CHAPTER 3

EXTRA TERRITORIAL JURISDICTION AND SOCIAL MEDIA OFFENCES

Global internet based communications defies territorial borders, creating a new realm of people’s interaction and undermining the feasibility and legitimacy of applying laws based on geographic boundaries. The Internet creates ambiguity for sovereign territory because network boundaries intersect and transcend national borders. To establish the rule of law in the information society has been the biggest challenge to the traditional notions of jurisdiction.

In a world composed of equally sovereign states, any state is entitled to shape its sovereignty or imperium by adopting laws and ‘juris-dicere’, to state what the law is relating to persons, activities, or legal interests. Jurisdiction becomes a concern of international law when a state, in its eagerness to promote its sovereign interests abroad, adopts laws that govern matters of not purely domestic concern. The Public International Law of jurisdiction guarantees that foreign nations concerns are also accounted for, and that sovereignty based assertions of jurisdiction by one state do not unduly encroach upon the sovereignty of other states. The law of jurisdiction is doubtless one of the most essential as well as controversial fields of international law, in that it determines how far, ratione loci, a state’s laws might reach.

The international law of jurisdiction is sometimes referred to as the law of ‘extra-territorial’ jurisdiction. The use of the term ‘extraterritoriality’ derives from the notion that jurisdiction becomes a concern of international law where a state regulates matters which are not exclusively of domestic concern. In theory there is no limit on the circumstances in which a national government might claim to apply its laws and

150 J H Beale, ‘The Jurisdiction of a Sovereign State’ (1923) 36 Harv. L. Rev. 241
regulations to internet activities which originate in a different jurisdiction, although practical enforcement of those laws against a foreign enterprise is a different matter.\textsuperscript{151}

Dispute resolution mechanism, based primarily on territoruality, faces a number of challenges when applied to disputes arising on the internet. The internet is by definition international and can be accessed from almost any place. On the internet, digitized data may travel through various countries & jurisdictions in order to reach its destination. The physical world location of those parts of the Internet infrastructure via which a communication is carried may be purely fortuitous. The result in many cases is that the parties to an Internet transaction are faced with overlapping and often contradictory claims that national law applies to some part of their activities. The difficulties faced by courts in dealing with this new medium are acutely exemplified by the November 20, 2000, decision of a French trial court. Climaxing a series of earlier rulings by the same court, the trial court ordered Yahoo! Inc. to put filtering systems in its United States website so as to prevent access by French residents to portions of the Yahoo! Inc. auction site on which persons offer to sell World War II memorabilia containing Nazi symbols.\textsuperscript{152}

In its initial ruling the same court in the same case had held that the U.S. website for Yahoo! Inc. was subject to French jurisdiction simply because it could be accessed from France.

The issue of overlapping jurisdiction raises these detailed questions which are discussed in this chapter:

- Where an Internet activity has a cross border element, on what principles can we decide which country’s law applies and which court has jurisdiction?
- On what basis can a national Govt. claim to apply its laws and regulations to Internet activities which originate in a different jurisdiction?

\textsuperscript{151} Chris Reed, ‘\textit{Internet Law}’ (2\textsuperscript{nd} edn, Cambridge University Press, 2004) 231

\textsuperscript{152} \textit{VEIF and LICRA vs Yahoo! Inc. and Yahoo France} (tribunal de Grand Instance de Paris) [2000], The French judge rules that Yahoo! must put a three part system in place that includes filtering by IP address, the blocking of 20 keywords and self identification of geographic location. The system follows the recommendations of an expert panel appointed by the court to investigate such technologies.
The chapter discusses various issues and principles forming the basis of jurisdiction around the world particularly in U.S. & U.K. After a brief discussion of these issues and principles, the chapter analyzes their competence to answer the abovementioned question.

3.1 THE ISSUES OF JURISDICTION

The issues of jurisdiction have to be looked into following perspectives:

- Prescriptive jurisdiction
- Adjudicative jurisdiction
- Enforcement jurisdiction

3.1.1. Prescriptive Jurisdiction

Prescriptive jurisdiction is related to the power of a state to regulate its people, property, and transactions or to prescribe their conduct, usually through the passage of laws or regulations. A State has unlimited prescriptive jurisdiction: this means that the legislature of a state can create, amend or repeal legislation covering any subject or any person, irrespective of the person’s nationality or location. However, scholars have argued that prescriptive jurisdiction of a state may not be extended to direct the persons of other countries. The internet therefore should not be regulated under traditional standards.\(^\text{153}\) A question that naturally arises is whether a State can prohibit a person of different territory from posting any material on the social media pages, contents of which is detrimental to interest of the concerned state? Generally a state cannot extend its jurisdiction in another state but international law permits certain mechanism which allows a state to seek

prosecution/extradition of offender of another state. This fact has been reiterated by ICJ in the Lotus case.

The ICJ stated that “In these circumstances all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.”

3.1.2. Adjudicative Jurisdiction

Adjudicative jurisdiction refers to the power of a state, acting through its judicial organ, to hear disputes and to render judgments binding upon the parties thereto. It is the power of a court to determine the rights and obligations of the parties to a dispute and to exercise any judicial power in relation to it. Adjudicative jurisdiction defines the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits, i.e. to take cognizance of the matters presented in a formal way for its decision. Thus a court must satisfy itself of the simultaneous existence of the pecuniary, subject matter as well as territorial bases for it to lawfully exercise its jurisdiction.

Generally, a court assume jurisdiction only if it reasonably expects the terms of the decision to be carried into effect. Beyond its political borders, where a state is usually possessed of no coercive force and where the likelihood of enforcement is contingent on

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155 France vs. Turkey [1927] P.C.I.J. (Ser A) No. 10 (Sept. 7)

156 This type of jurisdiction is also referred to as “Personal Jurisdiction”, “Curial Jurisdiction” and “Jurisdiction in personam”.


the will of another state, there is little reason for the court to assume jurisdiction. Therefore, like enforcement jurisdiction, adjudicative jurisdiction is also essentially territorial.

