Jurisdiction Issues in Cyber Space

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The types of disputes in Cyber Space

- Domain Name Disputes
- Copyright Disputes
- Patent Disputes on web applications
- Crimes in Cyber Space..
  - hacking, Virus, denial of service, e-mail/sms spoofing,cyberjacking
  - privacy invasions through adware/spyware,defamation
  - Real space crimes using cyber space
    - Nigerian frauds, Lottery Frauds, Investment frauds etc
- Data Protection Disputes

The Challenges

- The properties involved are
  - neither movable nor immovable
- Persons involved are often Netizens and their mapping to physical personalities is only through IP address or other technical records
- Most transactions involve citizens of different countries with different legal cultures
- Many transactions involve multiple country resources in the form of servers, ISPs, routers etc and it may not be possible to establish any offence without exhaustive investigation
- Many offences are generated through malfunction of software or exploitation of software bugs by third parties.

The Challenges..2

- Can we apply International Physical Space Law to Cyber Space?
  - Is this law appropriate for Virtual properties and Virtual Persons?
- Can we apply the law only in cases where we can identify the physical entity who is either the victim or the offender and forget the others?
  - Will it become a selective enforcement? ..discriminatory? ..encourage criminals to bypass the law?

The Challenges..3

- Does a Netizen have a Secondlife?
    - Is he a Citizen of the Cyber World?
  - How do we interpret the life at secondlife.com?
    - When there is a reported theft of virtual furniture from a virtual hotel?
    - When there is a reported sale of illegally acquired virtual land to a virtual person/s?
  - Should the Dispute be confined to the Cyber Space or Extended to real life Courts?
    - Who should exercise jurisdiction on resolving disputes?
      - Cyber Space Courts? Real Life Courts? Which Country? State?

Basic Principles

- International law limits a country's authority to exercise jurisdiction in cases that involve interests or activities of Non Residents

Three Types

- Jurisdiction to Prescribe
  - Legal Jurisdiction
- Jurisdiction to Adjudicate
  - Judicial Jurisdiction
- Jurisdiction to Enforce
  - Enforcement Jurisdiction

Jurisdiction to Prescribe

- Jurisdiction to prescribe exists with respect to
  - Conduct that wholly or in substantial part **takes place within the territory**
  - Conduct outside its territory that has or is **intended to have substantial effect** within its territory
  - The activities, interests, status or relations of **its nationals** outside as well as within its territory
  - Certain conduct outside its territory by persons who are not its nationals that is directed **against the security** of the country or against a limited class of other national interests

Jurisdiction to adjudicate

- Tribunals/Courts of a given country may resolve a dispute in respect to a person or thing where the country has a jurisdiction to prescribe the law that is sought to be enforced
  - There must be reasonable links between the defendant and the forum state in terms of substantial, direct and foreseeable effect within the country from his conduct

Jurisdiction to Enforce

- A Country may employ judicial and non judicial measures to induce or compel compliance or punish non compliance with its laws or regulations provided it has jurisdiction to prescribe.
- A country may employ enforcement measures against a person located outside its territory if
  - The person is given notice of the claims or charges against him that are reasonable in circumstances
  - Person is given an opportunity to be heard in advance of enforcement and
  - Where enforcement is through courts if the country has jurisdiction to adjudicate.

Typical Long Arm Statute ..in US

- A court may exercise personal jurisdiction over a person, who acts directly or by an agent,
  - as to a claim for relief arising from the person's causing civil wrongs due to negligence (tortious injury) in the state by an act or omission out side the state
  - if he
    - regularly does or solicits business,
    - engages in any other persistent course of conduct, or
    - derives substantial revenue from goods used or consumed or services rendered, in the State

Personal Jurisdiction in US

- Stated exercise jurisdiction over non residents
  - If the long arm statute permits personal jurisdiction
  - Must meet constitutional due process
    - Shaffer v heitner, 433 US 186 (1977)
      - Depends on the relationship among the defendant, the forum and the litigation
    - Burger king Corp v rudzewicz, 471 US 462 1985
      - Physical presence within the forum is not required ..instead the plaintiff must show that the defendant has purposefully directed his activities towards the residents of the forum state

Specific Jurisdiction-Due Process

- When a plaintiff's claim arises out of the defendant's contact with the forum, the Court is said to exercise "Specific Jurisdiction".
  - Due Process requires
    - Sufficient minimum contacts within the forum
    - Court should feel satisfied that excercising jurisdiction is within the principles of fair play and substantial justice.

