CHALLENGES RELATING TO THE DETERMINATION OF CAUSE OF ACTION IN THE DIGITAL ENVIRONMENT

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ABSTRACT

Not everyone who has suffered loss, damage or injury due to copyright infringement in the digital environment may claim against a person or organization they believe is the cause of their harm, a cause of action is required. A cause of action is the technical legal name for the set of facts which give rise to a claim enforceable in court. It is a legally recognized wrong that creates the right to sue. Each cause of action consists of points the plaintiff (copyright owner) must prove and all of these elements must be satisfied in order to take court action. A cause of action or right of action, in law, is a set of facts sufficient to justify suing to obtain money or property, or to justify the enforcement of a legal right against another party. A cause of action may arise from statute (like provisions of the Berne Convention and related laws on copyright) or from the common law. The common law has evolved gradually over time, and is law made by judges when they give their judgment on a case brought before them. This process has led to the development of various causes of action which may be used to bring an action in the courts. Which court will hear your case depends on the type of cause of action. So it is suggested that, rules applicable to normal courts can be used to determine which cause of actions apply in the digital environment for infringement.

***Keywords*:** Challenges, Determination, Cause of Action, Digital Environment.

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INTRODUCTION

People are always suffering loss or injury especially in the digital environment but if everyone was allowed to sue anyone without having a proper cause of action, the courts would be clogged with hearing every case brought before them[i] especially with the fact that in our modern society, almost everyone is linked to digitalization. This would mean that the people who do have a clear and justifiable case may not get the justice they deserve[ii]. For these reasons, the legal system has evolved and formed sets of conditions to separate cases that do have a likely cause of action from those that do not. There are many specific causes of action.

Even if you seem to have a cause of action, this does not mean that you will automatically win the case or receive monetary or another form of compensation[iii]. There are many other factors which must be considered, but establishing a cause of action is the first step in going to court. It should be noted that, in order to successfully commence a legal action you must also have standing to appear before the court and evidence that the person accused of causing the harm did in fact cause the harm[iv]. You should also ensure that you commence your matter in the appropriate court or tribunal. The points a plaintiff (in our case the copyright owner) must prove to win a given type of case are called the "elements" of that cause of action. For example, for a claim of negligence, the elements are: the (existence of a) duty, breach (of that duty), proximate cause (by that breach), and damages. So in a case of copyright infringement, the infringer must have intentionally carried out the rights which are conferred to the copyright owner without permission.

The challenge in determining the cause of action in the digital age will be to determine which degree of infringement happened since getting access to a copyright owner's work is different from determining if the infringer used the work illegally substantially. Since its inception, copyright law has responded to technological change[v]. Today, the changes that are grabbing all the headlines relate to digital technology and digital communications networks, such as the Internet and personal computers. These technologies, like many innovations, are both promising and potentially harmful to various parties interested in the use and exploitation of works of authorship from books and music to films and web pages[vi]. There is no doubt that the issues related to achieving the right balance between these interests in light of recent developments are daunting and justifiably can be described as "new" or "unique." But, at the

same time, they are merely one step in a journey of continual and successful adaptation that characterizes the history of copyright law[vii].

English courts or jurisdictions of English law have particular modes in determining the classification of causes of action, and it is only when this classification has been made before we can examine which law is applicable. So, for us to have a better understanding on the challenges relating to the determination of cause of action in the digital environment, it will be good to clearly examine the determination or classification of course of action in normal cases. So, this article seeks to examine the determination of cause of action in English courts and its application in the digital environment.

CLASSIFICATION OF CAUSE OF ACTION UNDER ENGLISH LAW AND ITS RELEVANCE IN THE DIGITAL ENVIRONMENT

The "classification of the cause of action' means the allocation of the question raised by the factual situation before the court to its correct legal category. Its object is to reveal the relevant rule for the choice of law[viii]. The rules of any given system of law are arranged under different categories, some being concerned with status, others with succession, procedure, contract, tort and so on, and until a judge, faced with a case involving a foreign element, has determined the particular category into which the question before him falls, he can make no progress, for he will not know what choice of law rule to apply.

He must discover the true basis of the claim being made[ix]. He must decide, for instance, whether the question relates to the administration of assets or to succession, for in the case of movables left by a deceased person, the former is governed by the law of the forum, the latter by the law of the domicile. Whether undertaken consciously or unconsciously, this process of classification must always be performed. It is usually done automatically and without difficulty. If, for instance, the defendant is sued tor the negligent damaging in France of the claimant's goods, the factual situation before the court clearly raises a question of tort.

