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THE ISSUE OF INTERNET JURISDICTION IN COMMON LAW AND EU REGULATIONS

In the evolving landscape of internet jurisdiction and online speech regulation, courts in both the United States and Europe have developed distinct legal approaches. In the U.S., the First Amendment offers near-absolute protection for freedom of speech, restricting governmental regulation even in controversial contexts. Conversely, under Article 10 of the European Convention on Human Rights, freedom of expression may be limited to protect other constitutional values like public order or reputation. A landmark case in U.S. internet law, Zippo Manufacturing Co. v. Zippo Dot Com, Inc. (1997), introduced a «sliding scale» test for personal jurisdiction based on a website's interactivity, influencing the adoption of targeting-based jurisdiction models. In Europe, the CJEU ruling in eDate Advertising and Martinez (2011) clarified that plaintiffs alleging personality rights violations online may sue in the country of the defendant, the location of harm, or where their «center of interests» lies. Meanwhile, in Canada, the Supreme Court in Google Inc. v. Equustek Solutions Inc. (2017) upheld a global de-indexing order against Google, even though it was not a direct party to the infringement, illustrating the increasing pressure on intermediaries to assist in enforcing court judgments. These decisions reflect a broader legal struggle: reconciling state sovereignty and legal pluralism with the borderless nature of the internet.

Keywords: *Jurisdiction, Internet Law, International Law, precedents Reno v. ACLU and NetChoice v. Paxton, Moody v. NetChoice.*

У мінливому середовищі інтернет-юрисдикції та регулювання онлайн-висловлювань суди як у США, так і в Європі розробили різні правові підходи. У США Перша поправка забезпечує майже абсолютний захист свободи слова, обмежуючи державне регулювання навіть у суперечливих ситуаціях. Навпаки, згідно зі статтею 10 Європейської конвенції з прав людини, свобода вираження поглядів може бути обмежена з метою захисту інших конституційних цінностей, таких як громадський порядок або репутація. У знаковій справі в галузі інтернет-права США, Zippo Manufacturing Co. проти Zippo Dot Com, Inc. (1997), було запроваджено тест «змінної шкали» для особистої юрисдикції на основі інтерактивності вебсайту, що вплинуло на прийняття моделей юрисдикції на основі таргетингу. В Європі рішення Європейського суду у справі eDate Advertising and Martinez (2011) уточнило, що позивачі, які заявляють про порушення особистих прав в Інтернеті, можуть подавати позови в країні відповідача, за місцем заподіяння шкоди або за місцем розташування їхнього «центру інтересів». Тим часом у Канаді Верховний суд у справі Google Inc. проти

Equustek Solutions Inc. (2017) підтримав глобальний наказ про деіндексацію проти Google, незважаючи на те, що компанія не була безпосередньо причетна до порушення, що ілюструє зростаючий тиск на посередників з метою сприяння виконанню судових рішень. Ці рішення відображають більш широку юридичну боротьбу: узгодження державного суверенітету та правового плюралізму з безмежним характером Інтернету.

Ключові слова: *юрисдикція, інтернет-право, міжнародне право, прецеденти Reno проти ACLU та NetChoice проти Paxton, Moody проти NetChoice.*

The Internet, since its inception, has posed a persistent problem for international law, as there are no uniform acts concerning its jurisdiction. Jurisprudence requires interpretation to find a point of support, but the judgments that are issued only complicate the whole matter. In the following analysis, the implications of precedents in the US and Canada, based on landmark cases, are discussed: the first Reno v. ACLU, 521 U.S. 844 (1997), referred to as Reno II of the 1990s, i.e. the beginning of the Internet, and the second famous case NetChoice v. Paxton and Moody v. NetChoice, concerning the regulation of the Internet in 2023. The first case established a fundamental precedent concerning online publications and is a valuable starting point for discussions on the status and future of international private law of the Internet as a supranational system. Precedents NetChoice v. Paxton and Moody v. NetChoice concern the constitutionality of state laws in Texas and Florida that regulate the activities of large internet platforms in the field of content moderation, i.e.freedom of speech on the internet. These issues are crucial for the future of shaping Internet jurisdiction and law in countries regulating digital platforms, including the scope of protection of the First Amendment to the U.S. Constitution concerning private companies.

The Internet is an international system, the U.S. Supreme Court said in Reno-2, and for that reason, it should not be restricted by national law. It is still problematic that content can be created in one country, hosted in another, and available globally. Different countries may have different regulations regarding, e.g. freedom of speech, defamation, pornography, hate speech, etc. A user who publishes content legally in country A can be sued for its publication in country B — e.g. under the «place of harm» principle.

Introduction to the problem. In 1996, the United States Congress passed the Communications Decency Act (CDA) as part of the Telecommunications Act of 1996. The act was intended to regulate pornographic and «obscene» materials on the Internet. Specifically, It was made a crime to knowingly transmit «obscene or indecent» messages to minors or to make such content available to minors in a way that was «patently offensive» by social norms.

The law raised serious constitutional concerns because it was unclear what constituted «indecent» or «patently offensive» in a global medium. How could the law protect children without violating adults' rights to information?

