



# **Institute for Research on Internet and Society Jurisdiction and the Internet**

**International Jurisdiction of State Courts  
and Internet Litigation**

# **Institute for Research on Internet and Society**

## **Jurisdiction and the Internet**

### **International Jurisdiction of State Courts and Internet Litigation**

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# SUMMARY

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<b>1.Introduction.....</b>	<b>5</b>
<b>2. The classical principles of State’s jurisdiction.....</b>	<b>6</b>
2.1 The territoriality principle.....	6
2.2 The nationality principle.....	6
2.3 The passive personality principle.....	6
2.4 The protection principle.....	7
2.5 The universal jurisdiction principle.....	7
<b>3. Analysis of court decisions on adjudicative jurisdiction based on internet conflicts.....</b>	<b>7</b>
3.1 United States.....	7
3.2 European Union.....	9
3.3 Netherlands.....	10
3.4 France.....	11
3.5 Australia.....	13
3.6 Latin America.....	14
<b>4. Principles’ Crisis in a Globalised World.....</b>	<b>16</b>
4.1 Does the internet demands new and specific jurisdiction rules?.....	18
<b>5. Interpretation and Application challenges of Jurisdiction and International Jurisdiction rules.....</b>	<b>19</b>
5.1 <i>Forum Shopping</i> , Jurisdiction and the Internet.....	19

5.2. Jurisdictional Paradises and Sentence Market.....	21
5.3. An International Law for the Internet?.....	22
<b>6. Final Considerations.....</b>	<b>23</b>
<b>7. References.....</b>	<b>24</b>
a. Books .....	24
b. Scientific papers and book chapters .....	25
c. Treaties .....	26
d. Domestic and international rulings .....	27
e. Other references .....	28

# 1.Introduction <sup>1</sup>

There are many possible meanings to the word internet. It can be understood, in technical terms, as a decentralized and automated<sup>2</sup> telecommunications network, capable of facilitating communication among its users in a way never seen in the history of humanity. Through the internet, millions of people are able to interact without leaving their homes or workstations. In this sense, “[cyberspace] is a defining feature of modern life<sup>3</sup>,” since today’s society is relentlessly dependent on digital resources on a daily basis<sup>4</sup>. The internet “[...] that have become woven into every aspect of our lives.”<sup>5</sup>

As expected, the intense human interactivity provided by the internet also means a increased number of conflicts online. This is a complex scenario because these conflicts often have effects on a global scale. Since anyone, regardless of physical state borders, can have access to the online content that is the subject of the conflict.

Therefore, the internet is related with peculiar elements which a judge must analyse in order to decide if he or she has jurisdiction over a specific conflict.

First, we must remember that jurisdiction is a concept that relates to the power of every state to regulate and affect people, goods and facts under its influence. being a corollary of the international principles of sovereignty, equality and non-interference in internal affairs. In this sense jurisdiction derives from the international principles of sovereignty, equality and non-interference in internal affairs.<sup>6</sup> Jurisdiction is a core aspect of State sovereignty, because it allows State authorities to create, modify or terminate legal relations and obligations among persons subjected to that State.<sup>7</sup>

The context of internet brings an important question: Is it possible to conciliate classic features of state jurisdiction with the peculiarities of digital space?

The present paper aims to analyse the international jurisdiction rules used by national courts when they are dealing with internet litigation. For this purpose will be presented an extensive inventory of domestic and international cases. Which will allow the reader to note what are the main practices and trends of foreign and international jurisprudence. In addition, the article will also describe the impacts that globalization has had on the principles governing the jurisdiction of the domestic courts, as well as the challenges these impacts have brought or intensified in the context of internet conflicts such as forum shopping, jurisdictional paradises and the market for judgments.

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1 This research was conducted under the scientific coordination of Professors Fabrício B. Pasquot Polido and Lucas Costa dos Anjos, from the Institute for Research on Internet and Society - IRIS, in partnership with the Study Group on Internet, Innovation and Intellectual Property - GNET, at Universidade Federal de Minas Gerais. Contributed as authors to this paper the researchers Bruno Bizatti and Pedro Vilela. The translation into English was accomplished by Diego Carvalho Machado, Lucas Costa dos Anjos and Odélio Porto Jr.

2 AUSTRALIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56, para.80. Available at: <<http://eresources.hcourt.gov.au/showCase/2002/HCA/56>>. Accessed: 22/02/2018.

3 UNITED STATES. US Strategy for Operating in Cyberspace, US Department of Defense, 2011, p.1. Available: <<https://csrc.nist.gov/CSRC/media/Projects/ISPA/documents/DOD-Strategy-for-Operating-in-Cyberspace.pdf>>. Accessed: 22/02/2018.

4 UNITED STATES. Remarks by President Barack Obama on Securing our Nation's Cyber Infrastructure, The White House, Office of the Press Secretary, Washington D.C., 29 de maio de 2009, p.1. Available: <<https://obamawhitehouse.archives.gov/the-press-office/remarks-president-securing-our-nations-cyber-infrastructure>>. Accessed: 22/02/2018.

5 UNITED STATES. *Remarks by President Barack Obama on Securing our Nation's Cyber Infrastructure*, The White House, Office of the Press Secretary, Washington D.C., 29 de maio de 2009, p.1. Available: <<https://obamawhitehouse.archives.gov/the-press-office/remarks-president-securing-our-nations-cyber-infrastructure>>. Accessed: 12/23/2016.

6 SHAW, Malcolm. *International Law*, 6 ed., New York: Cambridge University Press, 2008, p.645.

7 MENTHE, Darrel. “Jurisdiction in Cyberspace: A Theory of International Spaces”, *Michigan Telecommunications and Technology Law Review*, vol.4, nº.1, 1998, 69-103, p.71.

## 2. The classical principles of State's jurisdiction

First we must look at the classical principles of adjudicatory jurisdiction, and then evaluate how internet affects them. We will study the 5 key principles: the territoriality principle; the nationality principle; the passive personality principle; the protection principle; and the universal jurisdiction principle.

### 2.1 The territoriality principle

Due to sovereignty, States have the right to exercise their obligations with independence, in other words, without interference of any other State.<sup>8</sup>

Thereafter the States, as general rule, have prescriptive and adjudicatory jurisdiction on activities occurring in their territories. It is based on the legal structure mentioned above that the territoriality principle is operationalized, so national courts can act upon any activities that occurs inside State boundaries.<sup>9</sup>

In reverse, the territoriality principle states that, mostly, facts which occurred inside a State's territory can not be adjudicated by a foreign judicial power.<sup>10</sup>

### 2.2 The nationality principle

One of the main characteristics of a State is the fact that it must have a permanent population, in this sense it's essential to establish a legal link between the people and that State. This link, in the law field, is the concept of nationality.<sup>11</sup> According to the nationality principle, only the State that has the nationality bond is competent to judge the actions of its nationals, regardless of the place where these acts have occurred.<sup>12</sup>

### 2.3 The passive personality principle

The passive personality principle declares that one State can have adjudicatory jurisdiction on facts which have happened abroad and have affected or will affect its nationals. The case *United States v. Yunis*, judged by Columbia Distrital Court, in 1991, illustrates that principle<sup>13</sup>. The accused, Fawaz Yunis, with 4 other men have boarded a plane in Beirut's airport, Lebanon, carrying rifles and hand grenades. The hijackers aimed to drive the plane to Tunis where a Arab League conference was taking place. The only link between Yunis and the United States were the fact that many american citizens were aboard the hijacked plane.

As a result, the Distrital Court of Columbia ruled that United States' courts had jurisdiction on the case due to the damages committed by the accused to the american nationals<sup>14</sup>.

8 PERMANENT COURT of ARBITRATION. *Ilha de Palmas*, Netherlands v. United States, 4 april, 1928, Recueil des Sentences Arbitrales, Vol.II, p.838; REZEK, Francisco. *Direito Internacional Público: Curso Elementar*, 13 ed., São Paulo: Saraiva, 2011, p.194.

9 SHAW, Malcolm. *International Law*, 6 ed., New York: Cambridge University Press, 2008, p.653.

10 South Africa. Kaunda v. President of South Africa (CCT 23/04) [2004] ZACC 5, 4 august 2004. Available: <<http://www.saflii.org/za/cases/ZACC/2004/5.html>>. Accessed on 22/02/2018

11 Nationality is so relevant that it is considered a human right. Cf. *Universal Declaration of Human Rights*, 10 december 1948, article 15; *International Pact on Civil and Political Rights*, 999 UNTS 171, 19 december 1966, art.24(3); *Convention on the Rights of the Children*, 1577 UNTS 3, 20 november 1989, art.7; *American Convention on Human Rights* ("Pact of San Jose, COSTA RICA"), 22 november 1969, article 20.

12 SHAW, Malcolm. *International Law*, 6 ed., New York: Cambridge University Press, 2008, p.663.

13 UNITED STATES. *United States of America v. Fawaz Yunis, A/k/a Nazeeh*, Appellant, 924 F.2d 1086 (D.C. Cir. 1991). Available: <<https://law.justia.com/cases/federal/appellate-courts/F2/924/1086/224419/>>. Accessed: 22/02/2018.