Classification is not something which is peculiar to private international law. All systems of knowledge, whether legal or otherwise, are based on classification in one form or another. In law it is common to both the internal and external law of any legal unit. Expressly or impliedly

the court allocates to an existing legal category the cause of action before it. Thus in a purely domestic case the judge, without having to give the matter much thought, distinguishes between an action in tort and one in contract, or between a question of succession and one of criminal law[x]. These are legal categories and each call for a different approach and treatment by the court.

Where there is a foreign element present the question of classification may often be of importance and difficulty since foreign legal concepts may not so easily fit into the established categories of English law. For example, is a right to dower on divorce or the death of a husband which arises under an agreement made in connection with a Mohammedan marriage a matter of contract or matrimonial law? In ***Shahnaz v. Rizwan***[xi] it was classified as contractual[xii].

Re Martin[xiii], a French spinster resident in England made a holograph will in French which was valid according to French law. She set up in business in England and married a French refugee professor. The business was carried on in the joint names for many years until the husband returned to France. The wife did not return to France but died in England. At the date of her death she was domiciled in France. The question arose as to whether her will was revoked by marriage. This would depend on whether the relevant law was that of England (the lex domicilii at the date of the marriage) or of France (the lex domicilii at the date of death). HELD: The question appertained to matrimonial law, not testamentary law, and consequently the will was revoked since English law applied.

If the judge decides that the matter before him relates to matrimonial law he may have to go on to decide whether it is the formal validity or the essential validity of the marriage which is in question since these may be governed by different laws[xiv].

CATEGORIES OR CLASSES OF CAUSES OF ACTION IN PRIVATE INTERNATIONAL LAW

There are different categories or classes of causes of action which the courts take into consideration before adjudicating on a case. These classes which are often relevant in private international law cases include; contracts, torts, marriages, procedures and substance. However, since our focus is the digital environment, I am going to examine some of these

categories in detail and see if the same classification can be used in determining cause of action for copyright violations in the digital environment. This is important because if we do not clearly understand the category, it will be difficult to understand the applicable law as it was seen in the case of ***Re Wilks***[xv] were Wilks died domiciled in Ontario leaving a block of shares in an English company. The English administrators wished to postpone the sale of the shares and the purpose of the summons was to decide whether they could do so by virtue of the Administration of Estate Act, 1925[xvi]. Under the law of Ontario they would have no right to postpone because questions of succession to movables are governed by the lex domicilii at the date of death and questions of administration are governed by the law of the place where the relevant property is situate (lex situs). It was held that, the power to postpone was a matter of administration not succession and therefore English law applied and the administrators could therefore postpone the sale of the shares. From this case, we can see how important the classification is. So, for us to clearly understand the determination of cause of action for copyright violation in the digital environment, it will be good to explain if the violation is a contract, tort or statute.

DIFFICULTIES/STAKES IN USING THE ABOVE-MENTIONED CATEGORIES IN DETERMINING CAUSE OF ACTION IN BOTH PRIVATE INTERNATIONAL LAW AND THE DETERMINATION OF CAUSE OF ACTION FOR COPYRIGHT INFRINGEMENT IN THE DIGITAL ENVIRONMENT

Occasionally, however, the matter is far from simple. In the first place, it may be a case near the line in which it is difficult to determine whether the question falls naturally within this or that judicial category[xvii]. Secondly, it may be a case where English law and the relevant foreign law hold diametrically opposed views on the correct classification[xviii]. There may, in other words, be a conflict of classification (especially in the digital environment where infringers of copyright are mostly located in different jurisdictions), as, for instance, where the question whether a will is revoked by marriage may be regarded by the forum as a question of matrimonial law, but by the foreign legal system as a testamentary matter[xix]. This can come up

in every category raised above, the first jurisdiction can see or take the infringement of copyright in the digital environment as a Tort, while another jurisdiction considers it as a contract.

These two difficulties are well illustrated by the historic ***Maltese*** Marriage case[xx], decided by the Court of Appeal at Algiers in 1889, which made the problem of classification a fashionable subject of study.