Shortly after the law was passed, it was challenged by the ACLU and a coalition of activists, internet service providers, and publishers, who argued strongly that the CDA was overly broad and therefore violated First Amendment protections for free speech.

The 1997 case of Reno v. ACLU. In June 1997, the U.S. Supreme Court, in a 7–2 decision, struck down as unconstitutional key provisions of the Communications Decency Act (CDA) of 1996 that criminalised the transmission of content over the Internet that was deemed «indecent» or «grossly offensive» by community standards. The court ruled that the regulations violated the Constitution's First Amendment guarantee of free speech because they were too broad and could unduly restrict the legitimate speech of adult Internet users [1].

The Judge John Paul Stevens, author of the majority opinion, emphasised the unique nature of the Internet as a medium of communication, stating that it is fundamentally different from traditional media such as radio or television. He noted that Internet users must take active steps to access certain content, which means that it is not inadvertently imposed on recipients. Accordingly, the Court held that the Internet deserves full First Amendment protection, as does the printed press.

The court rejected the government's arguments, which referred to previous rulings on content regulation in broadcast media, such as the cases FCC v. Pacifica Foundation(1978) or Ginsberg v. New York(1968). These precedents were found not to apply to the Internet because it differs from broadcast media in terms of accessibility and the nature of communication.

The verdict in the case Reno v. ACLU set an important precedent by confirming that the Internet as a medium of communication is subject to the full protection of freedom of speech, and any attempts to regulate it must be precise and cannot lead to excessive restrictions on legal expression. Moreover, the CDA was overly broad and vague: it used imprecise terms such as «indecent» and «patently offensive,» which could constitute a restriction on an adult's right to freedom of expression and access to information.

The paradox is that there is no clear way to enforce the CDA law without limiting the freedom of speech protected by the U.S. Constitution. The rights of adults cannot be violated in order to protect minors, and while the government has a legitimate interest in protecting children, it cannot do so by undermining the rights of adults. The Supreme Court emphasised in its ruling that less restrictive alternatives to protecting children are available (such as filtering software or parental control tools).

The criminalisation was harsh because the CDA imposed criminal sanctions, which made the provisions of the Act particularly dangerous, given the inconsistency, generality and hence the possibility of different interpretations, and thus the possibility of accusing and punishing innocent people.

Key legal principles that emerged from the Reno II precedent and First Amendment protections were given full application to the Internet: The Court extended full First Amendment protection to speech on the Internet, in contrast to the much higher limits on free speech that apply to other broadcast media.

The issue of jurisdiction of law in the context of the case Reno v. ACLU and the general protection of freedom of speech on the Internet mainly concerns the question: Which country or court can effectively regulate and enforce the law on global internet content?

In the case of Reno v. ACLU the US Supreme Court has considered only Compliance with US Domestic Law (CDA)with the constitutional protection of free speech guaranteed by the First Amendment. This means that it was a case internal in terms of jurisdiction — it concerned the competence of the US Congress to regulate content published on the Internet within the jurisdiction of the United States [2].

However, the verdict was of international importance because he pointed out that, first of all, the Internet as a medium has no limits, and the content is available everywhere. Secondly, the state cannot limit in a broad and imprecise way access to content on the Internet, even in the name of protecting minors, if in doing so it violates the rights of adult users.

Legal consequences of the precedent for jurisdictional issues. The fear of multi-jurisdictional liability can lead to the so-called freezing effect, where service providers or users limit the content themselves to avoid the risk of liability in countries with more restrictive laws. This phenomenon undermines the ideal of freedom of speech and pluralism, especially in democratic countries. The case of Reno v. ACLU emphasised that the Internet requires a new legal approach, different from the model applicable to traditional media. Internet jurisdiction is fragmented, and sometimes conflictual — one country may want to ban content that another considers protected. This creates the need for international standards or agreements that will facilitate a coherent approach to jurisdiction and protection of rights in the digital environment.

Currently, in the United States, any government regulation of Internet speech had to be strictly in line with precedent: any attempt at new Internet legislation must be precise, clear, and not vague. The principle of legal presumption against censorship was adopted, that is, no law should restrict freedom of speech just because it may be inappropriate for children, especially when there are alternatives based on Internet users' choice.

The Internet, as a decentralised and transnational medium, poses unique regulatory challenges to legal systems. In this 1997 case against the American Civil Liberties Union, the U.S. Supreme Court issued the first significant decision on the constitutionality of Internet content regulation, invalidating the obscenity provisions of the Communications Decency Act (CDA). Although this was a domestic decision, the court's reasoning has global significance in the context of the global nature of the Internet, which implicitly suggests that U.S. Internet law should be viewed as an international system. The U.S. Supreme Court stated: «The Internet is a 'unique and entirely new medium for global human communication.»

This legal precedent indicated the actual legal nature of the Internet, «declaring» the features of the Internet that distinguish it from traditional media: 1) Cross-border, 2) Decentralization, 3) User control and accessibility.