14 UNITED STATES. *United States of America v. Fawaz Yunis, A/k/a Nazeeh*, Appellant, 924 F.2d 1086 (D.C. Cir. 1991). Available: <<https://law.justia.com/cases/federal/appellate-courts/F2/924/1086/224419/>>. Accessed: 22/02/2018.

## 2.4 The protection Principle

The protection principle asserts that one sovereign State can adjudicate a person's conduct occurred outside its territory since it threatens national security or interferes with the regular activities of its sovereign functions. This principle is justifiable by a State's will to protect its public interests.<sup>15</sup>

## 2.5 The universal jurisdiction principle

In the light of universal jurisdiction principle every State is considered competent to rule and punish individuals responsible for crimes regarded offensive by all the international community. In this sense, those accused of committing these kind of crimes can be ruled by any State, regardless of the infraction location, or any national link. Some examples are genocide, piracy, war crimes a crimes against humanity.

## 3. Analysis of court decisions on adjudicative jurisdiction based on internet conflicts

The present work will analyse a series of jurisprudences in order to identify what are the principles and normative methods being used by domestic and international courts seeking to solve jurisdiction conflicts related to international competence of national judges. It will be analysed cases from the United States, European Court of Justice, Netherlands, France, Australia and Latin America.

### 3.1 United States

The US jurisprudence reveals that two main test are used to determine the jurisdiction of a court in Internet litigation: the interactivity doctrine (established in the Zippo case) and the effects doctrine (established in the Calder case). We will study with one of them.

The interactivity doctrine was adopted in the *Zippo Manufacturing Co. v. Zippo Dot Com.* case<sup>16</sup>, judged by the Western District of Pennsylvania on January 16, 1997<sup>17</sup>. The company *Zippo Manufacturing* is headquartered in Pennsylvania and manufactures the famous lighter "Zippo". In turn, *Dot Com* is a company headquartered in California, operating a website and an online news web page. It have obtained exclusive use rights of the domains "zippo.com", "zippo.net" and "zipponews.com"<sup>18</sup>. *Dot Com*'s employees and servers were located in California, and the company hadn't any office or commercial representative in Pennsylvania. Nevertheless, Pennsylvania residents had, obviously, access to the services and content provided online by *Dot Com*<sup>19</sup>.

The *Zippo Manufacturing* initiated a legal action against *Dot Com* in Pennsylvania, claiming trademark dilution, since the word "zippo" was used in the domains of *Dot Com* at various locations on its site, and in the news that were posted by DotCom subscrib-

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15 SHAW, Malcolm. *International Law*, 6 ed., New York: Cambridge University Press, 2008, p.667.

16 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available: <<https://googl/LpT5T2>>. Accessed: 12/18/2016.

17 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available: <<https://googl/LpT5T2>>. Accessed: 12/18/2016.

18 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available: <<https://googl/LpT5T2>>. Accessed: 12/18/2016.

19 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available: <<https://googl/LpT5T2>>. Accessed: 12/18/2016.



ers. This intense use of the “zippo” word was diminishing the uniqueness of the lighter trademark. And so *Dot Com* was allegedly committing a business illicit<sup>20</sup>

In turn, *Dot Com* claimed that the legal action should be closed, because Pennsylvania’s courts haven’t jurisdiction on the case<sup>21</sup>.

Western District of Pennsylvania ruled in favor of *Zippo Manufacturing*<sup>22</sup>. To answer if a court will have or not adjudicative jurisdiction on internet conflicts it must analyse the level of Interactivity between the website and the public, and see what is the quality and nature of the online commerce activity. For example, the jurisdiction of the judge will be uncontroversial when the defendant signs contracts with the residents of a foreign country involving the repeated transmission of data over the internet<sup>23</sup>. Differently, the Court has stated that adjudicative jurisdiction attributed to a local judge will be more uncertain if the defendant has just posted a content accessible to other jurisdiction’s users. In this cases adjudicative jurisdiction will be determined through the analyses of the degree of interactivity and of the commercial nature of the information exchange occurring digitally.<sup>24</sup>

Adversely, there is the *Calder v. Jones* case, decided by the Supreme Court of the United States, March 20, 1984. This case has adopted the effects doctrine, which uses as the criteria to determine adjudicative jurisdiction the effects intentionally caused by the defendant. So, the effects doctrine doesn’t use the level of interactiveness, like was used in the *Zippo* case. Briefly, *Calder v. Jones* was about a lawsuit brought by the actress Shirley Jones against the magazine *National Enquirer*. The legal action was about an article published by the magazine that described Jones as an alcoholic. The magazine was edited in Florida but the lawsuit was filed in a California state court. The plaintiff argued that the *National Enquirer* had a big circulation in California, thus making there suitable to be the jurisdiction.<sup>25</sup>

The Supreme Court has decided that California courts had adjudicative jurisdiction because the majority of damages had occurred in that state<sup>26</sup>. The sentence noted that the defendants deliberately focused on the Californian public because (1) they knew the magazine had significant circulation in California; (2) Shirley Jones was residing there; and (3) the allegations made in could undermine the California actress's career<sup>27</sup>.

The *Calder* case brings important implications for jurisprudence of internet jurisdiction conflicts, despite the fact it was about a printed newspaper. For example, a court can argue that it has adjudicative jurisdiction because the damage was suffered inside its jurisdiction, despite the fact that the digital content was posted online elsewhere. A court can also justify its jurisdiction claiming that a content in a website has specifically target people who were in its jurisdiction. In other words, the content was specifically made to target a determined group who was in a different jurisdiction from where the

20 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available at: <<https://goo.gl/LpT5T2>>. Accessed in: 12/18/2016.

21 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available at: <<https://goo.gl/LpT5T2>>. Accessed in: 12/18/2016.

22 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available at: <<https://goo.gl/LpT5T2>>. Accessed in: 12/18/2016.

23 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available at: <<https://goo.gl/LpT5T2>>. Accessed in: 12/18/2016.

24 UNITED STATES *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). Available: <<https://goo.gl/LpT5T2>>. Accessed in: 12/18/2016.

25 UNITED STATES. *Calder v. Jones*, 465 U.S. 783 (1984). Available at: <<https://goo.gl/FOWUmT>>. Accessed in: 01/03/2017.

26 UNITED STATES. *Calder v. Jones*, 465 U.S. 783 (1984). Available at: <<https://goo.gl/FOWUmT>>. Accessed in: 01/03/2017.

27 UNITED STATES. *Calder v. Jones*, 465 U.S. 783 (1984). Available at: <<https://goo.gl/FOWUmT>>. Accessed in: 01/03/2017.



content was posted.

## 3.2 European Union

The Court of Justice of the European Union (CJEU) also has produced important jurisprudence about the subject. Two influential cases are *eDate Advertising GmbH v. X* and *Olivier Martinez e Robert Martinez v. MGN Limited*, which were jointly ruled in 25 october 2011.

The first occurred in 1993, when a German person X, whose name is a secret of justice, killed a famous German actor. In 2008, he began a probation period. After being in conditional liberty, X filed a lawsuit in Germany against the *eDate Advertising* company, based in Austria. He took this legal action because the company had posted news on its website stating that X would prove that the main prosecution witnesses had lied in the criminal process.<sup>28</sup>

The second case, *Olivier Martinez and Robert Martinez v. MGN Limited*, was about the French actor Olivier Martinez and his dad, Robert Martinez. They claim that Oliver's image rights and Robert's privacy were injured by the British newspaper *Sunday Mirror*. An english written article stated that the french actor have had a romantic date with Kylie Minogue, describing details of this encounter. The legal action was initiated in France against *MGN*, the company which administers the *Sunday Mirror's* website and which is headquartered in The United Kingdom.<sup>29</sup>

In both cases the defendants claimed that the courts did not have adjudicative jurisdiction. For that reason the two cases were referred to The Court of Justice of the European Union to have the jurisdiction question verified. The Court pointed out that under Article 5 of Regulation (EC) n 44/2001 of the Council of the European Union on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, legal proceedings must be initiated in the jurisdiction of the place where the harmful event occurred. The ruling emphasized that the jurisdiction of the place where the harmful event occurred refers simultaneously to the place of the causal event and to the place of materialization of the damage.<sup>30</sup>

The CJEU stated that content available on the internet differ from content printed on paper, since a website's content can be viewed instantaneously by a large number of people around the world, independently from the person's intention who published.

This conclusion characterizes the internet's capacity of content diffusion as universal<sup>31</sup>. Thus the application of the criterion of the materialization of the damage in the context of the internet contrasts with the severity of the damage that the possible victim may suffer, since digital content is available to anyone, anywhere in the world<sup>32</sup>.

It is possible to conclude that there is a necessity to adapt the criteria for choosing adjudicative jurisdiction so that a victim of an online act can initiate a legal action

28 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

29 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

30 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

31 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

32 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

where that act can be better analysed by a court. In other words, where the damages can be analysed fully.