Jurisdiction in EU

- Based on statute or regulation instead of constitutional due process applied in case law as in US
  - Brussels's convention is the controlling document for jurisdictional issues within EU
    - A person domiciled in an E U member may be sued in that country
    - A person may be sued in the place of performance of the obligation in question
    - In tort matters, a person may be sued where the event casusing harm occurred
    - Consumer may be sued only in the consumer's country of domicile while the consumer may elect to bring an action either in his domicile or the other party's domicile so long as the consumer was subject to a specific solicitation or advertising in the consumer's domicile.
    - Since EU jurisdiction is not limited by constitutional due process, Brussels Convention does not require "minimum contacts".

Effects Test in US

- Calder V Jones 465 U S 783 (1983) Calder
  - Florida residents who had essentially no contacts with California
    - wrote and edited an article in the National Enquirer
      - which defamed Jones, a well known movie actress residing in California
  - Enquirer had greater circulation in California than in any other state and the material in the article was based on California sources….

Effects Test in US

- Calder V Jones 465 U S 783 (1983) Calder
  - Supreme Court found Jurisdiction stating
    - California was the focal point both of the story and the harm suffered

Zippo Sliding Scale Test

- Zippo Mfg Co v Zippo Dot Com. Inc (1997)
  - First analytical framework for testing specific personal jurisdiction
    - Websites belong to three categories Passive, Interactive and Integral part to the defendant's business.
    - Jurisdiction depends on the extent of interactivity

Zippo Case

- Plaintiff Zippo Manufacturing Company
  - From Pensylvania, manufacturing lighters, holds trademark "Zippo" brought a trademark infringement suit against the defendant, Zippo Dot Com, Inc.
  - Defendant was a Californian company.. Did not have any office in Pensylvania..contact limited to telephone communication
  - Maintained website hosted on a California server..offered services on newsgroup messages…more than 3000 Pensylvanians used the services of Zippo dot com.

Zippo Case..2

- The Pensylvanian Court said..
  - “If dot com had not wanted to be amenable to jurisdiction in Pennsylvania, the solution would have been simple-it could have chosen not to sell its services to Pensylvania residents.
  - The likelyhood that personal jurisdiction can be constitutionally excercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the forum residents.
    - Purposeful availment of the forum State
    - Level of interactivity and commercial nature of exchange of information
      - Pensylvanian court chose to exercise jurisdiction

Zippo Case..3

- The Court said
  - this is not an Internet advertising case ..Dot Com has not just posted information on a Web site that is accessible to Pennsylvania residents who are connected to the Internet.
  - This is not even an interactivity case. Dot Com has done more than create an interactive Web site through which it exchanges information with Pennsylvania residents in hopes of using that information for commercial gain later
  - We are not being asked to determine whether Dot Com's Web site alone constitutes the purposeful availment of doing business in Pennsylvania. This is a "doing business over the Internet"

Minimum Contact Principle

- Cybersell, Inc v Cyber Sell Inc, 130 F 3d 414 (9^{th} Cir 1997)
  - Plaintiff was an Arizona corporation that advertised its commercial services over the Internet
  - Defendant Cybersell FL was a corporation in Florida offering similar services
  - Defendant did not have offices, did not advertise, had no clients in Arizona
  - Plaintiff informed the defendant about the existence of their registered service mark and filed a suit in Arizona.
  - District court dismissed the case for lack of personal jurisdiction and Court of Appeals affirmed the decision.