Therefore, if we regard Internet law as an international system, we should consistently emphasise its transnational character, both objectively and subjectively. The global availability of Internet content creates conflicts between jurisdictions that have different standards and complexities. The US Supreme Court decision in Reno II demonstrated the inadequacy of domestic legal frameworks

in addressing the technological nature of the network. Jurisdictional ambiguities and challenges resulting from the distributed nature of digital infrastructure, between domestic law and global digital practice, remain unresolved.

The challenge since the Reno II precedent has perpetuated, well into the second decade of the 21st century, the thinking that Internet sovereignty requires international coordination [3].

Moreover, no state can regulate its own cyberspace on its own, due to the transnational nature of networks, and examples such as the extraterritorial application of the GDPR and data localisation in China illustrate this problem. The role of international law and institutions, and treaties such as the Budapest Convention and multi-stakeholder co-management models, are crucial to overcome regulatory gaps, and the normative implications and prospects based on the balance between fundamental rights, such as the international human rights system, should be accepted. Here, minimum standards should be defined to protect freedom of speech and privacy while responding to cyber threats [4].

Reno II showed the world how US legal decisions can influence global normative discourse and pointed to the need for international cooperation in moving beyond the domestic framework into the global space. The case of Reno v. ACLU provided not only constitutional guidance but also a philosophical foundation for building an international legal system for cyberspace.

NetChoice LLC v. Paxton of Texas and Moody v. NetChoice of Florida. In the last years of the 21st century, a particularly important case in the field of internet law has been the proceedings pending around state legislation in Texas and Florida, the purpose of which was to restrict the freedom of social media platforms to moderate content. These cases, NetChoice LLC v. Paxton in Texas and Moody v. NetChoice in Florida, were reviewed by the U.S. Supreme Court, which accepted them for consideration in 2023, and we are currently waiting for the expected rulings in this case.

The bills (HB 20 in Texas and SB 7072 in Florida) prohibit internet platforms like Facebook, X, and YouTube from removing, blocking, or demoting content based on the worldview it expresses. They also require social media platforms to disclose their moderation mechanisms and provide justification for removing content. Users who are «censored» by social media platforms gain a basis for pursuing their rights in court.

NetChoice challenged the First Amendment to the U.S. Constitution because it violates the constitutional right of platforms to edit and select content. This raised a constitutional issue, the fundamental legal question of which is whether a state can force private digital platforms to publish certain content, and therefore whether they can be treated as so-calledcommon carriers (entities obliged to be neutral) or rather are they entitled to the status of choosing editors, similarly to the printed press, with full freedom of the press.

The status of the proceedings for 2025 is as follows: 1) The Federal District Court found the state law unconstitutional; 2) The Texas Fifth Circuit Court of Appeals upheld the regulations, finding that the platforms were not editors; 3) Florida's Eleventh Circuit Court of Appeals, on the other hand, ruled that

the law violated the platforms' rights; 4) The Supreme Court heard the cases in 2024 and a ruling is expected in mid-2025.

If we compare the aforementioned cases with Reno v. ACLU, it is worth recalling that the Reno precedent concerned state restriction of content, while NetChoice is about imposing a state obligation to publish content. Reno II defended the right of citizens to free expression; NetChoice is about establishing the right for platforms to refuse to publish certain content. Reno II defined the Internet as a space of free speech, and the NetChoice precedent may redefine the scope of autonomy of expression on the Internet.

Will the NetChoice v. Paxton ruling have a global impact on international internet law and the future of online content moderation on social media platforms? In 2023, the U.S. Supreme Court agreed to hear both cases and will hear oral arguments in early 2024. The decision is pending as of May 2025, but it is expected to be as fundamental to platform regulation as Reno was to free speech online. In practice, federal district courts have repeatedly struck down regulations in the U.S. since 2023, rulings in favour of NetChoice.

Common law v. European law. In the context of disinformation, hate speech and the impact on political pluralism, will US precedents be the interpretation for international law, or will a completely different practice emerge under continental law, especially in the context of EU solutions such as the Digital Services Act (DSA)? Is there an implicit consent among European societies to mechanisms for controlling free speech on the Internet that is greater than in the US?

The thesis that there is an implicit, although ambiguous, consent in Europe to the functioning of mechanisms limiting freedom of expression on the Internet is justified. The consent of Europeans, conditional and contextual, results from the preferences of protecting the public interest, national security, human dignity, social order and the need to counteract disinformation and hate speech in networks. It is different in nature compared to the American constitutional approach to freedom of speech.

Unlike the United States, where the First Amendment to the Constitution grants freedom of speech an almost absolute character, European legal systems, under Article 10 of the European Convention on Human Rights, recognise freedom of expression as a right subject to limitations [5]. It may be limited in situations requiring the protection of other constitutional values, such as state security, public order, protection of the reputation of other people or public morality. This fundamental difference makes European societies more favourable to the intervention of state institutions and private entities in the online communication space [6].

EU member states have introduced several regulations that restrict freedom of expression on the Internet, including the German Netzwerkdurchsetzungsgesetz (NetzDG), the French Hate Speech Act, and the EU Digital Services Act (DSA). It is noted that these regulations have not met with mass public resistance, which may suggest that there is an implicit acceptance of the need to moderate content in the public interest.

