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# Understanding Jurisdictional Barriers of the Internet

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## ABSTRACT

*Devoid of physical barriers, transactions over the internet have posed significant challenges to the determination of jurisdiction where the primary concern till date, is the lack of a definite procedure of asserting jurisdiction. The jurisprudence has evolved over the years, with international instruments such as the Convention of Cyber Crime seeking international cooperation to resolve jurisdictional issues. The question really narrows down to the extra-territorial application of domestic laws by municipal courts and if such application is justifiable. Hence ensues, the larger debate of the rift between the principle of sovereignty of States and the national principle. Acknowledging that internet is today an essential part of the daily lives of individuals, this fundamental question of assertion of jurisdiction assumes great significance. This paper endeavours to examine how Courts over the world have attempted to exert jurisdiction in the domain of the internet with the aid of multiple tests like the sliding scale test and the effects test. With an extensive study of the jurisdiction available, this paper analyses the impact of the tests so devised and how jurisdiction has continued to be a recurring issue.*

## I. INTRODUCTION

The advent of internet connectivity has proactively contributed to global transformation. The boundaries have dissolved and the world is connected like never before. Only one click precedes the commission of an act- one click- to connect, to place an order, to publish or download material, to buy or sell a commodity, to make a payment; internet today is arguably a part of all major activities. The seemingly limitless world of the internet is bound to become anarchic if not regulated. Hence, with the evolution in technology and the rising use of internet in business transactions as well as in social aspects of life, there arose a need to develop or modify laws that suit this unique proposition.

It is undeniable that traditional laws devoid of reasonable foresight with regard to issues that emerge in this internet dominated world, will certainly face difficulties in adequately tackling

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the complex questions of law that arise herewith. Nevertheless, these issues have been sought to be resolved with the aid of traditional and general standards, evolved to suit the case at hand. One of the primary issues and definitely the most pertinent one with respect to the increased dominance of internet is that of jurisdiction.

Jurisdiction refers to the capacity of a Court to hear or try a matter. Jurisdiction comprises three primary facets- territorial jurisdiction, subject-matter jurisdiction and pecuniary jurisdiction. In the context of internet, territorial jurisdiction assumes significance. Yet another categorisation of jurisdiction, views jurisdiction from the perspective of prescriptive jurisdiction and enforcement jurisdiction. Prescriptive jurisdiction refers to a Sovereign State's rather unlimited power to legislate on the subjects it chooses.<sup>2</sup> Enforcement jurisdiction of a State refers to its ability to enforce the laws that it makes under prescriptive jurisdiction.<sup>3</sup> However, enforcement jurisdiction is not unlimited like prescriptive jurisdiction, and is supreme only within its national boundaries. This means that while a State can choose to legislate on subject matter that may transcend boundaries or may bring within its ambit subjects of international importance, it may not necessarily be enforceable without paying heed to the principle of sovereign equality of States. This limiting factor to enforcement principle, often presents itself as a classic issue of jurisdiction over the internet. We will further look closely into jurisdictional issues with relation to the internet.

## II. ISSUES IN DETERMINING JURISDICTION ON INTERNET

The internet provides for a seamless world that exists without the limitation of physical boundaries. Any transaction on the internet transcends multiple jurisdictions, be it inter-State or intra-State. For instance, a cyber offence that has taken place completely in India, may include two different States- one where the victim resides and the other where the offender used his computer to commit a crime. This issue of multiple, claimable jurisdictions becomes more complex when national boundaries are traversed, subjecting the issue to multiple national laws which is countered, of course, by the principles of sovereignty. Justice S. Muralidhar, in his article titled, "Jurisdictional Issues in Cyber Space", aptly illustrates the complexity of jurisdictional issues through a transaction out of copyright infringement- the sale of a pirated song.<sup>4</sup> The pirated song may be uploaded in the server of one country and advertised for sale in the website of another country's service provider, yet it may be bought by a "click and pay service" in a third country and ultimately downloaded in a different

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<sup>2</sup> Vakul Sharma, *Information Technology Law and Practice* 428 (LexisNexis 2021).