According to the CJEU the better adjudicative jurisdiction is where the center of a victim's interests are<sup>33</sup>. The center of a person's interests is normally, but not always, where is the place of his habitual residence. For instance, there may be situations in which the center of a person's interests is where she exercise her professional activities<sup>34</sup>.

The CJEU ruled in favor of where is the center of a person's interests as the element for determining adjudicative jurisdiction in this case, stating that this criteria do not violate the predictability principle. The Court justified this element affirming that a person who publishes harmful content on the internet has, at the moment of posting, conditions to determine the center of a person's interests to which the posted content refers. For that reason, future defendants or plaintiffs will be able to identify more easily where is the adjudicative jurisdiction<sup>35</sup>.

When a person's personality rights are violated by content posted on the internet she can either take legal action where the responsible for posting online that content is, or where her center of interests is. Similarly the victim can take legal action in every adjudicative jurisdiction where the content is online accessible, but the local courts will have jurisdiction concerning only the damages inside their jurisdictional territory<sup>36</sup>.

### 3.3 Netherlands

In the Netherlands an important jurisprudence emerged from the case *H&M v. G-Star*<sup>37</sup>. Hennis & Mauritz (H&M) is a Swedish multinational clothing retailer company. It has stores in many countries, including the Netherlands, and it has a website (www.hm.com) for marketing its products and for e-commerce. In August 2009 The Court of Dordrecht, in Netherlands, ruled against *H&M* for trademark and copyrights infringement of the Dutch company *G-Star*. The reason is that *H&M* were unauthorisedly selling "Elwood" jeans, which is property of *G-Star*<sup>38</sup>. However, in september 2009, a report concluded that the "Elwood" jeans have not been sold in Dordrecht by *H&M*, despite the fact the company was selling it in 23 other cities. Based on this report *H&M* contested the jurisdiction of The Court of Dordrecht<sup>39</sup>.

The Supreme Court of the Netherlands ruled against *H&G's* contestation and kept the jurisdiction of the Court of Dordrecht because the "Elwood" jeans was available at www."hm".com" so it could be bought for everyone in the country. The Supreme Court quoted the CJEU saying that the adjudicative jurisdiction is chosen by verifying where the damage have occurred. It also indicated that for cases related to trademark infringements in websites the adjudicative jurisdiction is in the State where the trademark is

33 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

34 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

35 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

36 EUROPEAN UNION. *eDate Advertising GmbH v. X e Olivier Martinez e Robert Martinez v. MGN Limited*, Judgment of the Court, Fourth Chamber, ECLI:EU:C:2011:685, 3 october 2013. Available at: <<https://goo.gl/dHLpfp>>. Accessed in: 01/08/2017.

37 NETHERLANDS. *H&M vs. G-Star*, Supreme Court of the Netherlands, ECLI:NL:HR:2012:BX9018, 7 december 2012. Available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2012:BX9018>>. Accessed in: 12/23/2016.

38 NETHERLANDS. *H&M vs. G-Star*, Supreme Court of the Netherlands, ECLI:NL:HR:2012:BX9018, 7 december 2012. Available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2012:BX9018>>. Accessed in: 22/02/2018.

39 NETHERLANDS. *H&M vs. G-Star*, Supreme Court of the Netherlands, ECLI:NL:HR:2012:BX9018, 7 december 2012. Available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2012:BX9018>>. Accessed in: 12/23/2016.

registered or where the advertiser is based<sup>40</sup>.

Examining the facts, the Supreme highlighted that:

all the clothes of H&M were available at its website and the site also served the dutch market [...]. All these elements indicates that the “Elwood” jeans was being sold in Dordrecht, therefore the Court of Dordrecht had international adjudicative jurisdiction, according to article 5.3 of Brussels Regulation, in order to know allegations against H&M.

The other important case mentioned on this paper is the *Dimensione v. Cassina*. It was ruled by the Court of Amsterdam in 12 february 2009<sup>41</sup>. The particularity of this litigation is that it is not dealing with a company registered in the Netherlands. The case involves a legal action promoted by the legal persons *Cassina S.P.A.*, based in Mela, Italy; and *La Fondation Le Corbusier*, based in Paris. This legal action was moved against *Dimensione Direct Sales SRL*, based in Bologna, Italy. The plaintiffs claimed that *Dimensione* had violated trademark and image rights belonging to *Cassina*, because the first was unauthorisedly selling real state models online. *Cassina*, knowing that *Dimensione*'s site aimed the dutch people as his public, argued that the fact that the defendant was based in Italy would not undermine Netherland's adjudicative jurisdiction<sup>42</sup>.

The Court of Amsterdam ruled in favor of Cassina<sup>43</sup>. It highlighted that the internet is accessible to everyone in a global scale, consequently, where a website owner is based is not relevant. If a website offers products to the dutch public infringing other people's rights it must be submitted to dutch jurisdiction<sup>44</sup>. To analyse if a website aims a specific public the courts must evaluate the domain name, what idioms are available on the website, references to a specific country, etc<sup>45</sup>.

In this case the dutch court applied the judicial precedent from *Calder* case ruled by the Supreme Court of the United States, since the Court of Amsterdam considered who was the targeted public of the website as the central criteria for jurisdiction.

### 3.4 France

An important case in french jurisprudence is the “UEJF et Licra v. Yahoo! Inc. et Yahoo France”. In april 2000, the *League against Racism and Anti-semitism* (Ligue Contre le Racisme et l'Antisémitisme - “LICRA”), which is french non-profit organization, sent a repudiation letter to *Yahoo!* headquarters in the US. In this letter LICRA stated that selling of nazi items on the company's online auction service was against french law, thus it demanded Yahoo to stop this kind of sellings. LICRA also indicated that legal action would be taken unless its demands were met. *Yahoo!* have blocked the selling of Third Reich items on “www.yahoo.fr”, but some items were still available at “www.yahoo.com”. Knowing that Yahoo's main website was available to the french nationals, LIRA started a legal action against the company in France, demanding that sellings on “yahoo.com” were also blocked. Later on, the Union of the Jewish Students of France (*Union des Etudi-*

40 NETHERLANDS. *H&M vs. G-Star*, Supreme Court of the Netherlands, ECLI:NL:HR:2012:BX9018, 7 december 2012. Available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2012:BX9018>>. Accessed in: 12/23/2016

41 NETHERLANDS. *Dimensione v. Cassina*. The Court of Amsterdam, LJN BH6546, 12 february 2009.

42 NETHERLANDS. *Dimensione v. Cassina*. The Court of Amsterdam, LJN BH6546, 12 february 2009.

43 NETHERLANDS. *Dimensione v. Cassina*. The Court of Amsterdam, LJN BH6546, 12 february 2009.

44 NETHERLANDS. *Dimensione v. Cassina*. The Court of Amsterdam, LJN BH6546, 12 february 2009.

45 NETHERLANDS. *Dimensione v. Cassina*. The Court of Amsterdam, LJN BH6546, 12 february 2009.

*ants Juif de France* - "UEJF") has presented the same demand in this legal action. The process have started in the Superior Court of Paris and the analyses of jurisdiction was made by one judge - Jean-Jacques Gomez<sup>46</sup>.

Gomez have decided in favor of french jurisdiction using the effects doctrine from the *Calder* case<sup>47</sup>. He stated that if the french law prohibits exhibitions of nazi products for commercial purposes, then the fact that a french citizen can access and buy this kind of product on "yahoo.com" is sufficient to configure it as an illegal act in France<sup>48</sup>. Although *Yahoo!* headquarters is in the US, the company's conduct is having an effect on the territory and population of France, making it competent to adjudicate against *Yahoo!*<sup>49</sup>. So the Superior Court of Paris have condemned *Yahoo!* to block the access of french users to pages with nazi goods available for selling<sup>50</sup>.

In response to the French decision, *Yahoo!* have initiated a lawsuit in California against the UEJF and LICRA, contesting the execution of the French decision on US soil<sup>51</sup>. UEJF and LICRA, in response, have tried to close the case stating that California's courts should not have adjudicative jurisdiction because both defendants were not based in the US or have any asset or employees in the United States. However the United States Court of Appeals for the Ninth Circuit have affirmed that the US had jurisdiction over UEJF and LICRA<sup>52</sup>. Similar to what was done by Judge Jean-Jacques Gomez, the Court of Appeals applied the effects doctrine to establish jurisdiction<sup>53</sup>. The test applied to verify what was the jurisdiction was divided into three elements: (I) the non-resident defendant must commit an act or consummate a transaction in the place of the forum, enjoying, therefore, its benefits and the protection of its laws; (II) the author's request must be due to or result from the activities committed by the defendant in the forum in question; (III) the exercise of court jurisdiction must be reasonable, and if the defendant claims it is not reasonable the jurisdiction choice, he must prove his allegations<sup>54</sup>.