Public opinion polls (e.g. Eurobarometer, EU DisinfoLab) show that EU citizens largely accept actions aimed at countering disinformation, hate speech

and extremist content. This stems from the belief that unrestricted freedom of speech can lead to serious social threats, including political polarisation and human rights violations. Trust in state and regulatory institutions, both national and EU, helps maintain social acceptance of interference in the sphere of digital communication.

There are also arguments questioning the existence of presumed consent, which I would like to cite here. The opposition to the arbitrariness of the actions of the so-called Big Tech is being increasingly strongly articulated. In Poland, there are demands to limit the influence of platforms on public debate. Issues are also raised about the lack of transparency of moderation algorithms and the lack of effective appeal mechanisms. In this context, we can talk about the growing distrust of a significant part of European citizens towards uncontrolled content moderation.

«*Europe against the USA?*» In the United States, freedom of speech is treated as a paramount value, even at the cost of tolerating false or controversial content. In Europe, a balanced approach prevails, which takes into account the need to protect other constitutional goods. The European state not only can, but should, intervene in the case of content that poses a threat to the democratic order [7].

It can therefore be argued that there is an implicit social consent in Europe to control freedom of expression in the digital space, provided that these activities serve the common good and are subject to appropriate oversight mechanisms. This consent is not unconditional, and the growing expectations regarding transparency and accountability of digital platforms may lead to further development of the regulatory framework. Europe is moving away from a model of absolute freedom of expression towards a model of responsible freedom, embedded in a broader order of democratic values.

Time will tell whether censoring content from a European perspective is not a principle of moral imperative.

The Concept of Internet Jurisdiction. Jurisdiction is an absolutely crucial issue in any case concerning the Internet. The term «jurisdiction» has more than one meaning. In discussing Internet law in case law, it is worth noting the decision of the Chief Justice of Australia in Gutnick, jurisdiction refers both to «the susceptibility of the defendant to the process in such a way as to enable the court to determine the controversy which the process seeks to resolve and, secondly, as relating to a particular territorial or legal area or legal district» [8].

Although the term «jurisdiction» can be used for both purposes, in my understanding, it refers to the first concept, since the first issue that a court considers in a cross-border dispute is whether it can seek jurisdiction to hear the dispute in question. The court must have both subject-matter jurisdiction over the type of dispute and subject-matter jurisdiction, i.e. jurisdiction over the parties involved in the dispute. In practice, the subject-matter jurisdiction criterion simply means that a plaintiff cannot, for example, refer to a domestic court in a dispute concerning a merger between two companies from third countries. Another example would be that a party must bring proceedings at the appropriate judicial level; it is usually not possible to refer to the highest court of a country

at an early stage of the legal proceedings. However, the issue of subject-matter jurisdiction in the case of the Internet is much more complex.

The criterion of personal jurisdiction or jurisdiction in personam in the case of Internet disputes can raise issues whose central point is very complex legal discussions. As a rule, personal claims mainly focus on location. For example, the court determines where a given contract was concluded, from which IP address, where the contract was breached, where the contract was performed, where the tort was committed, where the damage was suffered, where the server is located and where the defendant has his registered office, domicile or habitual residence.

While the jurisdictional grounds for contractual disputes often point to a court in one of the home countries of the parties to the contract, the jurisdictional grounds relating to torts are extremely broad in the internet context, as in the case of compensation for cyberattacks on bank customer accounts.

The legal order of the European Union has established an international instrument, Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, commonly known as Brussels I bis. The purpose of this legal act is to harmonise the rules on determining the jurisdiction of the courts of the Member States and to improve the recognition and enforcement of judgments within the Union.

The general principle resulting from Article 4(1) of that regulation is that a person domiciled in a Member State should be sued in the courts of that State. This principle is intended to ensure predictability and protect the interests of the defendant [9].

At the same time, the regulation provides for exceptions to the general rule in the form of so-called special jurisdiction, which allows claims to be brought also before the courts of other Member States.

In particular, pursuant to Article 7(2) of Regulation 1215/2012, in matters relating to tort or delict-like acts, the plaintiff may bring an action «in the courts for the place where the harmful event occurred or may occur» [10].

This provision gives the injured party the possibility to choose between two potential courts: the court of the place where the causative action took place and the court of the place where its effects occurred.

Despite the existence of a unified jurisdictional system within the European Union, the issue of infringements of personal rights in the online space still raises serious doubts of interpretation. A significant difficulty is determining the territorial point of reference for an event causing damage in the digital environment. Due to the transnational nature of the Internet, the lack of assignment of Internet communication to a specific territory and the limited possibility of identifying the location of users, assigning national jurisdiction becomes a challenge [11].

Consequently, despite the application of the Community legal framework, the practical application of the provisions on jurisdiction in cases of defamation, infringement of image or other personal rights on the Internet requires further clarification of case law and harmonisation, taking into account the specificity of the digital environment, mainly technology [12].