<sup>3</sup> Vakul Sharma, *supra* note 1 at 429.

<sup>4</sup> JUSTICE S. MURALIDHAR, *Jurisdictional Issues in Cyber Space*, 6 IJLT 1, 2 (2010).

country. This transaction traverses through multiple jurisdictions and raises the difficult question as to, if all of these countries can exercise jurisdiction over the issue.

What becomes essential in such cases is to localise the transaction or the offence in question. This allows a domestic Court to apply its domestic laws and hear a matter in exclusion to other courts whose jurisdiction may also be applicable. A common rift in these cases, is the classic conflict between prescriptive and enforcement jurisdiction. The national principle must be reasonably limited by the principle of sovereign equality of States. Hence, localisation affords a tenable justification for the domestic courts to try a case. In international law, such localisation is attributed to the “effects doctrine” which guard the extra-territorial application of national laws. For the “effects doctrine” to be applicable, it is essential that the action of the defendant must have an effect on the concerned State irrespective of whether the defendant has a national or territorial link. This doctrine is embodied to a certain extent in the applicable Indian Act – the *Information Technology Act, 2000*. Section 75 of the *Information Technology Act, 2000* provides for extra territorial application of the provisions of the Act and requires that the act or conduct which results in an offence or contravention of the Act should involve, “*a computer, computer system or computer network located in India.*” The primary considerations to link the principle of territoriality in the favour of a court’s jurisdiction have been the location of the users, place of incorporation of the company that runs a website or the place where owners of a website reside, location of servers where data is stored and the state where the website was registered. The constant rift between the national principle and the principle of sovereignty of States, along with the limitless domain of the internet have given rise to a number of issues. It has also made States feel the need to regulate the internet as much as possible and consequently expand the jurisdiction of their Courts. This behaviour is manifested in a kind of hyper-territoriality wherein States attempt to extend their sovereignty beyond national borders.<sup>5</sup> With increased accessibility, cross border issues are inevitable but there lies a challenge to address these issues without undermining the global nature of internet. Finding a solution to balance the aforementioned conflicting issues to producing a framework directed at preservation of the global nature of the internet, undeniably entails the larger picture of global governance.<sup>6</sup> It has become extremely essential to think beyond unilateral actions of national

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<sup>5</sup> BERTRAND DE LA CHAPELLE & PAUL FEHLINGER, *Jurisdiction on Internet: From Legal Arms Race to Transnational Cooperation*, I.J. & P. 4, 9 (2016), [IJ-Paper-Jurisdiction-on-the-Internet.pdf \(internetjurisdiction.net\)](http://internetjurisdiction.net).

<sup>6</sup> CHAPELLE & FEHLINGER, *supra* note 4 at 8.

governments, in protection of inter-dependent structures.<sup>7</sup>

When we consider e-commerce over internet, certain issues involved are akin to that of offline business such as litigation arising from defective products, deficiency in services, misrepresentation, trademark infringement, etc. However, when we consider these issues over transaction occurring over the internet, across global markets, a piecemeal perception of applicability of jurisdiction exposes such businesses to numerous risks of legal actions.<sup>8</sup> There correspondingly arises a similar concern for protection of consumers' interests who may buy products from a remotely situated company and if recourse to their domestic courts may not be available to them.<sup>9</sup>

An important document with respect to jurisdiction over cyber crimes is the Cyber Crime Convention of 2001 which dealt with the issue of jurisdiction, among others. It made a distinction between prescriptive and enforcement jurisdiction by providing that simply the ability of a country to exercise extra-territorial jurisdiction over a subject matter cannot invoke a Court's personal jurisdiction.<sup>10</sup> The Convention also emphasised on not trying anyone in absentia and resisted the enforcements of public law judgements of one country in another. In such a scenario, extradition of the offender becomes a pre-condition to trying the matter and in the case of cyber offences, owing to their ever-evolving nature, extradition treaties which enumerate specific offences may be inadequate.