Minimum Contact Principle..2

- Cybersell, Inc v Cyber Sell Inc, 130 F 3d 414 (9th Cir 1997)
  - Court applied a three part test of minimum contact test
    - Defendant had not purposefully availed itself of the privilege of conducting business in the forum state
    - No Arizon except for the plaintiff accessed the defendant's website
    - Court classified the website in Zippo Sliding scale as "Essentially passive" and it did not "deliberately" direct its efforts towards Arizona residents.
      - Declined to exercise jurisdiction

Dow Jones Vs Gutnick (December 2002)

- Australian High Court, in *Dow Jones & Co. v. Gutnick*,
  - held that an Australian citizen could maintain a defamation suit in a local Australian court for allegedly libelous statements published in a website.
  - Jurisdiction was proper in the place in which the article was downloaded and read and the harm caused, not where the server is located or where the publisher's principal place of business is located.
  - The site was also a subscription site, so the "purposeful availment" argument -- that is, that Dow Jones purposefully availed itself of doing business in Australia -- also could apply.

Adobe Vs Elcomsoft (Dmitry Sklyrov) (2002)

- Contributory Infringement of Copyright in US Laws
- Infringed by a Russian Firm
  - Legal Jurisdiction Declared
  - Judicial Jurisdiction activated when Enforcement Jurisdiction was available

Elcomsoft Argument..

- The Internet belongs to no country alone, but to all countries collectively. It is in a jurisdictional sense like the oceans or the air and space.
- Because it is an omnipresent shared resource, it is, and must be, by nature extraterritorrial. While transactions occurring solely on the Internet may have an impact on nations and/or their citizens, this fact does not and should not automatically imbue the effected country with jurisdiction over the actions of persons transacting on the Internet.

Forrest v. Verizon Communications, Inc., **(2002).**

- Forum Choice
  - Plaintiff filed a class action suit against Verizon in the District of Columbia Superior Court alleging breach of contract, negligent misrepresentation and violation of Virginia's consumer protection laws.
  - Verizon moved to dismiss based on the forum selection clause in the internet access agreement specifying Fairfax County, Virginia.
  - The trial court granted the motion and dismissed the case. The court of appeals affirmed the lower court's decision.
  - The court held that the clause was reasonably communicated to the plaintiff and that enforcement of the clause was not unreasonable. The court noted that although Virginia law does not provide for the same class action remedies, it does provide other avenues to the individual plaintiffs such as state small claims court

Metro Goldwyn Meyer Vs Grokster (Sharmaan Networks Ltd)- January 2003

- Court holds that both Sharman Network Ltd. ("Sharman") a **company based in Australia** which distributes software that **enables individuals to utilize** the Kazaa peer-to-peer file sharing network, and LEF Interactive PTY Ltd. ("LEF"), which manages Sharman's operations, are subject to personal jurisdiction in the California federal courts in a copyright infringement lawsuit arising out of Sharman's distribution of its file sharing software to California residents, and their subsequent use of such software.
- The court reached this conclusion notwithstanding the fact that Sharman's activities all occur outside California, where it operates a web site from which California residents download the Kazaa software.

Yahoo-French Government (2001-2006)

- Is Yahoo subject to the jurisdiction of
  - French Law/French Courts ?
  - If so, Are there any limitations?
    - Does French Jurisdiction extend to Yahoo if its action hurts the sentiments of the French?

Yahoo and Nazi Memorabilia

- On Yahoo.com's auction site, more than 1,200 Nazi-related items -- everything from Nazi flags and uniforms to belt buckles and medals -- are offered to cyberspace consumers under the shield of U.S. notions of free expression.
- Yahoo's France-based subsidiary, Yahoo France, did not host auctions for Nazi memorabilia.
  - organizations sought to stop the English-language auction sales from appearing in France.