3.1.3. Enforcement Jurisdiction

Enforcement jurisdiction is the power of a government to compel compliance or to punish noncompliance with its laws, regulations, orders, and judgments. However, a state cannot enforce its laws over persons residing in another country. It is concerned with a state’s power to act in the sense of exercising sovereign authority, i.e. ascertaining the extent to which a state can act in another to give effect to its own laws. Undoubtedly, the enforcement jurisdiction is not unlimited since a state is “in principle under no duty . . . to tolerate the performance or execution of acts of sovereignty of another state.”

With regard to internet crimes including social media offences, it is clear that main problem lies with enforcement jurisdiction when there is a cross border dispute. In general, International law has devised various principles to address extra territorial jurisdictional issues.

3.2 PRINCIPLES OF EXTRA TERRITORIAL JURISDICTION

In order for a national court to adjudicate criminal and regulatory sanctions internationally, there must be some connection, or nexus, between the regulating nation (the forum) and the crime or criminal. The principle equally applies whether the regulated conduct takes place in the physical world or in cyberspace. Various principles have been invoked by courts to justify their exercise of jurisdiction. These principles are not

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mutually exclusive. Courts routinely rely on more than one in assuming jurisdiction.\textsuperscript{161} These issues usually arise in cases where another state is claiming jurisdiction or where the defendant himself denies the national court’s jurisdiction. In many cases, the subject matter of the case involves non-nationals or events wholly or partly performed abroad and often concerns criminal law. The principle grounds for the assertion of jurisdiction are where there is either a territorial or nationality link between the case and the court, as where the events take place in the state or are committed by a national of that state. An extension of these is the ‘protective’ and ‘passive personality’ principles, both of which are now being invoked more frequently. The ‘effects doctrine’ is a contentious ground for invoking national jurisdiction as it often has an extraterritorial reach and affects non-nationals.\textsuperscript{162} These principles are as follows-

- Territorial Nexus Principle
- Nationality principle
- Passive personality principle
- Protective principle
- Universality principle

3.2.1 Territoriality Nexus Principle:

Territorial jurisdiction is the sovereign jurisdiction that a state has over the land within its boundary limits, over its inland and territorial waters, over all persons and things and to a reasonable extent over the airspace above and subsoil below in such land. The territoriality nexus allows courts to assume jurisdiction over crimes and regulatory offenses committed or consummated "in part" within the regulating nation’s territory.\textsuperscript{163}

\textsuperscript{161} In the landmark case of Attorney General of the Government of Israel vs. Eichman [1968] 36 I.L.R. 5 (Jm. D.C.) (Isr.), the court relied on the protective and the universality nexuses in exercising jurisdiction to try an official of the Austrian Nazi party for war crimes committed in the course of duty on behalf of a foreign country outside the boundaries of the forum (Israel), before the forum came into existence, and against persons who were not citizens of the forum.

\textsuperscript{162} Martin Dixon et al, ‘Cases And Materials on International Law’ (5th edn., Oxford University Press 2011)

\textsuperscript{163} Harvard Law School, ‘Research in International Law: Jurisdiction with Respect to Crime’ (1935) 29 AM. J. INTL L. 435
That is, jurisdiction can exist whenever "any essential element of the crime is accomplished" within the regulating nation’s territory.

In this connection the case of Bankovic and others vs Belgium and others\textsuperscript{164} is an important precedent. The court was called upon to consider whether the acts of North Atlantic Treaty Organization (NATO) forces, in conducting an aerial bombing raid against a Serbian state owned television station, were a violation of the rights protected by the European Convention on Human Rights. In order to do so, the Court had to determine whether the victims came within the jurisdiction of the states concerned. While deciding the case, the court has made following observation:

Para 58 of the case: “As to the ‘ordinary meaning’ of the relevant term in Article 1 of the Convention on Jurisdiction, the Court is satisfied that, from the standpoint of public international law, the jurisdictional competence of a state is primarily territorial. While international law does not exclude a state’s exercise of jurisdiction extra-territorially, the suggested bases of such jurisdiction (including nationality, flag, diplomatic and consular relations, effect, protection, passive personality and universality) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant states…..”

Para 60 of the case: “Accordingly, for example, a state’s competence to exercise jurisdiction over its own nationals abroad is subordinate to that state’s and other state’s territorial competence….in addition, a state may not actually exercise jurisdiction on the territory of another without the latter’s consent, invitation or acquiescence, unless the former is an occupying state in which case it can be found to exercise jurisdiction in that territory, at least in certain respects…..”

Para 61 of the case: “the Court is of the view, therefore, the Article 1 of the convention must be considered to reflect this ordinary and essentially

\textsuperscript{164} 41 International Legal Matters 517 (2002), European Court of Human Rights
territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case.

In S. S. Lotus Case (France vs. Turkey)\textsuperscript{165}, few principles have been laid down by the Permanent Court of International Justice. According to first principle a state cannot exercise its power in any form in the territory of another State; unless an International treaty or customary law permits it to do so. It says-

\begin{quote}
"Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention."
\end{quote}

Most states assert jurisdiction over persons or events where any element of an event takes place within their territory. The ‘objective’ territorial principle permits a state to exercise its jurisdiction over all activities that are completed within its territory, even though some element constituting the crime or civil wrong took place elsewhere.\textsuperscript{166} On the other hand, the ‘subjective’ territorial principle allows a state to assert jurisdiction over matters commencing in its territory, even though the final element may have occurred abroad. In those cases where two or more states are claiming jurisdiction based on the territorial principle, the issue is often resolved by negotiation, extradition to the most affected state or simply by an exercise of jurisdiction by the state having custody of the individual.

\textsuperscript{165} France vs. Turkey [1927] P.C.I.J. (ser. A) No. 10 (Sept. 7). An example of the first Lotus principle is found in the UK-Netherlands Agreement of 1991. Through this international agreement, the UK obtained the consent of Netherlands before prosecuting two Libyans accused in the Lockerbie bombing – by a Scottish Court – located in Netherlands.

\textsuperscript{166} R vs Sansom 1991 2 All ER 145
From a theoretical standpoint, territorial principle is uncontroversial and universally recognized. However, objective territoriality may involve competing jurisdictional claims. For example a highly inflammatory video made in State A and circulated via social media in State B, now if both state have to assert jurisdiction on the defendant then this may give rise to competing claim. International law does not clearly set out a hierarchy of jurisdictional claims, other than by reference to principles of jurisdictional restraint, such as comity or non-interference.