The problems and issues that arise with respect to the internet are evolving rapidly. The more complex the issue at hand, more tough it is to determine jurisdiction. The misuse of internet has become a growing concern and such misuse threatens a number of civil liberties, rights and national security considerations. It is pertinent to catch up with such developments and deploy quick solutions to the problems they present. It has been emphasised before that unilateral action by national governments are not sufficient to tackle these issues which include variety of actions such as content removal, seizure of domains, access to user data and right to be de-indexed. National laws on these areas significantly vary but cases where the issue of cross-border jurisdictions arise, it becomes essential to promote common standards and safeguards to avoid deadlock of interests and protect the rights of citizens. In this view, a corollary challenge also lies in the protection of global human rights. Besides, in a connected world, unilateral action and hyper-national exercise of jurisdiction threaten to

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<sup>7</sup> CHAPELLE & FEHLINGER, *supra* note 4 at 9.

<sup>8</sup> MICHAEL A. GEIST, *Is There a There There? Toward Greater Certainty for Internet Jurisdiction*, 16 B.T.L.J 1345, 1347 (2001).

<sup>9</sup> GEIST, *supra* note 7 at 1348.

<sup>10</sup> JYOTI RATTAN, *Cyber Jurisdiction: A Seamy Side of Cyber Sovereignty with Special Reference to India* (2018) 5 GNLU L.Rev. 52.

harm the economy, technological infrastructure and security.

### III. CASE LAWS

To better understand the issues in connection with jurisdiction over the internet, it is essential to look into various case laws and analyse them to understand how courts have endeavoured to keep up with gaps in law and infrastructure and if their efforts have been sufficient. We would first look into the Indian scenario and then delve into the American jurisprudence.

#### (A) Indian Scenario

In the case of *Casio India Limited v. Ashita Tele Systems Private Ltd*<sup>11</sup>, the Court held the mere accessibility of the defendant's website in India to be sufficient for the Court to exercise territorial jurisdiction. In *India TV Independent News Service Pvt Limited v. India Broadcast Live LLC & Ors*<sup>12</sup>, the Court stressed on the level of interactivity of a website as a determinant of invocation of territorial jurisdiction. Hence, mere accessibility was not enough and amounted to passivity. The Court clarified that the website will be considered passive if the users can only browse the said website, but will be considered sufficiently interactive if users were allowed to subscribe to the same. It was held that the website of the defendants targeted both residents as well as non-residents which was sufficient for the Court to exercise its territorial jurisdiction. In yet another case of *Super Cassette Industries Ltd. v. Myspace Inc & Anr*<sup>13</sup>, copyright infringement where the defendants were non-residents, the website in question was held interactive enough as it allowed the user to download content and share it with the larger public, in addition to simply accessing it.

An extremely important case in this aspect is the case of *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy & Anr.*<sup>14</sup> before the Delhi High Court, where the peculiar facts entailed that neither the plaintiff nor the defendant resided in Delhi. The Court used both the sliding scale test as well as the effects test to exercise jurisdiction over this matter and held that the plaintiff is required to prove purposeful availment as against the defendant which sufficiently exhibited that the defendant used the website with an intention to secure commercial transaction and the injury or harm to the plaintiff within the forum state, must result from the such efforts of the defendant. The Court while delivering the Banyan Tree judgment also remarked on the shortcomings of both the tests. Besides, in *SIL Import v.*

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<sup>11</sup> Casio India Ltd. v. Ashita Tele Systems Private Ltd, 2003 (27) P.T.C. 265 (Del.) (India).

<sup>12</sup> India TV Independent News Service Pvt Limited v. India Broadcast Live LLC & Ors, 2007 (35) P.T.C. 177 (Del.) (India).

<sup>13</sup> Super Cassette Industries Ltd. v. Myspace Inc & Anr, (2008) DLT 487.

