy across the globe. It has proved to be an effective strategy for growth of trade and commerce in developing economies such as India. Many commentators believe that the internet offers developing countries an opportunity for accelerated integration into the global economy.⁵²

When E-Commerce is coupled with Intellectual Property is the subject matter of a dispute, an international approach for resolution becomes essential. Disparate substantive laws can be forged into an international framework to facilitate litigation of internet related issues in an easier way. Uniformity of law will ensure that there is ease of judicial proceedings. This approach could shift the emphasis on the determination of the law itself rather than territorial uncertainty. An absence of new approach in this direction may lead to the internet becoming as bordered and restricted as traditional geographic boundaries are today.

Various common law precedents exist, which aid in protecting Intellectual Properties through various theories such as that of 'minimum contacts' or 'long arm statutes'. Though India is yet to adapt these theories and methods, it will help the judicial system to refer to them as they have originated from countries which have strong Intellectual Property protection. The Indian scenario is bound to witness more litigation in this specific field in the near future and it is of great importance that the judiciary explores and interprets the unexplored grey areas in this field.

The way forward in the field of Intellectual property protection, has been and always will be to attain a situation where Intellectual Properties are shared by their proprietors in a safe and protected manner, so as to benefit the public at large. Through adapting these theories and methods from other jurisdictions, parties may not only share Intellectual Properties with effective protection but also receive justice quicker in a more efficient way.

⁵²Soota, A, (1999).Developing Countries and E-Commerce. *In International Conference on E-Commerce and Intellectual Property* . Geneva, Switzerland , September 1999. Geneva : WIPO .