The Court of Appeals for the Ninth Circuit have decided that all the three elements above were present in the case. First, the UEJF and the LICRA have used United States' Resources when they have sent a repudiation letter to *Yahoo's* headquarters in Santa Clara, California. Second, the Superior Court of Paris have demanded *Yahoo's* serv-

46 FRANCE. *UEJF et Licra c/ Yahoo! Inc. et Yahoo France*, Ordonnance de Référé 00/05308, Superior Court of Paris, 20 november 2000. Available at: <<http://juriscom.net/2000/05/tgi-paris-refere-22-mai-2000-uejf-et-licra-c-yahoo-inc-et-yahoo-france/>>. Accessed in: 01/15/2017.

47 FRANCE. *UEJF et Licra c/ Yahoo! Inc. et Yahoo France*, Ordonnance de Référé 00/05308, Superior Court of Paris, 20 november 2000. Available at: <<http://juriscom.net/2000/05/tgi-paris-refere-22-mai-2000-uejf-et-licra-c-yahoo-inc-et-yahoo-france/>>. Accessed in: 01/15/2017.

48 FRANCE. *UEJF et Licra c/ Yahoo! Inc. et Yahoo France*, Ordonnance de Référé 00/05308, Superior Court of Paris, 20 november 2000. Available at: <<http://juriscom.net/2000/05/tgi-paris-refere-22-mai-2000-uejf-et-licra-c-yahoo-inc-et-yahoo-france/>>. Accessed in: 22/02/2018.

49 FRANCE. *UEJF et Licra c/ Yahoo! Inc. et Yahoo France*, Ordonnance de Référé 00/05308, Superior Court of Paris, 20 november 2000. Available at: <<http://juriscom.net/2000/05/tgi-paris-refere-22-mai-2000-uejf-et-licra-c-yahoo-inc-et-yahoo-france/>>. Accessed in: 01/15/2017.

50 FRANCE. *UEJF et Licra c/ Yahoo! Inc. et Yahoo France*, Ordonnance de Référé 00/05308, Superior Court of Paris, 20 november 2000. Available at: <<http://juriscom.net/2000/05/tgi-paris-refere-22-mai-2000-uejf-et-licra-c-yahoo-inc-et-yahoo-france/>>. Accessed in: 01/15/2017.

51 UNITED STATES. *Yahoo! Inc. v. La Ligue Contre Le Racisme et l'antisemitisme (LICRA)*, United States Court of Appeals, Ninth Circuit, No. 01-17424. 23 de agosto de 2004. Available at: <<https://law.justia.com/cases/federal/district-courts/FSupp2/145/1168/2421483/>>. Accessed in: 22/02/2018.

52 UNITED STATES. *Yahoo! Inc. v. La Ligue Contre Le Racisme et l'antisemitisme (LICRA)*, United States Court of Appeals, Ninth Circuit, No. 01-17424. 23 de agosto de 2004. Available at: <<https://law.justia.com/cases/federal/district-courts/FSupp2/145/1168/2421483/>>. Accessed in: 01/15/2017.

53 UNITED STATES. *Yahoo! Inc. v. La Ligue Contre Le Racisme et l'antisemitisme (LICRA)*, United States Court of Appeals, Ninth Circuit, No. 01-17424. 23 de agosto de 2004. Available at: <<https://law.justia.com/cases/federal/district-courts/FSupp2/145/1168/2421483/>>. Accessed in: 01/15/2017.

54 UNITED STATES. *Yahoo! Inc. v. La Ligue Contre Le Racisme et l'antisemitisme (LICRA)*, United States Court of Appeals, Ninth Circuit, No. 01-17424. 23 de agosto de 2004. Available at: <<https://law.justia.com/cases/federal/district-courts/FSupp2/145/1168/2421483/>>. Accessed in: 01/15/2017.



ers in Santa Clara to implement measures to block french users from access to electronic commerce of nazi items in the company's services. Third, it was considered relevant to the Court of Appeals that UEJF and LICRA have used *United States Marshals Service* when they were suing *Yahoo*. Considering all these 3 factors, the court decided that the defendants actions had aimed the California jurisdiction<sup>55</sup>.

Regarding the second element, the judgment indicated that *Yahoo!*'s request concerns the enforceability of the decision issued in favor of the defendants in France. The measures taken by the EUJF and LICRA, through which they enjoyed the benefits provided by California law, are directly related to this decision. Therefore, the second element to verify what's the jurisdiction is present in the case<sup>56</sup>. Lastly, in relation to the third element, the Ninth Circuit Court of Appeals stated that the defendants did not submit any reason to indicate that the jurisdiction of California's courts would not be reasonable<sup>57</sup>. Consequently the defendant's request to close the case for lack of jurisdiction was rejected<sup>58</sup>.

In both French and American cases the most fundamental aspect to determine jurisdiction was to analyse what were the effects derived from the parts' actions. Thus, the *Calder* case was used in both disputes.

### 3.5 Australia

The most notorious case regarding jurisdiction of the Internet in Australia is *Dow Jones & Company Inc. v. Gutnick* which was decided in 2002 by the High Court of Australia<sup>59</sup>. The *Dow Jones & Company*, a company from Delaware based in New York, have publicated a news on *Baron's Online* website about Joseph Gutnick. Joseph, who was an Australian citizen and businessman, accused the article of being a defamatory one. *Dow Jones* does not conduct any activities, nor has any assets in Australia, and the servers used to operate *Baron Online* are all located in New Jersey. In addition, the news was accessible only to site subscribers, who were about three hundred in Australia<sup>60</sup>.

Joseph Gutnick has filed a lawsuit in Victoria state (Australia) claiming compensation for damages to his image. *Dow Jones* has alleged the lack of jurisdiction of the Australian judiciary. According to the company, the Internet is a unique mean of human communication, so the laws regulating defamation should be re-evaluated to suit the specifics of the digital space<sup>61</sup>. The company argued that the supposed defamatory material should not be considered as posted in the place where it was uploaded on the

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55 UNITED STATES. *Yahoo! Inc. v. La Ligue Contre Le Racisme et l'antisemitisme (LICRA)*, United States Court of Appeals, Ninth Circuit, No. 01-17424. 23 de agosto de 2004. Available at: <<https://law.justia.com/cases/federal/district-courts/FSupp2/145/1168/2421483/>>. Accessed in: 01/15/2017.

56 UNITED STATES. *Yahoo! Inc. v. La Ligue Contre Le Racisme et l'antisemitisme (LICRA)*, United States Court of Appeals, Ninth Circuit, No. 01-17424. 23 de agosto de 2004. Available at: <<https://law.justia.com/cases/federal/district-courts/FSupp2/145/1168/2421483/>>. Accessed in: 01/15/2017.

57 UNITED STATES. *Yahoo! Inc. v. La Ligue Contre Le Racisme et l'antisemitisme (LICRA)*, United States Court of Appeals, Ninth Circuit, No. 01-17424. 23 de agosto de 2004. Available at: <<https://law.justia.com/cases/federal/district-courts/FSupp2/145/1168/2421483/>>. Accessed in: 01/15/2017.

58 UNITED STATES. *Yahoo! Inc. v. La Ligue Contre Le Racisme et l'antisemitisme (LICRA)*, United States Court of Appeals, Ninth Circuit, No. 01-17424. 23 de agosto de 2004. Available at: <<https://law.justia.com/cases/federal/district-courts/FSupp2/145/1168/2421483/>>. Accessed in: 01/15/2017.

59 AUSTRALIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <<http://eresources.hcourt.gov.au/show-Case/2002/HCA/56>>. Accessed in: 12/23/2016.

60 AUSTRALIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <<http://eresources.hcourt.gov.au/show-Case/2002/HCA/56>>. Accessed in: 12/23/2016.

61 AUSTRALIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <<http://eresources.hcourt.gov.au/show-Case/2002/HCA/56>>. Accessed in: 12/23/2016.

internet, not the place where it was accessible and could be read<sup>62</sup>. The competent jurisdiction would be only the United States, not Australia or any other State where the article was downloaded.

The High Court of Australia rejected Dow Jones' arguments. The trial concluded that the content which is published and circulates on the Internet should be treated in the same way as any other form of communication<sup>63</sup>. All defamatory material made available on the internet was considered as published in all places where the material was viewed or read<sup>64</sup>. The Court stated that "39. [...] In particular, those who post information on the World Wide Web do so knowing that the information they make available is available to all and sundry without any geographic restriction.[...]"<sup>65</sup>

### 3.6 Latin America

Latin American countries still do not have many decisions about jurisdiction in internet conflicts. This limitation restricted the scope of the region's jurisprudential analysis, being limited to only two States: Colombia and Brazil.

In Colombia, we can highlight two cases. The first is the *Jerónimo A. Uribe* case, judged on February 10, 2010, by the Supreme Court of Justice<sup>66</sup>. The case began after the publicity of the following post on a Facebook group: "I pledge to kill Jerónimo Alberto Uribe, son of Alvaro Uribe." This publication is considered a crime in Colombia, as it constitutes instigation of criminal conduct. The police authorities located and arrested the person who created the group, a resident of Chía, a city near Bogotá<sup>67</sup>. Knowing that the criminal procedure started in Bogotá, defense lawyers questioned the jurisdiction of the forum that the prosecutor has chosen. According to the defense, the relevant conduct originated in the city of Chía, so that the judge with adjudicative jurisdiction is not that of Bogotá, but the one of Cundinamarca (the forum that covers Chía)<sup>68</sup>.