A husband and wife, who were domiciled in Malta at the time of their marriage, acquired a French domicile. The husband bought land in France. After his death his widow brought an action in France claiming a usufruct in one quarter of this land. There was uniformity in the rules for the choice of law of both countries: succession to land was governed by the law of the situs, but matrimonial rights were dependent on the law of the domicile at the time of the marriage.

The first essential, therefore, was to decide whether the facts raised a question of succession to land or of matrimonial rights. At this point, however, a conflict of classification emerged. In the French view the facts raised a question of succession; in the ***Maltese*** view a question of matrimonial rights[xxi]. When a conflict of this nature arises it is apparent that, if a court applies its own rule of classification, the ultimate decision on the merits will vary with the country in which the action is brought. On this hypothesis, the widow would have failed in France but have succeeded in Malta[xxii]. So by this decision, whenever there is a conflict of classification for copyright violation in the digital environment, the decision on the category of infringement will be based on the jurisdiction which the case is brought.

The crucial question, therefore, is on what principles do English judges classify the cause of action? Or, to put it in another way according to what system of law must the classification be made? Must it be made according to the internal law of England, on the ground that the internal rules and the rules of private international law in any country are based on the same legal conceptions?[xxiii]. It is arguable, for instance, that when English private international law submits intestate succession to movables to the law of the deceased's domicile, the expression "intestate succession" must be given the meaning that it bears in English internal law and not a more extensive meaning than may be attributed to it in the foreign domicile. In opposition to this view, which had wide support, it has been suggested that classification must be based on

the "essential general principles of professedly universal application" of analytical jurisprudence and comparative law[xxiv].

But, although it may be desirable to solve the problem in this scientific manner, it is scarcely practicable to do so whilst there are no commonly agreed general jurisprudential principles. In the process of Classification, the court is required to analyze the pleadings prepared by the parties and to assign each component element to the most appropriate juridical concept or category[xxv]. The rules of any given system of law are arranged under different categories, addressing procedure, status, contract, tort, divorce, nullity, and so on. Every legal system arranges its rules under different categories which must form the basis of a plaintiff's claim (in our case, the copyright owner). These categories may be concerned with tort, contract, property, status, succession, and so on. Therefore the classification of cause of action means the allocation of the question raised by the factual situation before the court to its correct legal category[xxvi]. The aim or object of doing this is to reveal the relevant rule for the choice of law[xxvii]. Thus, once the forum court has decided that it has jurisdiction to hear the case, it then must characterize or classify the cause(s) of action.

This is regarded as the most important and difficult problem in the Conflict of Laws. It can be considered as a legally recognized wrong that creates the right to sue. Each cause of action consists of points the plaintiff must prove and all of these elements must be satisfied in order to take court action. A cause of action may arise from either a law passed by the parliament (statute) such as recognizing international conventions or from the common law.

Identifying the cause of action requires consideration of two factors – the legal theory and remedy[xxviii]. However, in the digital environment, this can be a problem because there can be an infringement to copyright whereas the law in that particular jurisdiction does not recognize that as a cause of action. For example, someone can be using the internet in Cameroon and violates the copyrights of someone in Nigeria, but if the Cameroonian law does not recognize this as infringement, the Nigerian copyright owner will not be able to sue and this will be a problem so the issue is on how to classify a cause of action in the digital environment so that someone can have a universal standard to sue.

There is no doubting that information technology stretches the law, which has sometimes been slow to react, and one problem has been the manner in which it has been attempted to adapt

existing legal paradigms to deal with the problems posed by technological development[xxix]. Nowhere can this be seen more strikingly than in the way in which copyright has been used as the main vehicle for the protection of computer programs. Whether copyright is an appropriate method of protection has been a long running debate that still rages on and the nature of computer programs as property remains a grey area[xxx]. There is one great difference between digital works and other and works protected by copyright that sets them apart. Conventional works of copyright are passive. They await our attention to be read, viewed or listened to. Computer programs, on the other hand, are active they do things they manipulate symbols, transform, modify and retrieve digitally stored information. Even though we now have substantial experience of dealing with computer technology, it continues to cause problems, and not just in terms of substantive law. Evidence and disclosure are other areas in which Problems may arise[xxxi].