Yahoo-French Government (2001-2006)..2

- French Government Rules that Yahoo cannot auction Nazi Memorabilia through its site
  - Ruled that Yahoo must put a three-part system in place that includes
    - filtering by IP address,
    - the blocking of ten keywords, and
    - self-identification of geographic location.
    - Three months to put the system in place, after which time the company would be subject to a fine of 100,000 francs ($13,000) a day if the system has not been implemented.
  - Yahoo accepts for Yahoo-France site
  - Rejects for Yahoo-US site
  - Also Refuses to block access to French people

Yahoo-French Government (2001-2006)..3

- U.S. District Court for the Northern District of California in San Jose
  - Upholds Yahoo's Rights not to block the site as it would amount to curbing Freedom of Speech
- Appeal Filed at Ninth U.S. Circuit Court of Appeals
  - judgment delivered on 26th August 2004, Yahoo lost. A Six bench Court, rejected Yahoo's arguments, for two different reasons.
  - Three judges ruled that California courts have no jurisdiction over the French organizations.
  - Another three judges stated that the case isn't "ripe," meaning Yahoo hasn't suffered sufficient hardship stemming from the French court's decision.

Yahoo-French Government (2001-2006)..4

- Yahoo then asked the appeals court to again hear the case with 11 judges.
- That appeal was argued in March 2005, and the court's decision was handed down on 12th January 2006.
- The Court dismissed Yahoo's contention.
  - These developments, therefore upheld the right of French Government to ensure blockage of the objectionable content from the website.

Howard v. Missouri Bone and Joint Center, Inc.,

- **No. 05-476, — N.E.2d —-, 2007 WL 1217855 (Ill.App. 5th Dist. April 24, 2007)**
- Zippo Verdict Overturned

Howard Case

- Plaintiff Howard filed suit in Illinois against defendant Missouri Bone and Joint Center, alleging personal injury arising from “athletic training services” that defendant provided to plaintiff at its Missouri facility.
- Defendant moved to dismiss for lack of personal **jurisdiction**, arguing that its contacts with Illinois were insufficient:
  - it had no facilities and
  - did not transact business there, and
  - owned no property located in the state.
  - Further, defendant argued it was not registered to do business in Illinois, and all its activities took place at its Missouri location.

Howard Case..2

- Responding to the motion to dismiss, plaintiff argued that
  - the court could exercise general **jurisdiction** over defendant due to its “continuous and systematic general business contacts” in Illinois.
  - Relying on the **Zippo** sliding scale test [***Zippo** Mfg. Co. v. **Zippo** Dot Com, Inc.*, 952 F.Supp. 1119 (W.D. Pa. 1997)], plaintiff claimed these contacts arose through defendant’s website which allowed its visitors to make appointments, fill out surveys, and ask questions.

Howard Case..3

- The court initially denied the motion to dismiss, and the case proceeded to trial.
- After the court awarded a substantial judgment to the plaintiff, the defendant moved for reconsideration of the question of personal **jurisdiction**.
- This time the court found that it lacked personal **jurisdiction**, and it vacated the judgment.
- Plaintiff sought review with the Appellate Court of Illinois. On appeal, the court affirmed.

Howard Case..4

- The appellate court rejected the ***Zippo*** test:
- Instead, we find that the web page's level of interactivity is irrelevant.
- In reality, an interactive website is similar to telephone or mail communications.
- A passive website is much the same as advertising on the radio or in a magazine.
- An ad on the Internet is no different than an ad in any other medium that provides a telephone number or other means to contact a potential defendant.
- It is mere advertisement or solicitation of business.