At present, the issue of jurisdiction is most often regulated by contracts, in particular through so-called choice of court clauses (eng. choice of forum clauses). Issues related to this practice are discussed in the context of choice of law clauses, which are also common in legal transactions. At this stage, it should only be pointed out that the validity of jurisdiction clauses may, but does not have to, be subject to limitations resulting from theabsolutely binding epises, such as the ones mentioned aboveRegulation (EU) No 1215/2012 of the European Parliament and of the Council, which, following Article 18, introduces an exception to the principle of freedom of choice of court in the case of civil contracts in commercial transactions. This provision protects the consumer by granting him the right to bring an action against the entrepreneur in the court of the country of his domicile, while at the same time limiting the entrepreneur to sue the consumer only in the courts of the same country. For the parties to the contract the issue of jurisdiction is fundamental for several reasons. Typically, a party may seek to conduct proceedings in its home country for practical reasons, such as confidence in the local court system, familiarity with procedures, or the desire to minimise its own costs while increasing the costs borne by its opponent.

However, what is often even more important is that the choice of court determines the application of specific conflict rules and thus influences the determination of the applicable law, substantive law applicable to resolving a dispute. The content of the substantive law applied, in turn, directly influences the outcome of the dispute, often determining which party has a better chance of winning. For this reason, disputes regarding court jurisdiction are in practice often linked to the pursuit of obtaining favourable substantive law.

It should also be noted that even if the court determines that foreign substantive law is applicable, it will still apply its procedural law. In certain cases, procedural norms may be decisive — for example, in the area of admissibility of evidence or the procedure for examining a case in jury proceedings.

From a normative point of view, the jurisdictional dilemma essentially comes down to the need to balance two values: too broad jurisdictional claims may violate the rights of the defendant and lead to their unequal procedural treatment, while too narrow an interpretation of jurisdiction may effectively deprive the plaintiff of access to effective legal remedies. Jurisdiction, as an institution designating the court competent to hear the dispute, must therefore be shaped in a way that maintains a balance between the need to protect the procedural interests of both parties.

The importance of jurisdictional ruleshowever, it goes beyond the interests of individual parties to the proceedings. In addition to the considerations of predictability and accessibility for the parties, there is also a third, systemic dimension, where jurisdictional rules are of key importance from the point of view of the organisation of justice. Courts can be located in appropriate places and appropriately equipped, both in terms of staff resources and specialisation, if it is possible to predict the type and number of cases in which they will be addressed. In the context of the issue of jurisdiction, it is necessary to emphasise its fundamental role not only in the context of protecting individual rights, but

also in the broader context of the functioning of the judicial system and the rule of law.It should also be emphasised that jurisdiction is one of the fundamental concepts of public international law. The impossibility of effective exercise of jurisdiction may undermine the very existence of statehood. As indicated in the classic definition: «Jurisdiction is an essential attribute of the sovereignty of that state, as of any sovereign and independent state, which has authority over persons and things within its territorial borders, both in civil and criminal matters» [13].

From the perspective of international law, a state that cannot exercise jurisdiction loses the essential feature of a sovereign being, which makes this institution not only a procedural instrument but also a constitutive element of states in the international context.

Interpretation «targeting-based jurisdiction». There is currently a legal solution called targeting-based jurisdiction, which is jurisdiction based on direction. This is a modern approach to deciding which courts can rule on Internet matters. It protects against accidental «influence» on another's jurisdiction and supports the balance between the global reach of the Internet and the sovereignty of states. It is not certain whether he will find applications in private international law, but subsequent case law in the US and the EU indicates the formation of a certain trend.

Model targeting-based jurisdiction is based on the assumption that a court of a given country may consider itself competent not only if the content is available there, but walso hen it was clearly «targeted» to users within its jurisdiction. The question remains cthe subject intentionally or foreseeably directed your online activities at residents of a particular jurisdiction? According to Prof. Daniel Svantesson, an expert in private international law, can be carried out target test.

Firstly, it has to be done «commercial targeting», or whether the activity was directed on a commercial basis for a given market, e.g. availability of language, currency, shipping options.

Secondly, the factor of «targeting technology» must be taken into account, checking if geolocation technologies were bypassed, to enable or disable access from a given jurisdiction. Could the lack of geoblocking indicate targeting of users from a specific country?

The third element of the test is knowledge-based targeting, when we investigate whethersubjecthe knew or could reasonably have known that his actions affected users from a given jurisdiction, whether he had access and knew it from e-mails, customer contact, orders, and visit statistics [14].

In the US, federal courts have begun to apply the «targeting» test to determine personal jurisdiction over the Internet, particularly after the case Zippo Manufacturing Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997)in which a federal court in Pennsylvania distinguished three levels of partiesInternet: the first are the websites conducting interactive activities and transactions, and these are subject to jurisdiction. The following websitespassive, with content only, are not subject to state jurisdiction, and «intermediate» parties who are subject to further analysis as to whether they were «targeted» [15].

In later cases (e.g. ALS Scan v. Digital Service Consultants, 2002), federal courts began to more formally require targeting of online activities to recognise the jurisdiction of a given court.