<sup>14</sup> Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy & Anr, 2009 SCC OnLine Del 3780 : (2010) 42 PTC 361

Exim Aides Silk Exporters<sup>15</sup>, the Court acknowledging the limitations of determining jurisdiction in a rapidly changing digital world and the evolving usages of internet held that Indian Courts should interpret statutes widely in internet disputes, in the absence of a specific legislation or international treaty with effect to the same.

### **(B) American Jurisprudence**

In order to effectively appreciate the application of extra-territorial jurisdiction, it is essential to understand how the same has evolved. Territorial jurisdiction of a Court is normally applicable to those who either reside or carry-on business within the prescribed jurisdictional limits of the Court. Courts had to deal with extra-territorial aspects of jurisdiction, even prior to the existence of complex jurisdictional issues of the internet. One of the earliest cases in the American jurisprudence is the case of *International Shoe Company v. Washington*<sup>16</sup> where the Court held that the defendant must have minimum contacts with the forum state and must have purposefully directed its activities to that forum state, in order to come within the ambit of the Court's territorial jurisdiction. In the case of *Burger King Corp v. Rudzewicz*<sup>17</sup> it was further clarified that "purposeful availment" by the defendant requires the plaintiff to prove that the actions of the defendant were purposefully directed towards the forum state in the form of actions that have given rise to significant obligations. The issue that may arise due to multiple overlapping jurisdictions is illustrated in the case of *Asahi Metal Industries v. Superior Court*.<sup>18</sup> In this case, a product liability case was filed in the superior court of California against a Taiwanese company that exported tyres to multiple countries, including the US. The cause of action arose from a motor accident attributable to a defect in the tyres. The said Taiwanese company imported assemblies from a Japanese company, and in turn filed a counter claim against the Japanese company in the Superior Court of California. It was held that the counter-claim was not maintainable as the Japanese company had not purposefully directed its actions towards the forum state and merely being a part of the stream of commerce will not amount to purposeful availment. The aforementioned cases tackle the issue of localising an act, in order to determine jurisdiction. However, these cases still provide a simpler view for the transactions in question did not occur over the internet.

The context of purposeful availment with respect to the internet can be understood from the

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<sup>15</sup> *SIL Import v. Exim Aides Silk Exporters*, (1999) 4 SCC 567.

<sup>16</sup> *International Shoe Company v. Washington* 326 U.S. 340 (1945).

<sup>17</sup> *Burger King Corp v. Rudzewicz* 471 U.S. 462 (1985).

<sup>18</sup> *Asahi Metal Industries v. Superior Court* 480 U.S. 102 (1987).

case of *Neogen Corp v. Neo Gen Screening, Inc*<sup>19</sup> wherein it was held that a website needs to be interactive to the extent that a specific intention to interact with the forum state becomes imminent. However, the threshold of thus “specific intention to interact”, itself is subjective and raises the question as to whether mere access will fulfil the requirements of purposeful availment. A landmark case that evolved the “Sliding Test” or what is popularly called the “Zippo Test” and determined the level of interactivity with the forum state to attract jurisdiction of such State’s court is the case of *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*<sup>20</sup> In this case, the Court based personal jurisdiction on whether the court seeks to apply general jurisdiction or specific jurisdiction. It was held that general jurisdiction can be applied based over a non-citizen, however, in case of application of specific jurisdiction: the minimum contacts requirement must be fulfilled, the claim against the defendant must arise out of such contacts and the application of the jurisdiction must be reasonable. The Court further specified websites as passive, interactive and integral to the business of the defendant and emphasised that the nature and quality of activity conducted over the defendant’s website plays a crucial role in determining whether personal jurisdiction of the Court can be applied. However, the requirement of determination of interactivity, which itself is subjective, is considered as a drawback to the Sliding Scale Test. This issue can be seen in cases where the Court held personal jurisdiction non-exercisable as the defendants did not sell anything through their website to the consumers of the concerned State but only provided product information<sup>21</sup> and mailing address<sup>22</sup> which were accessible to the users in the forum State.