Howard Case..5

- Illinois courts have long held that a mere advertisement or solicitation is not enough to sustain personal **jurisdiction** in Illinois.
- In this case, the court held that the defendant had done nothing more that advertise and solicit business in Illinois.
- That conduct, in and of itself, was insufficient to give rise to personal **jurisdiction**.
- The court compared the facts of the case to two previous Illinois appellate cases, *Pilipauskas v. Yakel*, 258 Ill.App.3d 47 (1994), and *Excel Energy Co. v. Pittman*, 239 Ill.App.3d 160 (1992) to support its holding.
- The nature and quality of the acts occurring in Illlinois were insubstantial.
- The plaintiff had chosen to contact the defendant, and had chosen to travel to Missouri for treatment.
- **Accordingly, the court held that exercising jurisdiction over the defendant “would not be fair, just, or reasonable.”**

GDPR Case Against Google (CNIL Vs Google)

- Google Search Engine received a “Right to Forget” request from a data subject.
  - Google removed the information from search data presented in France
  - The French Supervisory authorities demanded that it be removed from search results across the Globe.
    - EU Court held
      - ***…There is no obligation under EU law for a search engine operator to extend the rule beyond the EU States***

GDPR Case Against Google (CNIL Vs Google)

- By decision of 21 May 2015, the President of the CNIL served formal notice on Google that,
  - when granting a request from a natural person for links to web pages to be removed from the list of results displayed following a search conducted on the basis of that person’s name, it must apply that removal to all its search engine’s domain name extensions.
- Google refused to comply with that formal notice,
  - confining itself to removing the links in question from only the results displayed following searches conducted from the domain names corresponding to the versions of its search engine in the Member States.

CNIL Vs Google (GDPR)

- The CNIL also regarded as insufficient Google's further 'geo-blocking' proposal,
  - whereby internet users would be prevented from accessing the results at issue from an IP (Internet Protocol) address deemed to be located in the State of residence of a data subject after conducting a search on the basis of that data subject's name,
    - no matter which version of the search engine they used.
      - CNIL fined Euro 100000 after adjduication

CNIL Vs Google

- where a search engine operator grants a request for de-referencing pursuant to those provisions,
  - that operator is not required to carry out that de-referencing on all versions of its search engine,
  - but on the versions of that search engine corresponding to all the Member States, using, where necessary, measures which, while meeting the legal requirements, e
  - ffectively prevent or, at the very least, seriously discourage an internet user conducting a search from one of the Member States on the basis of a data subject's name from gaining access, via the list of results displayed following that search, to the links which are the subject of that request.

The Impact of the Confusion

E-Business under Eternal Threat

The Indian Scenario

- Civil Procedure Code
  - Suit for relief or compensation for wrong to an immovable property held by the defendant where the relief sought can be obtained entirely though his personal obedience can be filed
    - Where the property is situated or works
    - Where the defendant resides or carries on business
      - If the immovable property is situated in multiple jurisdiction, suit may be filed in either place

The Indian Scenario..2

- In case of compensation for wrong to a person or to movables
  - At the option of the plaintiff any of the following is applicable.
    - Where the person resides, carries on business or works at the time the suit is instituted
    - Where the cause of action wholly or partly arises
    - Place of principle office in case of a Company if it is not carrying on business in the place where the cause of action arose.

The Indian Scenario..3

- According to Supreme Court decisions
  - The making of a contract is part of the cause of action and hence suit can be filed in the place where the contract was made.
  - For determining where the contract was made, where the acceptance was given is the determining factor.
  - Performance of the contract is also part of the cause of action and hence a case can be filed where the contract ought to have been performed
  - Place where the repudiation was received or money payment ought to have been received and not received are also within the jurisdiction.

Indian Scenario..4

- In Copyright Act
  - Notwithstanding anything contained in Civil Procedure Code
    - Proceedings can be instituted in a place where the plaintiff is situated
- In Trademark disputes
  - The place where the infringement was made through sales
- In Contract Act
  - Specification of jurisdiction permissible
    - Supreme Court has however ruled that this cannot be used as a means of oppression.