In its decision on jurisdiction, the colombian Supreme Court of Justice stressed that Facebook has a global and transnational reach, which makes it impossible to affirm that the conduct in question occurred only in Chía. Thus, the territorial criterion is not applicable to actions committed on the internet, so that the forum with adjudicative jurisdiction is the one selected by the prosecution<sup>69</sup>.

Another relevant decision in Colombia is the one delivered in the *Centro Comercial Campanario* case,<sup>70</sup> which concerns the behavior of five persons who carried out a digital banking operation in the city of Barranquilla with the purpose of stealing money

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62 AUSTRALIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <<http://eresources.hcourt.gov.au/show-Case/2002/HCA/56>>. Accessed in: 22/02/2018.

63 AUSTRALIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <<http://eresources.hcourt.gov.au/show-Case/2002/HCA/56>>. Accessed in: 12/23/2016.

64 AUSTRALIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <<http://eresources.hcourt.gov.au/show-Case/2002/HCA/56>>. Accessed in: 12/23/2016.

65 AUSTRALIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <<http://eresources.hcourt.gov.au/show-Case/2002/HCA/56>>. Accessed in: 12/23/2016.

66 COLÔMBIA. Corte Suprema de Justicia, Sala de Casacion Penal, *Jerónimo A. Uribe* case, Auto rad. 33.474/2010, 10 de fevereiro de 2010.

67 COLÔMBIA. Corte Suprema de Justicia, Sala de Casacion Penal, *Jerónimo A. Uribe* case, Auto rad. 33.474/2010, 10 de fevereiro de 2010.

68 COLÔMBIA. Corte Suprema de Justicia, Sala de Casacion Penal, *Jerónimo A. Uribe* case, Auto rad. 33.474/2010, 10 de fevereiro de 2010.

69 COLÔMBIA. Corte Suprema de Justicia, Sala de Casacion Penal, *Jerónimo A. Uribe* case, Auto rad. 33.474/2010, 10 de fevereiro de 2010.

70 COLÔMBIA. Corte Suprema de Justicia, Sala de Casacion Penal, *Centro Comercial Campanario* case, Auto rad. 34.564/2010, 25 de agosto de 2010.

from Centro Comercial Campanario's bank account in the city of Popayán<sup>71</sup>. The criminal procedure started in Barranquilla, but the files were sent to Popayán, the victim's domicile. In turn, the Popayán's judge submitted the files to the Supreme Court of Justice, for the jurisdiction to be defined. This court ruled that the damage to the Centro Comercial Campanario's estate occurred in Popayan, since it was in that city that the money was subtracted, regardless of where the unlawful act took place. Thus, the most relevant aspect to determine jurisdiction is not the place where the conduct occurred but the place where the victim suffered the damage<sup>72</sup>.

Analysing this case, William Guillermo Jiménez-Benítez affirms that the Supreme Court of Justice decided correctly, since, in terms of internet conflicts, identifying the location of the damage (i. e., the location of the conduct effects) is much easier and objective than indicating where the conduct actually happened<sup>73</sup>.

In Brazil, the Superior Court of Justice (STJ) also has decisions that deserve attention. In Conflict of Jurisdiction nº 66981, when considering the adjudicative jurisdiction to prosecute and try a person accused of transmitting pornographic children and teenagers' images on the Internet, this court decided that the forum with jurisdiction is the one where the photographs were launched on the internet. It was also pointed out that it's irrelevant, for purposes of establishing adjudicative jurisdiction, the location of the internet service provider's head office. In the same sense, the Conflict of Jurisprudence nº 107938, in which the STJ ruled that

the jurisdiction to prosecute and try crimes committed by means of the internet, including those arising from the publication of racist texts on social networking sites, is of the place from which the discriminatory messages are sent<sup>74</sup>.

The *Agravo de Instrumento* nº 1.375.009/MG, judged by the STJ on March 15, 2011, refers to a compensation lawsuit for moral damages caused by the publication of an allegedly calumnious journalistic material. It was decided that, in the case of a journalistic story transmitted through the internet, the adjudicative jurisdiction determination will be similar to the instances of content publication in national newspapers or magazines. Thus, the forum with jurisdiction will be the one of the place where the victim resides and works, since it is in the place where he lives that the slanderous content ill effects would have greater repercussion<sup>75</sup>.

In this ruling, the STJ adopted the same understanding as that used by the European Union Court of Justice in the cases *eDate Advertising GmbH v. X* and *Olivier Martinez and Robert Martinez v. MGN Limited*. Both courts argued that the forum where the online criminal act had the largest impact - the center of the victim's interests location - would have jurisdiction to adjudicate the litigation.

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71 COLÔMBIA. Corte Suprema de Justicia, Sala de Casacion Penal, *Centro Comercial Campanario* case, Auto rad. 34.564/2010, 25 de agosto de 2010.

72 COLÔMBIA. Corte Suprema de Justicia, Sala de Casacion Penal, *Centro Comercial Campanario* case, Auto rad. 34.564/2010, 25 de agosto de 2010.

73 JIMÉNEZ-BENÍTEZ, William Guillermo. "Rules for Offline and Online in Determining Internet Jurisdiction. Global Overview and Colombian Cases", *Revista Colombiana de Derecho Internacional*, no. 26, 2015, p.13-62, p.52.

74 BRASIL. STJ - CC: 107938 RS 2009/0183264-2, Relator: Ministro Jorge Mussi, Data de Julgamento: 27/10/2010. Available at: <<http://www.stj.jus.br/SCON/jurisprudencia/toc.jsp?livre=%28107938+%29+E+%28%22JORGE+MUSSI%22%29.min.&processo=107938+&&b=ACOR&thesaurus=JURIDICO&p=true>>. Accessed in: 01/05/2017.

75 BRASIL. STJ - Ag: 1375009 - MG, Relator: Ministro João Otávio de Noronha, DJ Data de Julgamento: 15/03/2011. Available at: <[https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=MON&sequencial=14360028&num\\_registro=201002240765&data=20110315](https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=MON&sequencial=14360028&num_registro=201002240765&data=20110315)>. Accessed in: 01/05/2017.



## 4. Principles Crisis on the Globalized World

In its original technical architecture, the internet was created indifferent to distance or national borders between the various points connected by it.<sup>76</sup> Besides a major positive impact on all human activities related to or dependent on distance communications, this decentralized global network has allowed for unprecedented increasing in cross-border interactions between users, businesses and governments.

The cross-border and global nature of the internet is generally considered to be one of its strengths, which is the reason why preserving it to the fullest extent has been sought over the years. However, a truly transnational internet stumbles upon states jurisdictional claims, whose principles of sovereignty and territoriality became less and less relevant and applicable to current factual situations.

Although private cross-border interactions are nothing new to inter-State relations, thanks to the internet, more and more individuals are involuntarily affected by acts originated from foreign territories, but its effects are felt within the state's jurisdictional circumscription, even if such acts are carried out by entities without any local presence<sup>77</sup>.

Traditional jurisdiction elements, such as territory and territorial sovereignty, have become significantly inadequate to guide courts in defining the forum with adjudicative jurisdiction and the applicable law in each case. The territoriality principle and the rules derived from it were conceived in a historical and technological context in which physical geography was much more relevant than it is today. In this historical period, the concepts of State and Nation were being united to create the so-called Westphalian System.

All this allocation system of prescriptive and adjudicative jurisdiction based on territorial limits is deeply rooted in the conception of the Nation-State itself. Control and jurisdiction to adjudicate issues within its territory is not only a consequence of state sovereignty but also one of its essential attributes.<sup>78</sup>

The Westphalian system and its subjection to the notion of sovereignty has been eroded in the last thirty years, with the advancement of globalization and information and communication technologies, in favor of transnational processes centered on actors other than the state.<sup>79</sup> Especially on the internet, the territoriality principle as a criterion defining jurisdiction shows itself flawed, since the geographical location of a legal act carried out through the internet is difficult to predict. The act may be committed by a person in jurisdiction X, through a platform whose servers are located in jurisdiction Y, and affect another individual in jurisdiction Z, resulting in a competition between several states with equally legitimate claims with respect to territorial connection criteria.<sup>80</sup> Identifying the ideal location of an online activity that results in a relevant legal fact is therefore a difficult and complex issue.

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76 LEINER, Barry *et al.* "Brief History of the Internet", *ACM SIGCOMM Computer Communication Review*, vol.39, no.5, 22-31, 2009, p.23-25. Available at: <<http://www.cs.ucsb.edu/~almeroth/classes/F10.176A/papers/internet-history-09.pdf>>. Accessed in: 01/05/2017.

77 BERMAN, Paul Schiff. "The Globalization of Jurisdiction: Cyberspace, Nation-States, and Community Definition", *University of Pennsylvania Law Review*, Vol.151, 311-529, 2002 p.318.

78 KOHL, Uta. *Jurisdiction and the Internet: Regulatory Competence over Online Activity*, Cambridge: Cambridge University Press, 2007, p.8.