### 3.2.2 The Nationality Principle

Nationality principle permits a state to exercise jurisdiction over its own nationals irrespective of the place where the concerned act was committed. In this context, a state may even assume extra-territoriality jurisdiction. Like the territorial principle of jurisdiction, this principle also has two limbs. If jurisdiction is asserted over a national accused of being a perpetrator of extraterritorial conduct, this is described as ‘active nationality’. If the national is a victim of extraterritorial conduct, then jurisdiction over that national is termed ‘passive nationality’.

Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws\(^{167}\)

*Articles 1*- “it is for each state to determine under its own law who are its nationals. This law shall be recognized by other states in so far as it is consistent with international convention, international custom, and the principles of law generally recognized with regard to nationality.”

*Article 2*- “any question as to whether a person possesses the nationality of a particular state shall be determined in accordance with the law of that state.”

\(^{167}\) 179 League of Nations Treaty Series 89 (1930)
Article 3- “subject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the states who nationality he possesses.”

Nationality principle came into existence as a result of decline in the importance of territory & lessened significance to borders for the purposes of jurisdiction. This factor is particularly pertinent within the European Union, where borders have come to assume a lesser importance. There are several strong positive arguments in favour of a move to nationality based jurisdiction. The incorporation of the European Convention on Human Rights into United Kingdom domestic law by the Human Rights Act 1988 provides the basis of one of them. The incorporation has brought all criminal trials to be tested against the Convention in United Kingdom Courts. The right to liberty, fair trial, and security and right to be free from retrospective criminal legislation are all now part of UK municipal law. Exercising jurisdiction on the basis of nationality would be a method whereby these rights could be applied to those who are accused of crimes abroad and may not otherwise be afforded this protection. Nationality was likely used as a jurisdictional nexus in the trial of Jay Cohen in United States v. Galaxy Sports. Cohen, the president of World Sports Exchange (WSE), an online gambling organization headquartered in Antigua, was convicted of soliciting and accepting bets from Americans via WSE's Internet Web site. Because the company was Antigua-based, the court was unable to assert jurisdiction over it. It’s President, however, was a citizen of the USA and could, therefore, be taken to court.

The extent to which a national court will go to establish jurisdiction based on nationality in serious cases is illustrated by Joyce vs Director of Public Prosecutions, where the defendant was said to owe allegiance to the English Crown even though his UK passport had been obtained unlawfully and had been surrendered in 1940.

Nationality principle as basis of jurisdiction has its own demerits. If a persona possess dual nationality and both countries want to enforce their jurisdiction, then it poses a

168 260 F.3d 68 (2d Cir., July 31, 2001), Docket No. 00-1574

169 1946 AC 347
serious problem. The ICJ in Nottebohm case\textsuperscript{170} said that in such a situation jurisdiction goes to the country where the person has a genuine link i.e., where he living and working, where his home is and his family. In the context of cyberspace, however, the courts have yet to directly rely on nationality as a nexus for asserting jurisdiction. Nationality, nevertheless, may have been an important factor in several cases.

\subsection*{3.2.3 The Passive Personality Principle}

According to the passive personality principle a sovereign can adopt laws which apply to conduct of foreign nationals who commit crimes against the sovereign’s nationals while the sovereign’s nationals are outside of the sovereign’s territory.

The jurisdictional aspects of passive personality principle have been elaborated in the case of United States vs. Yunis\textsuperscript{171}. In this case Yunis, a Lebanese citizen, was lured by a US agent from Cyprus into a fishing boat that was in international waters. He was then arrested and transported to the US, where he was charged with hostage taking and piracy in connection with the hijacking in 1985 of an aircraft belonging to Royal Jordinian Airlines. Though, no part of the offences occurred in the US, the district court of Columbia considered that it had jurisdiction over the prosecution of accused on the basis of both the passive personality and the universality principles.

The Court held:

\begin{quote}
\textquote{This principle authorizes States to assert jurisdiction over offences committed against their citizens abroad. It recognizes that each State has a legitimate interest in protecting the safety of its citizens when they journey outside national boundaries.} \end{quote}

\textsuperscript{170} \textit{Liechtenstein v. Guatemala} (1955) I.C.J. 4

\textsuperscript{171} \textit{United States vs. Yunis} (1988) 681 F Supp 896
The government in this case contended that because American nationals were on board the Jordanian aircraft, therefore, the court possess jurisdiction over accused under this principle. Though, this principle may be referred to as a controversial one, as it extends the ‘arm of national laws further even in the foreign territories’. Nevertheless, the principle has been adopted as a basis for asserting jurisdiction over hostage takers. Many international legal scholars agree that the international community recognizes the legitimacy of this principle. Most accept that ‘the extraterritorial reach of a law premised upon the…..principle would not be in doubt as a matter of international law.’

3.2.4 Protective Principle

Protective principle is a rule of international law that allows a sovereign state to assert jurisdiction over a person whose conduct outside its boundaries threatens the states security or interferes with the operation of its government functions. In particular, a state may rely on the protective principle because acts that threaten its security or national interest may not be illegal in the state where they are being performed.

In Joyce v DPP an American citizen gained a British passport by fraudulent means and worked for German radio during World War II. It was argued on behalf of the accused that the United Kingdom did not have jurisdiction to try a non-national for a crime committed outside British territory. The Court rejected this argument on the basis that:

“No principle of comity demands that a state should ignore the crime of treason committed against it outside its territory. On the contrary a proper regard for its own security requires that all those who commit that crime, whether they commit it within or without the realm should be amenable to its laws.”

172 See; International Convention Against The Taking of Hostage, 1979


174 Joyce v DPP (1946) AC 347
Given uncertainties as to what constitutes a sufficient threat to ‘national interest’, the protective principle is open to abuse. While a particular statement or video available on social media pages may not be of a nature to threaten the security of a state, the prosecuting state may go for wider claims.