In the EU, this model has been taken into account in the case law of the Court of Justice of the EU, including in cases concerning Brussels I bis regulations(resolution of cross-border disputes).Case C-585/08 Pammer & Alpenhof (TSUE, 2010)

The CJEU ruled that the courts of a Member State may have jurisdiction if the entrepreneur intended to run a business in the user's country (e.g. through advertising, accepting orders from a given country). The departure of the ECJ is consistent with the principle «directing activities» in the EU, as set out in Article 17(1)(c) of the Brussels Ia Regulation.

The advantages of Prof. Daniel Svantesson's model include: protection of users in a given jurisdiction from the effects of foreign entities' actions and avoiding excessive jurisdiction in cases where the connections are only technical (e.g. website accessibility). It also increases predictability for online entrepreneurs. However, the model may be difficult to apply in practice, where many websites have a global reach without clear targeting. In addition, the procedure itself requires an analysis of technology, content and intentions, influencing the costs of the proceedings.

In my opinion, the model may lead to jurisdictional uncertainty when courts in different countries interpret the elements of the test differently.

The issue of jurisdiction must be considered from at least two perspectives. For the parties, the question is: in which forum(s) can the case be heard? For the judge, the question is: can I exercise jurisdiction in the case? When the judge concludes that he can exercise jurisdiction in this case, he may ask two more judicial questions: do I have the right to decline my jurisdiction? And if so, should I decline to exercise jurisdiction in this case? While the jurisdiction is quite similar across U.S. states, the power and willingness of courts to decline jurisdiction vary considerably, from state to state.

Scope of jurisdictions. Whether or not to grant jurisdiction to a court often depends on what that court will do if it does claim jurisdiction. For example, if we know that the court is likely to want to impose its will on the entire world, for example, by the decision to delete certain Internet content globally, we may be reluctant to grant jurisdiction to that court in the first place. Indeed, whether or not we agree with the court that claims jurisdiction in the first place, we may have concerns about the reach of orders issued by the court. In this matter, we begin to see the outlines of an additional dimension of jurisdiction — something we may call the «scope of jurisdiction» or, perhaps more accurately, the «scope of remedial jurisdiction.»

The scope of jurisdiction refers to the respective geographic scope of the orders made by a court that has personal jurisdiction and subject matter jurisdiction. This question has received much less attention to date than other aspects of jurisdiction. However, it is a question that is gaining importance and therefore deserves consideration. For example, imagine that a court must decide, on the issue of the scope of copyright infringement, whether to award

damages because a company based in State A sold illegal hard copies of a film in some states, including State A. The court might decide to award damages only for the illegal copies sold in State A (a modest jurisdictional claim). Or it might decide to award damages for illegal copies sold anywhere in the world, a blanket jurisdictional claim. Of course, it might choose some form of middle ground, such as awarding damages for illegal copies sold in states «covered» by the seller.

One such example can be found in the following quote from the eDate case, commenting on the approach of the European Commission Regulation EU to jurisdiction in tort cases: Article 5(3) of the Regulation should be interpreted as meaning that in the case of an alleged infringement of personal rights throughcontent placed online on a website, a person who considers that his or her rights have been infringed has the possibility of bringing an action for liability for all the damage caused, either before the courts of the Member State where the publisher of that content is established or before the courts of the Member State where his or her centre of interests is situated. That person may, instead of bringing an action for liability for all the damage caused, bring an action before the courts of any Member State in whose territory the content placed online is or was accessible [16].

These courts shall only have jurisdiction for damage caused in the territory of the Member State of the court seized. This declaration sets out the rules on personal jurisdiction, stating, for example, that an action may be brought before the courts of the Member State where the publisher of that content is domiciled or before the courts of the Member State where its centre of interests is situated. However, it expressly and also unambiguously defines the scope of jurisdiction. For example, it clearly states that if you sue where the defendant is domiciled or where your centre of interests is located, the applicable scope of jurisdiction is global, whereas if you sue in another country, the applicable scope of jurisdiction covers only that Member State.

While the issue of jurisdictional scope has always had to be relevant in private international law, there is no doubt that issues of jurisdictional scope are particularly controversial in the context of removing, blocking or delisting Internet content, because in this context there are significant cross-border implications: an order by a court in State A to remove content from the Internet directly affects what content persons in other States can access online.

The growing importance of jurisdictional scope is largely due to the fact that we are increasingly seeing litigation against online intermediaries such as search engines, social media operators and video hosting platforms. Such intermediaries have the ability to achieve global takedown, blocking or delisting of content on the basis that the content is incompatible with the laws of a particular country.

Recognition and enforcement of judgments. Among the rules of private international law, few are as frequently challenged by the courts as those concerning the choice of law. Although this issue is sometimes referred to as the «central conflict issue of private law,» as previously indicated, its proper discussion should take place in close connection with the analysis of jurisdiction. Only

once the court has established its jurisdiction can it move on to the question of which law should be applied. Indeed, since it is the applicable law that sets the standards on the basis of which the decision is made, from a certain perspective, it may be said that the choice of law is the most important issue in private international law.