79 SASSEN, Saskia. "When national territory is home to the global: Old borders to novel borderings", *New Political Economy*, v. 10, n. 4, p. 523-541, 2005, p.524.

80 KOHL, Uta. *Jurisdiction and the Internet: Regulatory Competence over Online Activity*, Cambridge: Cambridge University Press, 2007, p.24.

Under the territoriality principle, the concept of border is key. Multiple regulatory regimes still establish the border as a central institute for its operability.<sup>81</sup> These regimes orbit around the State unilateral authority to define and enforce its regulations and the State's obligation to respect and observe the international legal system norms.<sup>82</sup> The dismantling process of this classic apparatus has been implemented by several platforms, among them the internet, giving rise to what Saskia Sassen defines as "denationalization process": the empowerment of private norms generator, the large-scale fruit of the processes of globalization of the late twentieth century and the beginning of the twenty-first century.<sup>83</sup>

When activities such as those performed by means of the internet transcend the concept of frontier, there are situations in which the same principle can lead to the affirmation of exclusive jurisdiction by both parties involved. As an example, we have the recent *Microsoft v. U.S.*<sup>84</sup> In this case, the United States, on the grounds that the Irish judiciary would be intervening in the activities of a corporation situated on American territory, may allege breach of the territoriality principle (as well as sovereignty), as Ireland may assert that data on Irish soil violates the same principle.<sup>85</sup>

Dan Svantesson explains that the only way we can satisfactorily make progress is recognizing that classical principles, such as territoriality and the concept of territorial sovereignty, no longer serve as starting points for jurisdiction conflicts settlement. In addition, he argues that these principles were in fact extensions of nuclear principles, that is, jurisprudential constructions based on the practice of their time, and that therefore should never have been considered as nuclear principles in itself.<sup>86</sup>

The sovereignty principle is, in general terms, inseparable from the ideas of territory and frontier. In fact, these ideas stem directly from sovereignty. However, like the territoriality criterion, state sovereignty over a particular territory proves to be a robust guide to determine which State has jurisdiction over a dispute. Nevertheless, the exercise of sovereignty over a territory as a parameter for the State exclusive authority has entered a new phase. Although the principle of territorial sovereignty remains a systemic propriety and border regimes continue to be key elements of global geopolitics, both co-exist with a large and complex diversity of other dynamics and supra and transnational interactions.<sup>87</sup>

The crisis of sovereignty and territoriality principles lies at the heart of the concepts of territory, community and space, and its connection with partially obsolete notions developed in different historical contexts. According to Paul Berman, it's impossible to advance the problem of jurisdiction on the Internet without a re-evaluation of the concepts of territory and jurisdiction, their social and political meanings and their respective

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81 Um exemplo é o regime internacional da proibição do uso da força, cujo elemento central é a proteção das fronteiras internacionais dos Estados.

82 SASSEN, Saskia. "When national territory is home to the global: Old borders to novel borderings", *New Political Economy*, Vol. 10, No. 4, 2005, p. 524.

83 SASSEN, Saskia. "When national territory is home to the global: Old borders to novel borderings", *New Political Economy*, Vol. 10, No. 4, 2005, p. 527.

84 ESTADOS UNIDOS. *Microsoft Corporation v. United States of America*, No. 14-2985, 2d Cir. 2016. Available at: <<http://law.justia.com/cases/federal/appellate-courts/ca2/14-2985/14-2985-2016-07-14.html>>. Accessed in: 01/19/2017.

85 SVANTESSON, Dan. "A New Jurisprudential Framework for Jurisdiction: Beyond the Harvard Draft", *American Journal of International Law*, Vol. 109, 2015, p. 70.

86 SVANTESSON, Dan. "A New Jurisprudential Framework for Jurisdiction: Beyond the Harvard Draft", *American Journal of International Law*, Vol. 109, 2015, p. 70.

87 SASSEN, Saskia. "When national territory is home to the global: Old borders to novel borderings", *New Political Economy*, Vol. 10, No. 4, 2005, p. 535

origins<sup>88</sup>. We must ask how jurisdiction relates to the concepts of geographical space, belonging to communities, citizenship, borders and self-definitions.

In accordance with Sassen and Svantesson, Berman considers that criteria based on territory and sovereignty, as well as the concepts of territory and sovereignty themselves, are specific constructs of a given period and have been crystallized and given centrality by the following generations. Just as the privacy dilemma in the digital age has been the subject of significant advances after a rereading of the privacy concept as the individual control over his own personal data, apart from conceptions such as public and private spheres or the "right to be left alone", the jurisdiction challenge must also undergo similar renovation and reevaluation.

## 4.1 Does the internet require new and specific jurisdiction rules?

The erosion of classical principles and rules in the face of globalization and the communications computerization raises questions about the adequacy of the application of these norms in the recent scenario. We must ask ourselves if the internet allows its users to do new activities, or whether it only allows people to do traditional activities in new ways and in larger quantities. This distinction is crucial because the answer to this question directly affects the way internet should be regulated.

Addressing this question, Harvard University professor Jack Landman Goldsmith says that the activities conducted on the internet are no different from those conducted in the non-digital world. According to him, online transactions use the internet as a medium, but are actual transactions between two or more real people, located in different jurisdictions<sup>89</sup>. Digital transactions are functionally identical to transnational activities carried out by other means, such as mail or telephone<sup>90</sup>.

In contrast with Goldsmith, David G. Post claims that the internet essentially exceptional<sup>91</sup>. As argued by him, the issues arising from internet operations are different and more intricate than those arising from real-world operations<sup>92</sup>. Hence, jurisdiction conflicts in internet litigation can not be adequately solved by applying traditional principles and rules that have been developed to deal with jurisdictional conflicts concerning the real world<sup>93</sup>. One of Post's arguments is based on the large amount of products that are marketed online worldwide<sup>94</sup>. He asserts that, although transnational commerce existed before the internet, it didn't have today's extent. Circumstances have changed in such a way that applying classic jurisdiction rules to online disputes would undermine jurisdictional performance to interested parties<sup>95</sup>.

Clearly, we can't deny that the internet has brought new elements to jurisdiction conflicts. A website can allow anyone on the globe with internet access to purchase products on it. Precisely because the website is globally accessed, its owner can also be eventually sued anywhere on the planet by a consumer. The litigation risk and compli-

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88 BERMAN, Paul Schiff. "The Globalization of Jurisdiction: Cyberspace, Nation-States, and Community Definition", *University of Pennsylvania Law Review*, Vol.151, 311-529, 2002 p.318.

89 GOLDSMITH, Jack. "Against Cyberanarchy", *Chicago Law Review*, Vol.65, 1998, p.1239-1240.

90 GOLDSMITH, Jack. "Against Cyberanarchy", *Chicago Law Review*, Vol.65, 1998, p.1239-1240.

91 POST, David. "Against 'Against Cyberanarchy'", *Berkeley Technology Law Journal* vol.17, 2002, 1371, p.1390.

92 POST, David. "Against 'Against Cyberanarchy'", *Berkeley Technology Law Journal* vol.17, 2002, 1371, p.1390.

93 POST, David. "Against 'Against Cyberanarchy'", *Berkeley Technology Law Journal*, vol.17, 2002, 1371, p.1390.

94 POST, David. "Against 'Against Cyberanarchy'", *Berkeley Technology Law Journal*, vol.17, 2002, 1371, p.1386.

95 POST, David. "Against 'Against Cyberanarchy'", *Berkeley Technology Law Journal*, vol.17, 2002, 1371, p.1386.

ance with local legal norms impacts the business viability.

Likewise, a legal action may be brought against a news site in any jurisdiction, even though, according to the internal law of the place of the website's manager head office, the news story does not have any irregularity. This identified variety in the legal systems gives rise to a multiplicity of priorities of the respective States when establishing or denying their jurisdiction. Some countries may regard consumer protection as more important than promoting e-commerce in order to adopt an aggressive policy of affirming their jurisdiction to protect local consumers. Other States may emphasize the safeguard of their nationals' privacy by asserting their jurisdiction in litigation involving privacy violation<sup>96</sup>.

In addition, the application of traditional rules in the digital space may result in justice denial. If, for example, the forum of the offender's place of residence is applied as an absolute criterion for adjudicative jurisdiction determination, many people will inevitably be destined to don't receive any judicial service, since the court with jurisdiction may be based in another continent. In practical terms, access to justice would be denied in its essence. Therefore, the judicial authority must think about the classical rules and principles, with the objective of redefining them to deal with transnational adjudicative jurisdiction conflicts in the digital world<sup>97</sup>.

## 5. Matters of Jurisdiction and International Adjudicative Jurisdiction Rules Interpretation and Application on State Courts

The inadequacy of the traditional jurisdiction rules to approach the dilemmas surrounding the internet also generates a series of not-so-predictable consequences. Such practical consequences undermine the effectiveness of such rules by adding negative side effects to the application of common jurisdiction principles, or even unforeseen additional complexities. Let us examine some of these practical implications.