*United States v. Zehe*\(^{175}\)

In this case it was held by the court that under international law, the "protective principle" gives a country the jurisdiction to prescribe a rule of law attaching legal consequences to conduct outside its territory that threatens its security as a state or the operation of its governmental functions, provided the conduct is generally recognized as a crime under the law of states that have reasonably developed legal systems.

### 3.2.5 Universality Jurisdiction

A pointed out by Starke, “an offence subject to Universal jurisdiction is one which comes under the jurisdiction of all states wherever it be committed inasmuch as by general admission the offence is contrary to the interests of the international community, it is treated as a delicate *jure gentium* and all states are entitled to apprehend and punish the offenders. Clearly the purpose of conceding Universal jurisdiction is to ensure that no such offence goes unpunished.”\(^{176}\) Generally, international law concerns with the relations between nations. It does not establish regulations or criminal sanctions that apply directly to individuals. The exception to this rule is for the small category of crimes that are covered by the universality nexus; that is, those crimes that are considered to be so egregious as to be of universal concern.

The principle of universal jurisdiction is classically defined as 'a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective

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of the location of the crime and the nationality of the perpetrator or the victim'.

This is relatively a new theory on jurisdiction, and particularly deals with international criminal jurisdiction of states upon individuals for conduct regarded as “international crime” in custom or conventionally. In its literal and simplest meaning, the universality principle means that any state would have jurisdiction to prosecute, arrest, try, convict and sentence any person regardless of nationality, for crimes they have committed anywhere in the world and against the nationals of any state, as long as the act committed is considered criminal pursuant to the penal laws of the prosecuting state, or in international law. So far, this principle has been applied only in the context of serious and heinous international crimes such as genocide, war crimes, torture and other widely recognized gross violations of human rights.

The nexus between social media offences and universal jurisdiction appears rough despite the universal nature of internet and universal applicability of social media contents. Typology of crime in social media is regulated through different sets of national laws which in the present scenario cannot be asked to be crime of universal nature. However, there are certain offences committed through social media, which may be considered as crime of universal nature, thereby making it triable in any legal system. For example hate materials which is widely circulated and published in social media pages can be included within the ambit of crime against humanity, though terming it as aforesaid shall always be debated.


178 The Universality Principle becomes all the more important in cases of violation of international customary law, as the state exercising jurisdiction may not be required (at least theoretically) to have outlawed the specific criminal conduct in its domestic law, before exercising universal jurisdiction. However, it is logically expected that any country which has outlawed a specific international criminal conduct domestically or which is a member-state to a convention outlawing specific conduct on the international plane, will be more likely to act, compared to a country which can only base its decision to prosecute on a, usually vague, definition of a customary international crime.
1.3. EXTRA TERRITORIAL JURISDICTION: UNITED STATES

Perspectives

Within the United States, jurisdiction is applied in a varied manner which depends on whether a legal problem is within the federal or the state sphere. Among the states itself, the scope and definition of jurisdiction varies. Severity and type of crime is also taken into consideration in determining the jurisdiction to prosecute crimes. Even with existing laws against non-Cyber crimes, many questions arise as to whether the individual states or the federal government should be in charge of a particular prosecution. With the advent of the internet, the lines dividing those jurisdictions seem to have blurred even farther.

In the fight against crime on the internet both states and federal legislature are working cooperatively. Federal Law enforcement handles most of the interstate criminal activity but they are continually working with state and local law enforcement to train them in detecting, investigating and prosecuting cyber criminals. Adaptation on the state level is seen in which legislation is adopting minimal penalties for certain cyber crimes. To deal with the problems of extra territorial offences the Courts in United States have evolved various principles and doctrines. These principles and doctrines have been tested with the changing dimensions of international scenario.

1.3.1. Judicial Approach Regarding Personal Jurisdiction

A. The Effects Doctrine

In the United States, effects doctrine has been recognized by the federal courts as an important mechanism for acquiring jurisdiction over foreign defendants. The doctrine refers to extra-territorial application of national laws where an action by a person with no territorial or national connection with a State has an effect on that State. This doctrine has been considered as an extension of the territorial principle where some part of an act might be said to occur on a state’s territory, even if the only ‘effect’ is economic harm indirectly caused by that act. It can also be considered as an extension of the protective
principle to situations other than national security, where issues considered of importance to a state are affected. The effects doctrine mixes both these grounds of jurisdiction and has proved highly controversial.

The scope of the effects principle is controversial, particularly regarding the proposition that a purely economic effect would suffice.\(^{179}\) In expanding the jurisdiction of the regulating state, the effects principle fails to provide an effective framework for protecting the interests of other states which might be affected by this expansion. This "effects" test is described from the American Law Institute's Restatement (Second) of Conflict of Laws 37 (1971), which provides:

"A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an act done elsewhere with respect to any cause of action arising from these effects unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable."\(^{180}\)

In *Mannington Mills Inc vs Congoleum Corporation*\(^{181}\), the US Court of Appeals, Third Circuit, said “when foreign nations are involved, however, it is unwise to ignore the fact that foreign policy, reciprocity, comity and limitations of judicial power are considerations that should have a bearing on the decision to exercise or decline jurisdiction.”

**B. Long Arm Statutes**

Within the US, every state has specific and independent legislations. Generally, these legislations have a long arm clause which provides for personal jurisdiction, via substituted service of process, over persons or corporation which are non-residents of the

\(^{179}\) M. Akehurst, ‘*Jurisdiction in International Law*’ (British Yearbook of International Law, 1973) 19

\(^{180}\) Faye Fangfei Wang, ‘Internet Jurisdiction and Choice of Law’ (First Published, Cambridge Univ. Press 2010) 124

\(^{181}\) 1979, 595 F 2d 1287
state and which voluntarily go into the state, directly or by agent, or communicate with persons in the state, for limited purposes.

C. Due Process

In the US, the Due Process clause of the Constitution's Fourteenth Amendment sets the outermost limits of personal jurisdiction. If a party has substantial systematic and continuous contacts with the regulating nation, a court may exercise jurisdiction over a party for any dispute, even one arising out of conduct unrelated to the regulating nation. This is known as general jurisdiction. For example, a corporation or person can always be sued in its state of residence or citizenship or its principal place of business, regardless of whether or not the claim arose there.