In overcoming the shortcomings of the Sliding Scale Test, Courts have started making determinations on the exercise of personal jurisdiction on the “Effects Test”, which Micheal A. Geist, in his paper titled, “Is there a there there? Toward Greater Certainty For Internet Jurisdiction”, considers “equally problematic”, as it dilutes the threshold to the extent that it makes possible for almost any court to assert personal jurisdiction.<sup>23</sup> We will further deal with the use of “Effects Test”, in jurisdictions other than the American jurisdiction in the next section.

### **(C) Relevant Case Laws across Jurisdictions**

It is pertinent to understand how courts across various jurisdictions approach the issue of determining personal jurisdiction in order to determine the long-standing effects of the way in

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<sup>19</sup> *Neogen Corp v. Neo Gen Screening, Inc.*, 282 F.3d 883. 890 (6<sup>th</sup> Cir. 2002).

<sup>20</sup> *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa.1997).

<sup>21</sup> *People Solutions v. People Solutions* 2000 WL 1030619 (N.D. Tex., 2000)

<sup>22</sup> *Mink v. AAAA Development* 190 F.3d 333 (5<sup>th</sup> Cir. 1999)

<sup>23</sup> GEIST, *supra* note 7 at 1349.

which the issue is dealt and to develop a fair idea on the often discussed conflict between the national principle and the principle of sovereign equality of States. In this section, we shall look into widely discussed cases as well as certain recent cases.

A vivid example of the application of the “Effects Test” is the case of **LICRA v. Yahoo! Inc.**<sup>24</sup> The said case dealt with the sale of a Nazi memorabilia in the flagship website of Yahoo! Inc, which violated French laws. It has to be made clear at this point that Yahoo! maintained region specific websites, including one in France (Yahoo.fr) where content was curated in accordance with the domestic laws and the concerned Nazi memorabilia was not available in Yahoo.fr. Additionally, Yahoo! Inc. argued that their flagship website was governed by United States and primarily targeted the audience of US, where freedom of press laws do not raise any objection to such content. However, the French Court asserted its jurisdiction by way of an aggressive use of the “Effects Test”, by virtue of availability of the content on the flagship website to the French audience.

Another example of the application of the Sliding Scale test is the case of **Twentieth Century Fox Film Corp. v. iCraveTV.**<sup>25</sup> iCrave TV, which was a company based in Canada, allowed its users to watch real time television on their computers which even if legal in Canada was illegal in the United States. Due to the same reason, the company had a three-step verification that required the users to declare that they were Canadian citizens and enter into a clickwrap agreement which also included the same declaration. The users were also asked to enter a local area code and the access was granted only if the local area code was Canadian. Nonetheless, the US Court asserted its jurisdiction and issued an injunction against the broadcasting activities of iCrave TV.

An issue of jurisdiction was seen in a cyber defamation case of *Hegglin v. Google*<sup>26</sup>, where an English businessman, Daniel Hegglin, who lived in Hongkong sued google for defamatory search results in a UK Court. Google opposed the case stating lack of jurisdiction, however, the Court asserted its jurisdiction on the grounds that the defamatory material harms his reputation in UK where he has private contacts and business. With the issue of jurisdiction to hear the matter, one cannot turn a blind eye to what the rulings seek to do and if it is well within the power of the concerned courts to enforce such judgments. In the case of *RojaDirecta*, the US Homeland was allowed to seize domain names of foreign registrants and an on-going case is yet to decide if the US authorities can legitimately access emails stored in

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<sup>24</sup> LICRA v. Yahoo! Inc. et Yahoo France, T.G.I Paris, May 22, 2000.

<sup>25</sup> Twentieth Century Fox Film Corp. v. iCraveTV, 2000 WL 255989.