### 5.1 *Forum Shopping*, Jurisdiction and Internet

*Forum Shopping* is the practice to, directly or indirectly, choose the court or jurisdiction that seems more favorable to settle a possible litigation.<sup>98</sup> This choice is usually made after analyzing a number of factors that, weighted, indicate to the claimant a greater probability of success in his demand. These factors may range from lower litigation costs to procedural, substantive or jurisprudential rules that are more favorable to the plaintiff's claim. The term *forum shopping* is often used pejoratively.<sup>99</sup>

This jurisdiction election usually occurs through choice of forum clause, which is a common and almost universally accepted contractual instrument, despite certain restrictions.<sup>100</sup> However, a party may indirectly engage in *forum shopping* in other ways, such as by incorporating the company into a country of supportive legislation or by allocating its key activities within the desirable jurisdiction territory. These are common

96 LESSIG, Lawrence. *Code and Other Laws of Cyberspace*, Nova York: Basic Books, 1999, p.55.

97 BASSO, Maristela e POLIDO, Fabrício Bertini Pasquot. "Jurisdição e lei aplicável na Internet: Adjudicando litígios de violação de direitos da personalidade e as redes de relacionamento social". In: LUCCA, Newton de e FILHO, Adalberto Simão (eds.). *Direito & Internet – Aspectos Jurídicos Relevantes*, São Paulo: Quartier Latin, 2008, v.02, p. 442-490, p.443.

98 MONDRÉ, Aletta. *Forum Shopping in International Disputes*, Londres: Palgrave Macmillan, 2015, p.3-15.

99 WHYTECK, Christopher. "The Evolving Forum Shopping System". *Cornell Law Review*, Vol. 96, 481-534, 2010-2011, p.486-487.

100 ARAÚJO, Nádia de. *Direito Internacional Privado: Teoria e Prática Brasileira*, 1ª ed., Porto Alegre: Revolução eBook, 2016.

practices in the internet, although the choice of forum clauses are often limited by the State of destination legal system rules, avoiding abuses.<sup>101</sup>

More worrying and relevant to internet and jurisdiction issues are the situations in which a particular service or content based in a country with less restrictive legislation is accessible around the world by individuals in different jurisdictions. The feasibility of *forum shopping* in internet-related litigation requires that the jurisdiction choice rules be exclusively concentrated in the country of origin of the online activities in question. The country of origin approach is one of several proposals for resolving jurisdiction conflicts, and is beneficial mainly for online content providers, to whom legal predictability and security for all actors involved are the main advantages of the method<sup>102</sup>.

In the paradigmatic case *Dow Jones & Co vs. Gutnick*,<sup>103</sup> a court discussed the application of the law of the country in which the conduct that led to litigation has originated. As demonstrated earlier, the case refers to a publication of a north-american weekly magazine with an online version. This digital publication was deemed defamatory by an Australian citizen, who filed a lawsuit in Australia's judiciary. Although the Dow Jones & Co's strong arguments in favor of the application of New Jersey State law, the Australian court was unanimous in affirming Australia's jurisdiction over the dispute, even though all of the company's activities were located in New Jersey.

*Dow Jones & Co* also argued that online publications should receive differentiated treatment over physical publications, since its availability on servers from one location inevitably results in its availability in any other jurisdiction. It would not be possible, *a priori*, that the person in charge of the publication had control over the places in which it would be allowed to access the content. Although the Australian Supreme Court has concluded in the end that the jurisdiction rules of his country allowed the plaintiff to file a lawsuit at his place of residence, the case is illustrative, as it demonstrates that neither of the two arguments offered by the parties is fully satisfactory.<sup>104</sup>

It is also illustrative the concern of the Australian judges with the use of the country of the activity's origin approach as an incentive to *forum shopping*<sup>105</sup>. By employing various technical mechanisms, a content provider could, with ease not found in the offline world, relocate its activities to the jurisdiction that is more favorable or lenient. An individual affected by any of these activities would not have an effective means to claim their rights, except by filing an action in the jurisdiction in question, which can often may be costly or unfeasible.

Knowing that the practice of *forum shopping* may lead to a race to the softer and more favorable state for content providers, these actors often migrate to jurisdictions with less balanced and fair legal systems<sup>106</sup>. This scenario entails insecurity and legal

101 No Direito Consumerista brasileiro, por exemplo, certas cláusulas de eleição de foro podem ser consideradas abusivas. Para mais informações, cf. HOLZMEISTER E CASTRO, Joana. Cláusula de Eleição de Foro em Contratos Internacionais: O que Muda Com o Novo Código de Processo Civil, Trabalho de Conclusão de Curso, Orientadora: Nádia de Araújo, Pontifícia Universidade Católica do Rio de Janeiro, 2015, p.19.

102 KOHL, Uta. *Jurisdiction and the Internet: Regulatory Competence over Online Activity*. Cambridge: Cambridge University Press, 2007, p.164

103 AUSTRÁLIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <[http://www.austlii.edu.au/au/cases/cth/high\\_ct/2002/56.html](http://www.austlii.edu.au/au/cases/cth/high_ct/2002/56.html)>. Accessed in: 12/23/2016.

104 SAADAT, Michael. "Jurisdiction and the Internet after Gutnick and Yahoo!", *Journal of Information Law and Technology*, 2005, no.1. Available at: <[http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2005\\_1/saadat/](http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2005_1/saadat/)>. Accessed in: 01/05/2017.

105 AUSTRÁLIA. *Dow Jones & Company, Inc v Gutnick* [2002] HCA 56. Available at: <[http://www.austlii.edu.au/au/cases/cth/high\\_ct/2002/56.html](http://www.austlii.edu.au/au/cases/cth/high_ct/2002/56.html)>. Accessed in: 12/23/2016.

106 SAADAT, Michael. "Jurisdiction and the Internet after Gutnick and Yahoo!", *Journal of Information Law and Technology*, 2005, no.1. Available at: <[http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2005\\_1/saadat/](http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2005_1/saadat/)>. Accessed in: 01/05/2017.



inconsistency, culminating in the erosion of citizens' trust in their legal system of origin, as well as economic inefficiencies, as it compels the parties to discuss competence or to move large distances to litigate.<sup>107</sup>

## 5.2. Haven Jurisdictions and Sentence Markets

The practice of forum shopping can also lead to the creation of "haven jurisdictions", which is a metaphor that describes institutional and legal platforms which have more lenient regulations and, as a result, that attract companies to offer online services from those places. The internet gambling industry is the most concrete case of the emergence of these havens, with clear examples of small jurisdictions that have relaxed their regulations to attract ventures of this nature, such as countries, territories or regions that reduced their regulatory and legal patterns. This is the case of the Island of Man<sup>108</sup> and the city of Gibraltar,<sup>109</sup> both United Kingdom territories. Similar to the so-called "tax havens", jurisdictional havens favor, in an unbalanced way, the companies or individuals that seek to relocate to their assets and businesses to other territory different of their nationality, country of residence or main address, as a way of escaping from other States' regulation, or of minimizing the effects of its regulatory politics. With this strategy, parties incur in *law shopping*, which is different from *forum shopping*, since its goal is to search for legal systems that are more favorable in a regulatory sense, and not necessarily with more effective courts, or courts specialized in private litigation.

An additional factor that contributes to the emergence and strengthening of these havens is the difficulty of executing judicial decisions taken in the jurisdiction of a possible plaintiff's place of residence or habitual residence. In several cases, local courts have asserted their jurisdiction over acts or conducts of foreign origin, but have encountered serious difficulties in enforcing their decisions. In certain private transnational litigation, mechanisms have been used that allowed the due execution of judgments through the accountability of subsidiaries or other types of assets in the jurisdiction of one court.<sup>110</sup>

However, the cases that constitute a jurisdictional haven situation do not offer similar options. They are usually those that involve online gambling or possibly illegal or infractional content offering. In 2007, the torrent tracker site, The Pirate Bay, began a fundraising campaign to acquire an island outside of any state jurisdiction, where it would allocate its servers, which would also be a strategy in order to escape the numerous lawsuits against the site for facilitating copyrighted material sharing under several judicial systems.<sup>111</sup> Although Pirate Bay operators have not been successful, the case demonstrates how easy it can be to escape from a state jurisdiction by relocating activities to jurisdictional havens.

The concern with *forum shopping* and jurisdictional havens goes well beyond the difficulties generated for individual cases. The complexity involved in defining the

107 MOORE, Kimberly A. e PARISI, Francesco. "Rethinking Forum Shopping in Cyberspace", *Chicago-Kent Law Review*, Vol. 77, No. 3, 1325-1358, 2002, p.6-8. Available at: <<http://dx.doi.org/10.2139/ssrn.297100>>. Accessed in: 01/08/2017.

108 "Cleaning Up", *The Economist*, 03 de outubro de 2015. Available at: <<http://www.economist.com/news/britain/21670042-reformed-tax-haven-looks-online-economy-cleaning-up?zid=291&ah=906e69ad01d2ee51960100b7fa502595>>. Accessed in: 01/08/2017.