In terms of legal protection for works in the digital environment, there are two main concerns for the copyright owners. The first is copying by out and out piracy. This has been particularly rife in relation to games software, operating system software such as Windows, popular applications software, such as word-processing software and, of course, music, films and other works in digital form, unauthorized copies of which may have been made available Online. The second concern applies particularly to software that has been specially written, typically, it might be software written for a business or other organization to help it carry out its functions or operations. It might be software used to book holidays or flights or to control an industrial process or to run accounting functions or stock control. Two forms of copyright are relevant here, the first of which is where a duplicate is made (which may then be modified).

The second is where someone undertakes to write new software to emulate the functions and operations carried out by existing software[xxxii]. The latter form of copying is particularly troublesome for copyright law in the determination of cause of action or if the act carried out constitute an infringement. The new software may even have been written without access to the source code of the first software but a copy of the existing software has been used to gain a deep understanding of how it works, what it does and how it does it. This form of copying is known as non-literal or non-textual copying. As will be seen, it can be done without infringing copyright by relying on some of the specific permitted acts that apply to computer programs. But there are dangers for the person writing software to emulate the functions and operations

performed by existing software, as it is possible to infringe copyright indirectly and by taking elements of computer programs not explicitly expressed in the code of the program.

After seeing the above explanations which shows the complex nature of the digital environment which can be termed as the challenge in instituting a legal action for infringement, it will be good if we examine the element of the cause of action in details and know what is needed to institute a lawsuit in the digital environment and why it's a challenge.

To institute a lawsuit, a plaintiff must prove all the elements of cause of action including wrongful action (which can be difficult in the digital environment as seen from the above explanations) this is because wrongful action alone does not trigger a cause of action. It is the existence of the injury, damage, or loss that happened due to that wrongful action.

The following 6-step process gives a copyright owner confidence to specify cause of action for their particular case which in turn is very difficult to establish in the digital environment and causes a challenge[xxxiii].

1. Establish the existence of a legal possessory right: The possessory rights, in this case, mean that the plaintiff's legal right exists and where the defendant's act affects that right. (this is a challenge because in the digital environment, what constitute a right in the jurisdiction of posting may not be what constitute an infringement in a jurisdiction of access)

2. Determine defendant's legal duty to act: The second element of the cause of action corresponds to the primary right of the plaintiff. This duty may arise from a contract or may be imposed by positive law independent of the contract, or it may arise ex contractu or ex delictu (consequences from breaching the contract).

There are several ways to determine whether the defendant had a duty to act:

- The defendant is engaged in the creation of the risk which resulted in the plaintiff's harm.
- Voluntary undertaking: The defendant volunteered to protect the plaintiff from harm.
- Knowledge: The defendant knows/should know that his conduct will harm the plaintiff.
- Business/voluntary relationships:

- Business owner and customer;
- Innkeeper and guest;
- Land possessor who opens her land to the public;
- A person who voluntarily takes custody of another person

3. Prove wrong or violation toward the plaintiff: Duty is the action which is to be done or not done by the person in obligation of it. A cause of action arises wherever there is proof that there was the existence of a duty towards the plaintiff by him which he failed to procure resulting in a breach. For instance, Negligence as a Tort is a breach of duty that is not desired by the plaintiff but committed by the defendant. The Wrongful Act or Omission forms part of the action that leads to affecting the right of the plaintiff.

4. Establish the concurrence of right, duty, and wrong : According to Salmond[xxxiv] "no right can exist without any corresponding duty and vice versa".

Every person is rendered some rights which are granted to him against individuals or some against the public at large. These rights cannot be taken away. On the other hand, it's the duty of individuals around him to let him enjoy his right by doing or restraining from doing anything which may hinder it. Rights and duties exist simultaneously. A right is an interest protected by the law or the state, and it's the duty that mandates the protection of the right. But when the protection is infringed by a failure to follow the duty, it gives rise to the wrong committed and hence, to a cause of action. This renders another right to claim the damage suffered for the one whose right was infringed.

5. Prove damage or loss: When the duty obliged is not performed, the right is infringed causing loss or damage and can be claimed with the cause of action that arose. Damages can be defined as the injury caused or loss incurred by the plaintiff due to the failure of the defendant and can be remedied by issuing the cause of action claiming damages.

6. Demonstrate concurrence of wrong and damage: The maxims damnum sine injuria and injuria sine damnum are elaborative of the relationship between the wrong and damage. Damnum sine Injuria refers to damages without injury or damages where there is no infringement of any legal right in spite of the loss which might have been incurred.