D. The Minimum Contact

The Supreme Court of United States in *International Shoe vs. State of Washington*\(^{182}\) has enunciated the principle of ‘minimum contact’ on the reasoning that the due process requires only that in order to subject a defendant to a ‘judgement in personam’ (personal jurisdiction). According to this principle for a non-resident to be subject to a state’s personal jurisdiction, he must have taken certain steps that were purposefully directed towards forum state. To exercise jurisdiction under this principle it is required that defendant’s actions met with Fourteenth constitutional amendment of right to due process. However, courts will not exercise this jurisdiction if considerations of ‘fair play and substantial justice’ see due process violation of defendant.

Applying the minimum contact theory in social media context, it would be necessary to show something more than mere access to a particular social media website. Because if that were not so, every social media website owner would be liable in every jurisdiction

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\(^{182}\) *International Shoe vs. State of Washington* (1945) 326 U.S. 310; The case involved a Washington court attempting to assert jurisdiction over a corporation that was incorporated in Delaware and had a principal place of business in Missouri.
simply because the website can be accessed everywhere. It would lead to very unreasonable results where the defendant would have to defend himself in each potential jurisdiction.

These issues have come up before the court in the case of *CompuServe, Inc. v. Patterson*.\(^{183}\) The Sixth Circuit court found jurisdiction to be appropriate where the defendant contracted with plaintiff, an Ohio corporation, for Internet access and to distribute the defendant’s computer software via the plaintiff’s Internet network. In this case defendant took up the argument that he did not belong to Ohio, how could he, then, be amenable to jurisdiction of court in Ohio? But the court held that since Patterson purposefully availed himself of the privilege of doing business in Ohio, he was amenable to jurisdiction there. The factors that the court considered were, first, the shareware agreement that Patterson entered into with CompuServe indicated that Ohio law will govern; second, CompuServe system was located in Ohio; third while transacting with CompuServe, Patterson was addressing all his electronic communications through the server system in Ohio. These factors were sufficient to create what we call a minimal contact.

In *Cybersell, Inc. v. Cybersell, Inc.*,\(^{184}\) the Ninth Circuit court found jurisdiction lacking where the defendant’s site provided the company’s local phone number and electronic mail address, but no services could be provided, no contracts could be consummated and no products could be sold via the Internet.\(^{185}\)

It is clear that when threshold of ‘minimum contact’ is crossed, the courts in the U.S. assume jurisdiction. However, the twin requirement that the defendant must “purposefully avail” himself of the “privilege of conducting activities with the forum state” at times gives rise to serious problems. The claim of “reasonableness” of exercise

\(^{183}\)(1996)89 F.3d 1257 (6th Cir. July 22, 1996)


\(^{185}\) Id. at 418-19; the Ninth Circuit declined to incorporate an “effects” analysis because a corporation “does not suffer harm in a particular geographic location in the same sense that an individual does.” That court, however, later applied an “effects” analysis in *Panavision International L.P. v. Toeppen* (1998) 141 F.3d 1316 [9th Cir. 1998]
of personal jurisdiction is pitted against the rule of assumption of jurisdiction based on the universality of access of web pages. The US courts balance these claims by a three-prong categorization of all internet activities into

(1) active websites;
(2) websites permitting exchange of information with the host computer; and
(3) passive websites.

The response with respect to the first and the last categories is without much difficulty. The US courts exercise jurisdiction over defendants acting through active websites since this “involves the knowing and repeated transmission of computer files over the internet”. Ordinarily, jurisdiction is not exercised over those who merely supply information through passive websites, without anything more since doing otherwise would be “inconsistent with traditional personal jurisdiction case law . . .”.

The second set of categories on the other hand often creates a high degree of confusion and complications. In these cases, the exercise of jurisdiction is determined by examining the “level of interactivity and commercial nature of the exchange of information that occurs on the Web site”.

In this regard, “a ‘sliding scale test’, measuring the degree of interactivity of the website” is found to be usually decisive.

Cases Finding Personal Jurisdiction—Not Utilizing the Sliding Scale Analysis

In *Panavision International L.P. v. Toeppen*, the Ninth Circuit Court followed an “effects doctrine” analysis in finding jurisdiction over the nonresident

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188 The partly “active” nature of these cases appear only in the allegedly illicit activities of the defendants and not in the nature of the Web sites, which were not reported as interactive. Under a sliding scale examination of the above Web sites the sites likely would have been viewed as passive sites by other courts.

defendant based on his scheme to register the plaintiff’s domain name to extort money from the plaintiff.

In *Superguide Corp. v. Kegan*,190 the United States District Court for the Western District of North Carolina found jurisdiction over a nonresident defendant based on the defendant’s Web site advertisement of products to forum state residents and the court’s assumption that most the those residents had utilized the defendant’s services.

Cases Finding Personal Jurisdiction—Utilizing the Sliding Scale Analysis

In *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*,191 the United States District Court for the Western District of Pennsylvania found jurisdiction over the defendant based on its “conducting of electronic commerce with Pennsylvania residents,” which constituted a “purposeful availment of doing business in Pennsylvania.” In this case the court held that there is a continuum or sliding scale for measuring websites, which fall into one of three general categories: (a) passive, (b) interactive, or (c) integral to defendants’ business. The ‘passive’ website is analogous to an advertisement in Time magazine; it posts information generally available to any viewers, who have no on-site means to respond to the site. Courts ordinarily would not be expected to exercise personal jurisdiction based solely on a passive internet website, because to do so would not be consistent with traditional personal jurisdiction law. An ‘integral’ website is at the other end of the three categories. It is used actively by a defendant to conduct transactions with persons in the forum state, receiving online order and pushing messages directly to specific customers. The middle category, or ‘interactive’ site,

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falls between passive and integral. It allows a forum state viewer to communicate information back to the site.\textsuperscript{192}

In order to make a person subject to personal jurisdiction of a state not of his domicile, not only he must be fit under the ambit of the state's "long-arm" statute, but also the state's jurisdiction must be valid under the Due Process Clause of the Fourteenth Amendment. The Supreme Court set the standard for constitutional exercise of jurisdiction in \textit{International Shoe Co. v. Washington}\textsuperscript{193}. Pursuant to the Due Process Clause, a nonresident defendant may not be sued in a regulating nation unless it has first established sufficient "minimum contacts with the regulating nation such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." In addition, the nonresident's "conduct and connection with the regulating nation must be such that he should reasonably anticipate being hauled into court there." This test relies on courts to decide, according to "traditional notions of fair play and substantial justice," what contacts are sufficient.