The conflict rules regarding choice of law generally focus on location — a good example of this is the rule common in tort case,s the law of the place of the offence(i.e. the law of the place where the tort was committed). Although the way in which this principle is applied varies from country to country, a common feature is the frequent preference for the law of the market(i.e. the law of the country in which the proceedings are conducted). For example, under Australian law, the rule of law of the place of the offence is seemingly neutral in nature — it indicates the place where the tort was committed. However, the detailed rules of defamation law favour the law of the court adjudicating. Since the tort of defamation is considered to occur where a third party becomes familiar with the defamatory material, it is relatively easy to show thatthe law of the place of the offencepoints tolaw of the market– it is enough to prove that someone in the territory of Australia (or more precisely: in the desired federal state) read or heard the content.

An important difference between jurisdiction and choice of law is that while jurisdictional rules may designate multiple forums (courts), it is generally accepted that choice of law rules should lead to the determination of only one applicable law. Currently, location-oriented conflict rules do not always meet this assumption, especially in the context of the Internet, where identifying «one» law can be difficult or even artificial.

In more general terms, we can speak of a normative dilemma: each state has a legitimate interest in applying its own regulations to actions taken on its territory or causing actual or potential effects there. As a result, due to the diversity of legal systems, entities operating in the online environment must deal with a heterogeneous mosaic of regulations, the availability and, above all, comprehensibility of which is not always obvious, especially for transnational entities.

Even before a judgment in favour of the client is issued, the attorney should consider its potential enforcement. If the debtor has sufficient assets in the territory of the court that ruled in the case, the problem is limited to the execution of local procedures. However, the matter becomes more complicated when the debtor's assets are not located in the jurisdiction of the court issuing the judgment, or when they are insufficient to cover the liabilities resulting from the judgment.

Although most of the literature on private international law in the context of the Internet focuses on the closely related issues of jurisdiction and applicable law, the key role of recognition and enforcement of judgments cannot be ignored. After all, the mere knowledge that a given court may accept jurisdiction and apply a given law is of limited value if the judgment cannot be enforced in the country where the opposing party's assets are located [17].

Recognition and enforcement of judgments in a foreign country is rarely a simple process. On the contrary, the overall complexity of this procedure is a

de facto form of protection for defendants in cross-border disputes. Even with a positive decision, obtaining real benefits may be significantly hindered by legal, procedural and political barriers in the enforcement country [18].

Frequent jurisdictional issues related to content violating national law. In some such cases, courts order global blocking without much discussion on the subject. In other cases, the scope of the jurisdictional issue is a central element of the dispute.

An example of the latter type is found in the Canadian Google case. Justice Fenlon of the Supreme Court of British Columbia decided to block certain Google sites worldwide. Google argued that if an injunction were granted, it should be limited to «Google.ca,» the site designated for Canada, on the grounds that no court should be required to issue an injunction that has worldwide reach; after all, what is illegal in State A may be perfectly legal, and even required by law, in State B. However, the Court stated: «Although Google has a website for each country to which searches in that country are directed by default, users can bypass that default and access Google sites in other countries. For example, even if the defendants' websites were blocked for searches conducted through www.google.ca, Canadian users could go to www.google.co.uk or www.google.fr and obtain results, including the websites that the Court ruled against».

In Canada, a landmark court decision ordered Google to globally block search results that linked to infringing websites. The case involved a dispute between a Canadian company, Equustek Solutions Inc., and a former distributor who was illegally selling its products online. Although Google was not a direct party to the dispute, the Supreme Court of Canada ordered it to remove links to infringing websites not only from the Canadian version of the search engine, but from all versions of Google worldwide.

The Court's position was based on the premise that the effectiveness of the judgment required global application because the defendants were selling primarily outside of Canada. Therefore, local restrictions (e.g., only in the .ca domain) would be insufficient to prevent further infringement of Equustek's rights. The Court found that the protection of its judgments must extend to actions taken from any jurisdiction, because otherwise searchers from other countries could still access illegal content, which would undermine the effectiveness of the judgment [19].

The ruling has sparked an international debate about the limits of national courts' jurisdiction in the context of the global internet and the ability to enforce local law in a digital space that is, by its nature, borderless. Critics have said it could lead to abuses as different states begin to demand global enforcement of their norms, which could in turn threaten free speech and the openness of the internet [20].

Given the availability of alternative search engines, this argument is hard to maintain. The fact that one particular search engine blocks reliable search results worldwide does not affect the availability content in question; the content is still there, you just can't find it using that particular search engine. Consequently, the content can still be accessed using an alternative search engine.

But the Court, to its credit, has interpreted this: Although there are other search engines, Google does not dispute the plaintiff's claim that Google's position as a search engine usedup to 70–75% of internet searches mean that defendants will not succeedsuccess if they cannot be found using Google search services. With this in mind, the Court found that: «Google is an innocent bystander, but it unknowingly makes it easier for the defendants to continue violations of the orders of this Court. There is no other practical way to stop sales on the defendants' website». The last sentence in this quote is especially incorrect. For example, a sale requires some form of payment method, so another practical way to stop sales on the defendants' website could be a non-built-in payment mechanism.