Indian Scenario..5

- Jurisdiction of Courts may be determined by
  - Pecuniary Jurisdiction
    - Based on the value of the dispute
  - Territorial Jurisdiction
    - Based on the location
  - Subject matter Jurisdiction
    - Based on the nature of dispute

The Difficulties in Cyber Transactions

- Property may be neither immovable nor movable
  - Eg: Domain Name, Web space
- The damage may be to a Virtual entity and not a physical entity
  - eg: Defamation of a pseudo name or an e-mail identity
- Cause of action is not defined
  - Eg: Copyright violation claim when the infringed material is not visible to human beings (Euregio.net Vs Women.com)
    - (http://www.naavi.org/cl_editorial/edit_01jul_01_1.html)

The Indian Scenario-Cyber transactions

- Section 75 of ITA-2000
  - **Act to apply for offence or contraventions committed outside India**
  - (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

Indian Scenario..2

- ITA-2000 as well as other UNCITRAL based laws define attribution and the place of despatch and receipt of communication

Data Requests

- Every Internet Transaction is an exchange of "Data Requests"
- Every Internet Contract has an offer message and an acceptance message
- Since acceptance freezes a contract and the place of acceptance freezes the place of a contract
  - This can be used to determine the choice of forum automatically as the place where the contract is concluded

South Africa ECT-2002

- **48.** The protection provided to consumers under this Chapter, applies irrespective of the legal system applicable to the agreement in question.
  - May override contractual clauses

Jurisdiction of Courts under ECT-2002

- A court in the Republic trying an offence in terms of this Act has jurisdiction where—
- *(a)* the offence has been committed in the Republic;
- *(b)* any act of preparation towards the offence or any part of the offence has been committed in the Republic, or where any result of the offence has had an effect in the Republic;
- *(c)* the offence has been committed by a South African citizen or a person with permanent residence in the Republic or by a person carrying on business in the Republic; or
- *(d)* the offence has been committed in or on board of any ship or aircraft registered in the Republic or engaged in a voyage to or from the Republic at the time that the offence was committed.

Enforcement Problems

- The Universal Legal/judicial Jurisdiction assumed under ITA-2000 or ECT-2002 needs support in Enforcement Jurisdiction
  - Depends on International Treaties
    - Treaties basically follow the principle of “Common Offence”

Principles of Extradition Law..1

- **1 Influence of nationality on extradition**
  - Many States apply the principle of not extraditing their own nationals.
  - In such cases, a State may undertake to place its nationals on trial under the conditions laid down in its own laws, in application of the principle 'Aut tradere, aut judicare' (either extradite or judge).

Principles of Extradition Law..2

- **2 Nature of the extraditable offence**
  - Political offences may not give rise to extradition.
    - It is up to the requested country to determine whether a given offence is political.
    - In the case of more complex offences (offences which are ordinary law crimes by nature but inspired by political motives), the current tendency is to restrict the definition of a political offence and to allow extradition
    - example, the European Convention on the suppression of terrorism, which includes a list of offences that, for extradition purposes, are not to be considered as political offences
    - . In addition, whereas earlier treaties contained lists of extraditable offences, more recent treaties define extraditable offences in general terms, according to their gravity and to the penalty which may be incurred (for example, minimum duration of a prison sentence).

Principles of Extradition Law..3

- **3 'Double criminality'**
  - Extraditable offences are only those which are punishable offences in the requesting State, and would have been punishable in the requested State if committed there.

Principles of Extradition Law..4

- **4 'Non bis in idem'**
  - In application of this principle, extradition must be refused if the individual whose extradition is requested has already been tried for the same offence.
    - However, if the individual has been pardoned, he may - under the terms of some recent extradition treaties - be tried again.

Principles of Extradition Law..5

- **3.5 Specificity**
  - The person whose extradition has been requested may only be prosecuted, tried or detained for those offences which provided grounds for extradition or those committed subsequent to extradition.
  - If an individual has been extradited in application of a judgment, only the penalty imposed by the decision for which extradition was granted may be enforced.

Principles of Extradition Law..6

- **6 Capital punishment**
  - If the requested State does not apply the death penalty to its own nationals who are to stand trial, or if it does not carry out the death penalty even though it is one of the penalties that may be applicable, the requested State may refuse extradition if the person whose extradition is requested is likely to be sentenced to death in the requesting State. However, extradition may be granted if the requesting State provides sufficient assurance that the death penalty will not be carried out.