<sup>26</sup> Hegglin v. Google [2014] EWHC 2808.

the Irish jurisdiction by Microsoft which is a US based company.<sup>27</sup>

#### IV. ANALYSIS

As much as it is difficult to impose territorial boundaries on internet when it comes to accessibility, it is equally tough to control dissemination of information for in internet, there exists one connected world and routes to computer sources are identified by the unique IP address of each system. This aspect is significantly different from the geopolitical considerations of law-making.<sup>28</sup> Micheal A Giest, in an attempt to capture the essence of this issue paraphrases Gertrude Stein, when he says that *in relation to the internet, not only is there no “there” there but the “there” is everywhere where internet is accessible.*<sup>29</sup> This complex statement portrays the extent to which the legal imagination must stretch in order to grasp the idea of extra-territorial jurisdiction with respect to transactions or information accessibility on the internet. Even if it includes computer systems over various States, the transaction takes place in a space that is undeterred by distance and unlimited by boundaries. So, even if there does not exist a single “there” in a geo-political sense, there exists a space that transcends it all and reaches as far as the internet does.

Courts have tried to grasp this unique nature of internet and exercise jurisdiction in a form of usage of conventional legal principles but in a wider manner. The place where an issue arises cannot be properly categorised to a particular locality which affords definite standards to the applicability of the territoriality principle but, it concerns a space that exists all over and has little to do with physical boundaries. Of course, various times the accessibility to a particular site may not be available to all jurisdictions, or sites may be curated specifically to the country whose audience it aims to target. An example would be the website of amazon, where a wholly different website operates for the Indian market. However, in considering the applicability of both the Sliding Scale Test and the Effects Test, the interactivity of the website is an essential consideration. The sliding scale test offers a higher threshold where mere accessibility is not sufficient to invoke jurisdiction but the effects test, dilutes this threshold even further. The result is to tests that often present extremes and it is almost left to the Courts to decide their course.

The above discussed judgment in the Yahoo! case is critiqued to be overarching and unreasonable in the sense that the Nazi memorabilia in question was not available in the website curated for France, hence respecting their national laws. The French court exerted its

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<sup>27</sup> CHAPELLE & FEHLINGER, *supra* note 4 at 10.

<sup>28</sup> MURALIDHAR, *supra* note 3 at 4.

<sup>29</sup> Geist, *supra* note 7 at 1346.

extra-territorial jurisdiction in an almost hyper-national way when it decided to enforce its ruling over a domain that was expressly under the governance of the United States. It must also be noted, that this ruling was over turned by a California court, nevertheless, the impugned content was taken down.<sup>30</sup> Two crucial concerns arise at this juncture: the first one relates to the question of limits on enforcement jurisdiction and the second one, with respect to the ability to enforce these judgments in a foreign land. Another aspect that has to be noticed here is how the right granted in one court is taken away by another country and one has to ask the question if such consequences are foreseeable and reasonable.

If a domestic court exercises its jurisdiction owing to the supremacy of the concerned country's prescriptive jurisdiction which allows it to provide for extra-territorial jurisdiction, it will undeniably have to counter the principle of sovereign equality of States if it has to enforce the judgment in another country. This issue is more complex wherein a certain act is legal in one country and illegal in the other. In *Hegglin v. Google*, the issue was still simpler but it could have been more complex if the laws substantially differed. For instance, in India defamation is a criminal offence as well as a civil offence, but in many countries, defamation is considered to be a civil offence alone. Suppose a person were to file claims against defamation, he may seek a harsher penalty under criminal law and could simultaneously initiate civil proceedings within the same jurisdiction as well. In this case, the defendant may land in significant disadvantage. The law is yet to contemplate a solution for such questions.

It is to make sense of the exercise of territorial or personal jurisdiction that the Courts as well as the law try to localise the issue as there needs to be some nexus between the case brought before the Court and the place where the Court is situated. In the Indian scenario, section 75 is almost straight forward but in cases that go beyond the purview of the IT Act of 2000, courts have used the sliding scale test and the zippo test. The Delhi High Court while delivering the *Banyan Tree Holding* judgement, used both the tests acknowledging that either of the tests had their own limitations. However, judicial precedents cannot solve the issues, in the absence of definite legislations.