Another notable example of the growing importance of the scope of jurisdiction is the Google Spain «right to be forgotten» case. In light of the above, I believe it is important that we recognise the issue of the scope of (remedial) jurisdiction as a distinct issue in private international law.

The issue of jurisdiction over the activities of transnational digital corporations such as Google is causing increasing controversy in public and private international law. In particular, in the face of national court rulings ordering the global removal of content from search results (e.g. in the caseGoogle Inc. v. Equustek Solutions Inc.), the question arises about the limits of permissible legal control over global digital platforms. Google is an entity operating on a global scale, which becomes sensitive when adjudicating in different countries, each of which is guided by its own legal system, human rights standards and cultural values.

This situation leads to the so-called «jurisdictional entanglement» effect (jurisdictional overreach), in which many courts claim the right to adjudicate on the actions of one entity on the basis of their national regulations. This carries the risk of a conflict of norms and an excessive burden on internet platforms to comply with conflicting legal obligations. As noted by Judge Abella in the case Equistek, it is not a flaw in the legal system but the very nature of global technology corporations that makes them susceptible to regulation by multiple jurisdictions. However, as some commentators have pointed out, fears of multi-jurisdictional control may be exaggerated. Google, while theoretically vulnerable to court orders from multiple countries, in practice often negotiates with governments, uses appeal mechanisms, and is able to effectively limit the scope of unfavourable judgments [21].

Moreover, the growing number of court cases concerning content moderation, the right to be forgotten, and preventive censorship highlights the lack of consensus on what values should dominate the digital space. Attempts to impose local standards on global platforms may lead to the fragmentation of the internet (so-called splinter internet) and restrictions on the freedom to exchange information [22].

It is striking, given the careful consideration given to the scope of the remedial jurisdiction in the Canadian Google case, that Judge Groberman's statement. Are overbroad jurisdictional claims questions of law or defects in law, and not merely the result of certain adopted business structures? Business itself

is in no waymeaning does not require an overly broad scope of jurisdictional claims. Judge Groberman emphasised that in exercising its discretion the Court is to take into account territorial competence and the existence of jurisdiction in personam over the parties, as well as many other factors. Courts must exercise considerable restraint in granting remedies that have international implications. And this leads to the crux of the matter, that in addition to the limitations on territorial competence and the existence of jurisdiction in person over the parties, a separate issue is the problem of how we should determine the scope of (remedies) jurisdiction.

Waiver of jurisdiction: forum non conveniens and the online cross-border dispute. It seems that the problem of jurisdiction in matters related to the Internet will find its solution within the doctrine that the forum is not appropriate. States will increasingly adopt the position: «Of course, we have jurisdiction — the damage occurred in our territory, we can serve the process — but it will be much more appropriate to hear the case somewhere else.» Although domestic courts may formally have grounds for recognising jurisdiction, considerations of efficiency, access to evidence or where the damage occurred may lead to a decision not to exercise it [23].

In general, courts of civil law countries have less room to refuse jurisdiction than courts of common law systems. In many continental law systems, the basis for refusal is usually the principle alone. The case is pending elsewhere(i.e. the existence of parallel proceedings before another court).

In common law countries, as well as in some civil law countries, such as Sweden, it is possible to refuse to exercise jurisdiction on the basis of the principle that the forum is not appropriate. However, the interpretation of this doctrine varies widely. In most common law countries, a court may decline jurisdiction if a more appropriate forum exists. In Australia, for example, a court will decline jurisdiction only if it is clearly inappropriate (an inappropriate forum) [24].

Although in the common law doctrine the forum is not appropriate plays an important role, its significance is sometimes weakened by the growing tendency to sue only for damages incurred locally. Such an approach may defeat the purpose of applying this doctrine. In cases such as Dow Jones v. Gutnick (Australia), Harrods v. Dow Jones (England), Investasia(Hong Kong) or Breeden v. Black(Canada), the courts found no grounds for refusing jurisdiction because the claims concerned only damages incurred in their territory. And which court is better suited to hear a case concerning only damages incurred in country X than a court of that country? [25].

A logical, otherwise, interpretation may lead to a situation in which the plaintiff circumvents the doctrine forum is not appropriate. However, the plaintiff does so at the cost of receiving compensation only for the damage caused in the country where the court is located. Consequently, even if the doctrine the forum is not appropriate may not protect a foreign defendant from being sued on a specific forum, it may have the effect of preventing the plaintiff from seeking compensation for damage allegedly incurred in multiple jurisdictions, which is very important in the Internet law matters discussed.

Conclusions. Among the rules of private international law, few are as frequently challenged by the courts as those concerning the choice of law. Although this issue is sometimes referred to as the «central conflict issue of private law,» as previously indicated, its proper discussion should take place in close connection with the analysis of jurisdiction. Only once the court has established its jurisdiction can it move on to the question of which law should be applied. Indeed, since it is the applicable law that sets the standards on the basis of which the decision is made, from a certain perspective, it may be said that the choice of law is the most important issue in private international law.

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