Court generally accepts the argument that contacts are sufficient to satisfy due process only in case non-resident "purposefully availed" the benefits of being present in, or doing business in, the regulating nation. According to the plurality of the Supreme Court in \textit{Asahi Metal Industry v. Superior Court}\textsuperscript{194}, a connection sufficient for minimum contacts may arise through an action of the defendant purposefully directed toward the Forum State.

If the minimum contacts test is met, a court may only exercise jurisdiction if it is reasonable to do so. In determining reasonableness, a court must weigh and consider the burden on the defendant to litigate in the regulating nation, the state's interests in the matter, the interest of the plaintiff in obtaining relief, efficiency in resolving the conflict

\textsuperscript{192} Rodney D Ryder, \textit{'Introduction to Internet Law and Policy'} (1st edn, Wadhwa and Company Nagpur 2007) 66

\textsuperscript{193} 326 U.S. 310 (1945)

\textsuperscript{194} 480 U.S. 102 (1987)
in the forum, and the interests of several states in furthering certain fundamental social policies.

In sum, under U.S. law, if it is reasonable to do so, a court in one state will exercise jurisdiction over a party in another state or country whose conduct has substantial effects in the state and whose conduct constitutes sufficient contacts with the state to satisfy due process. Similarly, every U.S. court may exercise jurisdiction by treating the internet contacts and ‘minimum contact’.

3.4 EXTRA TERRITORIAL JURISDICTION: UNITED KINGDOM PERSPECTIVES

The English conflict rules have more or less adhered to the rule of territoriality as the basis of an adjudicative jurisdiction. In England, there are two different set of jurisdiction rules. In most cases jurisdiction is established by the traditional rules though in growing proportion of cases conventional rules are being followed. The rules of international jurisdiction of the EC Member States are now governed by a Community instrument, Regulation 44/2001. This substitutes the Brussels Convention, which after March 1, 2002 ceases to operate between the Parties to that Convention, except in their relations to Denmark. The Regulation is binding in its entirety and directly applicable to the Member States. The Regulation is binding on and applicable to the United Kingdom also as a result of the exercise by the United Kingdom of the “opt-in” option.195

Generally, an offence will only be triable in the jurisdiction in which the offence takes place, unless there is a specific provision to ground jurisdiction, for instance where specific statutes enable the UK to exercise extra-territorial jurisdiction. In the case of R v Smith (Wallace Duncan)196 Lord Chief Justice Woolf observed that an offence must have a "substantial connection with jurisdiction" for courts in England and Wales to have

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196 (No.4) (2004) 3 WLR 229
jurisdiction. It follows that, where a substantial number of the activities constituting a crime take place within England and Wales, the courts of England and Wales have jurisdiction unless it can be argued, on a reasonable view that the conduct ought to be dealt with by the courts of another country.

3.4.1 Personal Jurisdiction in Cyber Space in UK

In England, cases raising the issue of jurisdiction in cyberspace have been limited in number and confined particularly to matters of defamation and cyber crimes. There will be no great difficulty in finding a basis for the assertion of jurisdiction by the English courts in most cases involving defamation via the internet. The publication of the defamatory material within the jurisdiction of a court is a basis for the exercise of jurisdiction under the traditional rules, the Conventions and the Regulation since this constitutes the place where the harmful event occurred.197

UK High Court in the case of Cartier International and Others vs BSkyB and thers198 held that trademark holders may be granted site-blocking injunctions against ISPs, despite the absence of an express provision to that effect in the legislation.

Similarly, in EMI Records Limited vs. British Sky Broadcasting Limited199 High Court has made a court order requiring UK ISPs to block access to three hugely popular peer-to-peer file-sharing web sites based outside the UK. The court order required ISPs to block access to H33T, Fenopy, and KAT, on the ground that each service provider “has actual knowledge of another person using their service to infringe copyright”.

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197 Under the Conventions and the Regulation, the damages are however limited to the injury within that state, unless the defendant is a domicile in that state.
198 (2014) WLR(D) 464
199 (2013) EWHC 379 (Ch)
3.5 EXTRA TERRITORIAL JURISDICTION AND INDIA

The Indian Penal Code, 1860 which deals with criminal offences, propounds the basic jurisdictional principle that Indian courts will have jurisdiction to cover offences committed in India. According to Section 3 of the Act,

"Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India."

Sec. 3 provides for extraterritorial operation of the code, but only if the terms of the section are satisfied. A key ingredient of the provision is contained in the words “any person liable by any Indian law”. This section operates only where an Indian law specifically provides that an act committed outside India may be dealt with under that law in India. Thus, for the applicability of Sec. 3 of IPC, it is essential for a person to be liable under the Act. Similarly, Sec. 4 of the Act is related to extension of Code to extra-territorial offences.

2. Extension of Code to Extra Territorial Offences

“The provisions of this Code apply also to any offence committed by—

(i) any citizen of India in any place without and beyond India;

(ii) any person on any ship or aircraft registered in India wherever it may be.

(iii) any person in any place without and beyond India committing offence targeting a computer resource located in India.”

Procedurally, the jurisdictional principles for crimes are contained in the Code of Criminal Procedure, 1973. However, the application of Cr.P.C. for offences committed outside India is very limited. For better scope and clarity, Sec. 4 and Sec. 188 of the Criminal Procedure Code are extracted herein as under:

200 This sub section has been added vide IT Amendment Act, 2008
4. Trial of offences under the Indian Penal Code and other laws

(a) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(b) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

188. Offence committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

Thus it is apparent from Sec. 4 above that the provisions of Cr.P.C. are applicable where an offence under the IPC or any other law is being investigated, inquired into or tried or otherwise dealt with. The jurisdiction under Sec. 4 is comprehensive to the extent that no valid machinery is set up under any Act for the trial of any particular case, the jurisdiction of the ordinary criminal court cannot be held to have been excluded.201

Sec. 188 only deals with procedure and does not make it a substantive offence.202 It is the procedural counterpart of Sec. 4 of the Indian Penal Code.203

201 Bhim Sen vs. State of UP, AIR 1955 SC 435
202 Narayan Mudlagiri Mahale vs. Emperor, AIR 1935 Bom 437
203 Antony D'silva & Another vs. The King, AIR 1949 Mad 3
The jurisdictional principles of IPC based on territoriality and nationality has been widened by the Information Technology Act, 2000. According to Sec. 1 (2) of the Act-

“It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention there under committed outside India by any person.”