While different categories of jurisdictions exist, there lies considerable uncertainty in choosing which kind of jurisdiction is to be taken into consideration. For instance, the Zippo Sliding Scale Test, makes a distinction between general and specific jurisdiction for the exercise of personal jurisdiction of Courts.<sup>31</sup> The Courts also take into consideration whether the exercise of jurisdiction would be reasonable and foreseeable as a requirement of due

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<sup>30</sup> Geist, *supra* note 7 at 1349.

<sup>31</sup> *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa.1997).

process<sup>32</sup> to determine the personal jurisdiction of Courts but that in itself becomes uncertain owing to the rapid technological evolution and alteration in the way internet is used.

There are still areas of law where jurisdictional challenges are even more complex and there exists a sort of legal vacuum and uncertainty, both in terms of substantive law and the exercise of jurisdiction. To name a few, cyber-attacks, data thefts and the numerable misuses of the dark web pose jurisdictional issues that are yet to be resolved. Additionally, it cannot be denied that the issue of internet jurisdiction and the uncertainty it entails affects several other policy areas included under overall global governance – such as digital economy, security and order and the need to respect various civil rights and liberties. Even when the Courts try cases that involve domain seizures or access to information stored in other jurisdictions, a question also arises as to whether the Courts are reasonable to render judgments that may have a significant impact on the country against which or against whose citizens the ruling is directed. It becomes almost impossible to contain the conflict between right of a nation to enforce its laws and the right of the nations maintain their Sovereignty and resist accepting a ruling by a foreign court.

## **V. CONCLUSION**

In the words of Abraham Lincoln, “The dogmas of the quiet past are inadequate to the stormy present.” This statement holds true in the present context. Our understanding of jurisdiction and how it may be invoked has remained unchanged over time. Even if precedents and laws prescribe newer tests, they are more often than not built upon traditional understanding of invocation of jurisdiction. Sure, there must be some nexus with the defendant and the Court in question but overtly asserting jurisdiction over lower thresholds will create as many problems as setting higher thresholds for invoking jurisdiction. As we have seen from the analysis presented above, the Sliding Scale Test and the Effects Test, both come with their own shortcomings and Courts have identified these shortcomings to. Such decisions which witness a seemingly exceeding exercise of jurisdiction is bound to be resisted by countries that are affected by it. This creates problems with the enforcement of judgments as well as may land a country in a state of handicap to enforce a ruling against a matter that affects its own citizens.

Hence, what is essential in this situation is to find a balance and since, the internet exists and operates through multiple jurisdictions, such solution cannot be found without international cooperation. Evolving challenges are no longer confined to issues in relation to e-commerce

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<sup>32</sup> *Asahi Metal Industries v. Superior Court* 480 U.S. 102 (1987).

but include complex problems of cyber-attacks, data theft and espionage. There lacks little clarity on how the courts may deal with these issues. As has been already stated, resolving the issues of jurisdiction on internet touches upon the larger question of global governance.

The way forward is increased international cooperation and deliberation to assess common challenges and design mutually agreeable solutions. Precedents by themselves are not sufficient, and are subject to the interpretation of the Courts. There is an urgent need for definite laws to guide the Courts of law and there is an equally urgent need to work on policy framework to ease the difficulties at hand. Treaties and conventions too can be useful in providing uniformity. The Cybercrime Convention of 2001 is a good enough example, only that it fell short of ratification. Another additional mechanism to ensure better enforcement of rulings or to deal with issues that are obstructed from being resolved because of jurisdictional complexities, is negotiation between the parties. However, none of it can be achieved if States do not come together. Hence, it is through concerted international action on agreeable standards and practices that a solution can be paved.

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