109 "Gibraltar's Online Gambling Boom Has Made It a Haven for British Expats", *Vice*, 18 de novembro de 2014. Available at: <[https://www.vice.com/en\\_us/article/the-battle-for-the-rock-224](https://www.vice.com/en_us/article/the-battle-for-the-rock-224)>. Accessed in: 01/08/2017.

110 Cf., por exemplo: ESTADOS UNIDOS. *US v. American Sports Ltd*, 286 F 3d 641 (2002). Available at: <<https://goo.gl/F8PJh7>>. Accessed in: 01/19/2017. Nesse caso, tribunais norte-americanos executaram uma sentença contra uma empresa de apostas online localizada no Reino Unido, por meio contas bancárias que esta possuía em solo americano.

111 Cf., for example: ESTADOS UNIDOS. *US v. American Sports Ltd*, 286 F 3d 641 (2002). Available at: <<https://openjurist.org/286/f3d/641/united-states-v-73457882-in-united-states-currency>>. Accessed in: 01/19/2017. In this case, United States' courts executed a judgment against an online gambling company located in the United Kingdom, through bank accounts that it had on American soil.

country with adjudicative jurisdiction to process and enforce its rulings in any situation can also prove to be a major obstacle to any attempt to create international normative mechanisms for resolving jurisdiction conflicts. Even if, for example, some level of procedural harmonization were agreed upon by a large number of States, such as initiatives from the Hague Convention on International Private Law, or the World Intellectual Property Organization, a few discordant States would suffice for the whole purpose of such a treaty to be severely undermined. Unlike other types of legislative harmonization initiatives involving the common physical world, where adherence by a greater number of States would be directly proportional to effectiveness in combating the problem in question, this rule does not exist on the internet without the use of filtering mechanisms and network fragmentation.<sup>112</sup>

### 5.3. An International Law for the Internet?

With so many complexities and difficulties involving the application of traditional rules and principles in resolving jurisdictional conflicts on the internet, it is natural that alternatives should begin to be proposed to overcome them. Most of these solutions have recognized the difficult application of traditional principles or also consider undesirable the adaptation of new technologies to these principles. In this work, we will approach one of these proposals in a detailed way, treated by specialized literature and experts as: the *International Internet Law*.

The idea of an International Internet Law exists from the very beginning of the internet itself, when David Johnson and David Post argued that cyberspace would be a radically different place from the offline world and that, therefore, it should be governed by its own Law, and have its own sovereignty. The idea was considered naive and simple at the time when the first works on the matter were published, but it was of seminal importance for more consistent theories to be developed in the following decade.

In her book "*International Internet Law*", Joanna Kulesza discusses the feasibility, challenges and possible sources of an International Internet Law. The author argues that just as International Environmental Law emerged as a branch of Public International Law in the 1970s through the adoption of treaties and written principles, and just as that discipline has an inherently transnational nature, since its object of study is shared by several States, should also regulation of the internet be developed from multilateral or multi-stakeholders agreements.

The author explains that a significant part of internet regulation has been made by well know multi-stakeholder mechanisms, although successful regulations were more prominent in the physical and logical layers of the internet. Organizations like *The Internet Engineering Task Force* (IETF),<sup>113</sup> *The Internet Society* (ISOC)<sup>114</sup> and *The Internet Corporation for Assigned Numbers and Names* (ICANN)<sup>115</sup> have been working, since 1990, in developing technical regulations, standards, best practices guides and promoting policies favorable to the good use of internet. For the most part, these organizations have set themselves up to create standards which are limited to the technical and logical functioning of the network.<sup>116</sup>

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112 Sobre esses mecanismos, cf.: SVANTESSON, Dan Jerker. "Geo-location technologies and other means of placing borders on the 'borderless' Internet", *Journal of Computer & Information Law*, Vol.XXIII, 2004, 101-139. Available at: <[http://epublications.bond.edu.au/law\\_pubs/63](http://epublications.bond.edu.au/law_pubs/63)> Accessed in: 01/10/2017.

113 Internet Engineering Taskforce official website: <[www.ietf.org](http://www.ietf.org)>. Accessed in: 01/19/2017.

114 ISOC official website: <[www.isoc.org](http://www.isoc.org)>. Accessed in: 01/19/2017.

115 ICANN official website: <[www.icann.org](http://www.icann.org)>. Accessed in: 01/19/2017.

116 KULESZA, Joanna. *International Internet Law*, 1ª ed. New York: Routledge, 2012, p.128.



With the popularization and expansion of Internet access, issues involving human rights, intellectual property, e-commerce and other topics not previously worked by these organizations, have started to demand a greater attention from the interested actors, as these issues grow in relevance to modern society.

The multi-stakeholder model for internet governance, adopted by the organizations mentioned above, started to be used also by the actors of the content layer of the internet. This proposes an equal position among governments, private sector actors and civil society in the discussion and elaboration of policies. According to Kulesza, this equality must be a core principle in the development of an International Internet Law<sup>117</sup>. Multistakeholderism in internet governance have already produced a series of soft law instruments like the documents of the *World Summit for the Information Society* (WSIS)<sup>118</sup>, which have influenced national legislation like *Brazilian Civil Rights Framework for the Internet* ("Marco Civil da Internet"). These soft law instruments can also be used to define a possible scope for International Internet Law.

Kulesza also emphasizes<sup>119</sup> that, in addition to multi-stakeholder development, international Internet law must adopt some of the fundamental principles established in the Geneva Declaration of Principles at the first WSIS, 2003. These principles are cultural diversity, freedom of access and the adoption of open standards<sup>120</sup>.

However, the author admits that the development of an international regulatory framework for the Internet depends to a large extent on the consensus and cooperation between several States<sup>121</sup>. In the current forums for multi-stakeholder debate, it has already been recognized that it is difficult to reach a consensus among countries with such diverse cultural values and sovereign interests, like the ones with the largest numbers of Internet users. The hard law legislative instruments are sparsely ratified, with no influential countries participating in several of them, such as Brazil and Russia. Traditionally, countries such as China and Russia have favored the multilateral model, which is based on the primacy of intergovernmental bodies (such as the United Nations, the International Telecommunication Union, the World Trade Organization and the World Intellectual Property Organization) in transnational regulation, without the intervention of other sectors<sup>122</sup>. There are also the aforementioned problems related to forum shopping.

The development of an International Internet Law still has several complex challenges to face before reaching a universally satisfactory level of adoption.

## 6. Final Considerations

Regardless of how fast technology developments are or how national boundaries may become irrelevant, the world will continue to be divided between geographically delimited nation-states. Despite of its relativism, sovereignty still remains an inalienable - though limited - attribute of States. This classic framework generates an antagonism

117 KULESZA, Joanna. *International Internet Law*, 1<sup>a</sup> ed. New York: Routledge, 2012, p.136.

118 *The World Summits for the Information Society* were two conferences promoted by the United Nations in 2003 and 2005. It produced some final documents, which established principles and an action plan for Internet Governance between 2005 and 2014. See: <[www.itu.int/net/wsisis](http://www.itu.int/net/wsisis)>. Accessed in: 15/01/2017.

119 KULESZA, Joanna. *International Internet Law*, 1<sup>a</sup> ed. New York: Routledge, 2012, p.142.

120 The adoption of open standards means an open architecture where the code can be accessed and evaluated by anyone. These standards are the essence of Open Source and Free Software movements.

121 KULESZA, Joanna. *International Internet Law*, 1<sup>a</sup> ed. New York: Routledge, 2012, p.153

122 ANASTÁCIO, Kimberly. "Transnacionalidade na Rede: Introdução à Governança da Internet e ao NETMundial" (Transnationality in the Internet: Introduction to Internet Governance and NETMundial). *Marco Civil da Internet: Diálogos entre o Doméstico e o Global*, p. 226-244, Belo Horizonte: Instituto de Referência em Internet & Sociedade, 2016, p. 237; KURBALIJA, Jovan. *An Introduction to Internet Governance*, Genebra: DiploFoundation, 2016, p. 11.

with the very essence of the Internet, which is characterized by transnationality. A communication network that ignores borders is something that is often alarming to States. As a result, measures are taken in order to establish "borders" in the internet, preventing the free circulation of information and new technologies.

Determining if a national court has international jurisdiction also reflects that antagonism. The national and international court rulings presented in this paper reveal a tendency for judges to apply traditional jurisdiction concepts and rules, only adapting them to the internet context. An example of such an adaptation was found in the *effects test* in *Calder v. Jones*. The application of the *effects test* to the internet indicates that a judicial authority of a certain place will be competent to adjudicate a dispute if a website, which causes a conflict of interests, was targeting users at that place. Thus, e-commerce enterprises or entertainment companies can limit at some level which jurisdictions they are under, exercising some control over where they may be sued. Despite a greater legal certainty for the agents involved, this jurisdictional rule leads to the delimitation and fragmentation of the internet.

Facing the challenge of jurisdiction on the Internet will involve a re-signification of previously established concepts, such as those of community, territory, sovereignty and border. Although these elements continue to exist in the information society, they ought to be mitigated. Law must not neglect, but to keep up with these changes and update these concepts, and therefore comprehend concepts and narratives in a socially and politically contextualized manner.

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