Further section 75 of the IT Act says

“(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.”

The extra territorial operation of the IT Act has been put in place considering the ease with which anybody actually present anywhere in the world can commit a cyber crime having an impact in India.204 In this way legislature in India has been influenced by the effect theory whereby the jurisdiction is determined by examining where the effect of a particular offence is felt. This principle is an extension of the principle propounded in section 182 of Cr.P.C. whereby an offence which is committed by means of telecommunication message can be inquired into or tried by any court within whose local jurisdiction such messages were received.

204 See Ss. 2 (i) (j) (l) of the Information Technology Act, 2000
3.6 PROBLEMS IN DOMESTIC PROSECUTION OF EXTRA TERRITORIAL CONDUCT

In prosecuting any individual for an offence committed over social media a lot of problems may arise which may undermine the ability of an individual to enjoy a fair trial. In particular, it considers: the lack of consistency in domestic conceptions of ‘ne bis in idem’ or ‘double jeopardy’; extradition and mutual assistance frameworks; and the inconsistent application of constitutional protections to persons accused of extraterritorial criminal conduct.

3.6.1 The lack of a consistent transnational principle of ne bis in idem

The principle that a person should not be prosecuted more than once for the same conduct is expressed in the maxim ne bis in idem (‘ne bis’). This principle is also known as double jeopardy. A partial protection against double jeopardy is a Fundamental Right guaranteed under Article 20 (2) of the Constitution of India, which states, "No person shall be prosecuted and punished for the same offence more than once". This provision enshrines the concept of autrefois convict, that no one convicted of an offence can be tried or punished a second time. However it does not extend to autrefois acquit, and so if a person is acquitted of a crime, he can be retried. In India, protection against autrefois acquit is a statutory right, not a fundamental one. Such protection is provided by provisions of the Code of Criminal Procedure rather than by the Constitution.

The principle of double jeopardy has a long history dating back to ancient Greece and Rome. It derives from the Roman law principle ‘nemo debet bis vexari pro una et eadem causa’. Despite this long history, the principle does not necessarily exist at the transnational level. For example, the protection granted by Article 14(7) of the International Covenant on Civil and Political Rights (ICCPR) is limited to multiple

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206 B.K Sharma, Introduction to the Constitution of India (6th edn, PHI Learning Pvt. Ltd. 2011) 46
prosecutions in one state, and not at between states.\textsuperscript{207} This leaves a person accused of an extraterritorial crime, for which more than one state asserts jurisdiction, in a regulatory void. While Article 20 of the Rome Statute of the International Criminal Court also provides some protection against double jeopardy, this protection only applies to persons prosecuted for genocide, crimes against humanity, war crimes, and the crime of aggression.\textsuperscript{208} Therefore, it is generally not relevant to prosecutions of other kinds of transnational crime such as money laundering, migrant smuggling, human trafficking, child sex tourism, cybercrime or other criminal offences.

### 3.6.2 Extradition and Mutual Legal Assistance

**Extradition** is the removal of a person from a requested state to a requesting state for criminal prosecution or punishment. Put differently, to extradite is to surrender, or obtain surrender of, a fugitive from one jurisdiction to another. Extradition procedures are normally determined by reciprocal agreements between countries or by multilateral agreements between groups of countries. The European Union, for example, shares a system of extradition laws. It provides a treaty-based framework that imposes on the participating nations the obligation to enact legislation criminalizing certain conduct related to computer systems, create investigative procedures and ensure their availability to domestic law enforcement authorities to investigate cybercrime offenses, including procedures to obtain electronic evidence in all of its forms and create a regime of broad international cooperation, including assistance in extradition of fugitives sought for crimes identified under the CoE Convention.

\textsuperscript{207} 4 International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 as cited in Danielle Ireland-Piper, Prosecutions of Extraterritorial Criminal Conduct and the Abuse of Rights Doctrine (2013) 9 Utrecht Law Review 4

Offences on social media and extradition

The anonymity made possible by social media is one reason why attacks on other individuals are hard to stop. Another reason has to do with borders. Social media pages are flooded with hate speeches, pornographic materials, false news, defamatory statements etc. When these activities take place from abroad, they are hard to stop for a different, independent reason. Because of the limited power of a state to prosecute an individual of another state in these matters, it appears necessary to consider the extradition laws.

Extradition is the removal of a person from a requested state to a requesting state for criminal prosecution or punishment. Put differently, to extradite is to surrender, or obtain surrender of, a fugitive from one jurisdiction to another.209 Extradition procedures are designed not only to ensure that criminals are returned from one country to another but also to protect the rights of those who are accused of crimes by the requesting country.

The Supreme Court of India in Daya Singh Lahoria v. Union of India210, held that

“A fugitive brought into this country under an Extradition Decree can be tried only for the offences mentioned in the Extradition decree and for no other offences and the criminal courts of India will have no jurisdiction to try such fugitive for any other offence.”

“The law of extradition is a dual law. It is ostensibly a municipal law, yet it is a part of international law also, inasmuch as it governs the relations between two sovereign States over the question of whether or not a given person should be handed over by one sovereign State to another sovereign State. This question is decided by national courts but on the basis of international commitments as well as the rules of international law relating to the subject.”

Despite the existence of a treaty, a State may refuse extradition. In Hans Muller of Nuremberg v Superintendent Presidency Jail211, Cal, the court held that even if there is a


210 AIR 2001 SC 1716

211 1955 AIR 367
requisition and a good cause for extradition, the government is not bound to accede to the request, because S. 3(1) of the Indian Extradition Act, 1903 (based on Fugitive Offenders Act, 1881 of the British Parliament) gives the government discretionary powers.