Hague Convention

- The issue of jurisdiction in international private law currently is addressed by the Hague Convention on Jurisdiction

Hague Convention..1

- 1. Countries which sign the convention agree to follow a set of rules regarding jurisdiction for cross-border litigation. Nearly all civil and commercial litigation is included. .
  2 .So long as these jurisdiction rules are followed, every country agrees to enforce nearly all of the member country judgments and injunctive orders, subject only to a narrow exception for judgments that are "manifestly incompatible with public policy," or to specific treaty exceptions, such as the one for certain antitrust claims.

Hague Convention..2

- 3. A judgment in one country is enforced in all Hague convention member countries, even if the country has no connection to a particular dispute.
  4. There are no requirements to harmonize national laws on any topic, except for jurisdiction rules, and save the narrow Article 28(f) public policy exception, there are no restrictions on the types of national laws that to be enforced.

Hague Convention..3

- 5. All "business to business" choice of forum contracts are enforced under the convention. This is true even for non-negotiated mass-market contracts. Under the most recent drafts of the convention, many consumer transactions, such as the purchase of a work related airline ticket from a web site, the sale of software to a school or the sale of a book to a library, is defined as a business to business transaction, which means that vendors of goods or services or publishers can eliminate the right to sue or be sued in the country where a person lives.

Hague Convention Countries

- Argentina, **Australia**, Austria, Belgium, Bulgaria, **Canada**, Chile, **China**, Croatia, Cyprus, Czech Republic,
- Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, **France**, **Germany**, Greece,
- Hungary, Ireland, **Israel**, Italy, **Japan**, **Republic of Korea**, Latvia, Luxembourg, Malta, Mexico, Monaco, Morocco, **Netherlands**, Norway,
- Peru, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Surinam, Sweden, **Switzerland**, Turkey,
- **United Kingdom** of Great Britain and Northern Ireland, **United States of America**, Uruguay and Venezuela.

Dangers of Hague Convention

- The Worst Laws of one State become universally applicable
  - Chinese norms of journalism will be applicable to other country citizens if they are both in Hague convention
  - Harmonization of Laws by persuation is better than harmonization of enforcement procedures as envisaged by Hague Convention

Cyber Crime Treaties

- EU
- US-EU
- India-US
    - Etc

The Silver Lining

- The arguments in Elcomsoft case
  - Highlights the need to treat Cyber Space as a different jurisdictional area with its own rules and regulations
  - If these are drafted by the Netizens and for the Netizens the regulations are likely to be acceptable by the majority of Netizens

The Silver Lining..2

- The acceptance of Alternate Forms of Dispute Resolution’
  - Through Arbitration
    - May also be an expression of Forum Choice with representation from different countries

Jurisdiction in Arbitration

- Arbitration contracts define
  - Seat of Arbitration
  - Applicable Law
- Enforcement in India is subject to CPC
  - The Supreme Court has held that enforcement of an Arbitral Award may be filed in any jurisdiction in the country, for execution, where such decree is capable of being executed and there is no requirement of obtaining a transfer of the decree from the court which has jurisdiction over the arbitration proceedings.

If the Specific Choice of Forum by the parties to a contract is given overriding recognition,

then the disputes will be less.

The Utopian Model

- Cyber Space as an independent jurisdiction
  - Jurisdiction over Cyber Properties and Netizens
  - Determine and enforce Rights and Liabilities of Netizens to other Netizens
  - Enforcement by way of “banishing From Cyber Space” or Confiscation and auction of Cyber Properties such as domain names, content on websites etc
  - Conflicts with Meta Society to be treated as an Inter Jurisdictional dispute between Cyber Space authorities and the corresponding geographic authority.
  - Controls to be set up on movement of assets from Cyber Space to Meta Space and Vice Versa

Thank You

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