- **Social Media Crimes - Are they Extraditable**

Convention on Cyber Crime has made almost every kind of cyber crime as extraditable offence. The Convention on Cybercrime, also known as the Budapest Convention on Cybercrime or the Budapest Convention, is the first international treaty seeking to address Internet and computer crime by harmonizing national laws, improving investigative techniques, and increasing cooperation among nations. The Convention and its Explanatory Report was adopted by the Committee of Ministers of the Council of Europe at its 109th Session on 8 November 2001. It was opened for signature in Budapest, on 23 November 2001 and it entered into force on 1 July 2004. As of March 2014, 42 states have ratified the convention; while a further 11 states had signed the convention but not ratified it. The Convention on Cyber Crime mainly deals with copyright infringement, computer-related fraud, network security violations and child pornography. The main objective of the Convention on Cyber Crime is to pursue a common criminal policy against cybercrime through international co-operation.

India is still not a signatory to the Cyber Crime Convention and the bilateral extradition treaties, which it has signed with around fifty countries so far, do not mention ‘cyber crime’ as extraditable offences. But it may not deter the Indian government from granting extradition, as it was held in *Rambabu Saxena v State*[^155], that “if the treaty does not enlist a particular offence for which extradition was sought, but authorizes the Indian government to grant extradition for some additional offences by inserting a general clause to this effect, extradition may still be granted.”

Apart from this, the procedures of ‘Letter Regoratory’ (section 166A and section 166B of Cr.P.C.) that enable investigation of crime in a foreign country are not easy and are hopelessly out of tune with the scope of computer crime and swiftness with which the evidence can be destroyed.

[^155]: 1950 AIR 155
There is necessity that India should sign mutual legal assistance treaties (MLTs) with more number of countries till necessary amendments are made in the Cr. P.C. Currently India has MLTs signed with very few countries to attain legal compatibility. These things are bound to affect the extra-territoriality application of the Information Technology Act, 2000.

3.7 CONCLUSIONS

This is undoubtedly clear that the traditional notions of extra territorial jurisdiction have failed with the rise of internet. The transnational character of the internet has disregarded the set principle and calls for some viable alternative. It is also clear that national territory-based regulations cannot effectively control an international, fluid network of computers. If nations want to protect their citizens from cyber-based harm, they must link with the rest of the global community, creating an international structure large enough to contain the Web. There have been few occasions to initiate such structure but most of the countries have chosen not to be a part of it. There is a need that all the nations should come forward putting their reservations aside and enter into a common agreement to find a solution to extra territorial jurisdictional issues.

There are two propositions that can be considered for determining jurisdiction in the regulation of social media offences. Either, we declare social media platforms as Common Heritage of Mankind (CHM) and thereby leave it to the nations to regulate social media in accordance with ‘universal principle’ of jurisdiction or we move forward to draft an international treaty for determining jurisdiction. Viability of both of these propositions is discussed below:

CHM has been defined as a principle that extends management rights of an area to everyone, while giving ownership to no-one. The global community regulates the area using treaties and norms of international law, for the benefit of all parties. In addition to the framework established by the concept of CHM, the "universality principle" provides a model for the type of treaty that could be established internationally to regulate the Internet. The universality principle allows any state to punish individuals for committing
offences of international concern even if the state has no jurisdictional links to the area the crime took place or the persons involved. Currently, it has limited application to international wrongs such as crimes against peace, crimes against humanity, and war crimes. Applying the universality principle to the social media and agreeing on a global standard for a minimum level of regulation would give all States the ability to regulate international transactions. An international committee could be created with the sole purpose of implementing universal standards created by the Treaty designed to bring order to and create jurisdictional rules for the social media.

However, approach of declaring social media as CHM suffers from serious failure. Drafting a single set of social media regulation of determining jurisdiction is likely too ambitious, and might even prove more problematic than helpful. If, for whatever reason, the CHM regulations turn out to be faulty, the international community would be essentially locked into those poor standards. Further, the solution would take an incredible amount of time to implement and modify because it would necessarily require the participation and ratification of every nation on earth. By the time the convention is able to draft regulations on which all nations can agree, Internet use may have evolved to the point where the regulations are obsolete before they are even ratified.

It can be argued that despite the possible failure of CHM principle, the scholars may also formulate similar other principles-like-Common Concerns of Freedom and Liberty Principle (CCFLP) - on the suggestive lines of CHM principle- so that a common agreement on the protection of basic freedoms and liberties may be ensured for the coming times.

Secondly, the idea of having an international treaty for determining jurisdiction in ‘social media offences’ or more widely ‘cyber crimes,’ is comparatively more viable. Louise is more vocal on this point and the propositions set out below are largely based on his views.213

213 Louise Hamilton, Regulation of the Internet: An Impossible Task? (2010) 4 Galway Student L. Rev. 33; Louise has also has borrowed his views from the proposal made by Meehan, who very strongly advocated for enactment of an international treaty in determining jurisdiction.
A proposal put forward by Meehan\textsuperscript{214} for determining jurisdiction involves establishing a global standard for determining jurisdiction in Internet cases. Similar to the CHM solution, the global standardization approach to Internet jurisdiction requires an international convention or treaty. It would, however, stop short of declaring the Internet CHM and formulating substantive Internet regulations. Specifically, proponents of global standardization desire the international adoption of a single test for determining Internet jurisdiction. An international convention that is limited to jurisdictional issues is far less ambitious and time consuming than declaring the Internet CHM.

It can be concluded that extra territorial jurisdiction in social media offences can be ascertained if policymakers appreciate the global nature of internet. The attempts of the Courts to resolve online jurisdictional issues illustrate that local law cannot effectively regulate an international system. The only way to successfully regulate this new technology is to create a system that is as global and integrated as the Web. The growth of the Internet will demonstrate that traditional notions of jurisdiction will become increasingly ineffective in regulating its development and an international standard is the only way forward. As long as nations hold on to antiquated views of territorial sovereignty as supreme for jurisdiction over legal matters, the Internet will continue to be a complicated array of inconsistent regulations and criminal safe havens.