On the other hand, Injuria sine damno refers to infringement of legal right without causing any harm, loss, or damage to the plaintiff. Whenever any legal right is infringed, the plaintiff or the one who suffers can bring a cause of action against the one who infringed the right. Therefore, damages are the result of the cause of action through an actionable wrong.

RATIONALE FOR THE CLASSIFICATION OF CAUSE OF ACTION AND ITS IMPORTANCE IN THE DIGITAL ENVIRONMENT

The most important reason for the classification of cause of action is to determine jurisdiction[xxxv] and the law which is to apply in a particular case especially in the digital environment. It is essential to categorize facts of a case & to find out which part of law to be applied - whether tort / contract/ succession/ marital issues etc. Then only a case can be decided. It is the second element in private international law to decide a case having foreign element, after assuming jurisdiction by a court[xxxvi]. A Cause of Action is therefore by its very nature essential to a Civil or criminal suit, since without a Cause of Action a Civil or a criminal suit cannot arise. The question now arises how important exactly is a Cause of Action?

To pursue a cause of action, a plaintiff pleads or alleges facts in a plaint, the pleading that initiates a lawsuit. A cause of action is said to consist of two parts, legal theory (the legal wrong the plaintiff claims to have suffered) and the remedy (the relief a court is asked to grant). Sometimes cases arise where the facts or circumstances create Multiple Causes of Action.

The law in force or existing at the time the cause of action arose is the law applicable for the determination of the suit. However, when Courts are faced with a case of a foreign element, have a two-stage process; first, the court will apply the law of the forum lex fori (lex fori means the domestic law of the court dealing with the case) to all procedural matters including, evidence rules and the choice of law rules. Further, the court has to count the factors that connect or link the legal issues to the laws of potentially relevant states and applies the laws that have the greatest connection. Example, the law of nationality (lex patriae) or domicile (lex domicilii) will define the legal status and capacity of the parties. The law of the state in which land is situated (lex situs) will be applied to determine all questions of the title. The law of the place where a transaction physically takes place or of the occurrence that gave rise to the

litigation (lex loci actus) will often be the controlling law selected when the matter is substantive.

The aim or object of doing this is to reveal the relevant rule for the choice of law. Thus, once the forum court has decided that it has jurisdiction to hear the case, it then must characterize or classify the cause(s) of action. Once the legal category of a given case has been identified, the next stage is to apply the relevant choice of law rules in order to identify the law of the place where the cause of action was raised (lex cause.) However, even at this stage, it may be necessary to classify a particular rule in order to determine whether it falls within one choice of law rule or another. Generally, the Classification of rule of law applicable in a case will depend basically on the ultimate reasoning of a judge. There is no hard and fast rule on this[xxxvii].

There can be little doubt that, in practice, classification of the cause of action is effected on the basis of the law of the forum[xxxviii]. Thus, by application of the principles of English law, an English judge makes an analysis of the question before him and, after determining its juridical nature in accordance with those principles, assigns it to a particular legal category[xxxix] , this is important with cases of copyright violation in the digital environment because the judge must first identify the category of cause of action before determining the applicable law. Although English law principles are being applied here, the case is in fact one which contains a foreign element, and so the classification which is made will not necessarily be the same as that which would be made in a purely domestic case[xl]. So international law will likely be applied if the infringer is located in a different jurisdiction. In this context, it's object is to serve the purposes of private international law and, since one of the functions or this department of law is to formulate rules applicable to a case that impinges on foreign laws.

It is obviously incumbent on the judge to take into account the accepted rules and Institutions of foreign legal systems. It follows, therefore, that the judge must not rigidly confine himself to the concepts or categories of English internal law for, if he were to adopt this parochial attitude, he might be compelled to disregard some foreign concept merely because it was unknown to his own law which can be the case in the digital environment with users located almost everywhere. The concepts of private international law, such as contract, "tort", 'corporation', "bill of exchange"[xli] (which have been explained detailly above), must be given a wide meaning in order to embrace "analogous legal relations of foreign type (this is

practically very important with the digital environment which entails violation from different jurisdictions)[xlii] In the words of one author:

The various legal categories, into one of which the judge must decide that the question falls before he can select his conflicts rule, must be wider than the categories of the internal law, because otherwise the judge in a conflicts question will be unable to make provision for any rule or institution of foreign law which does not find its counterpart in his own internal law, and thus one of the reasons for the existence of the science of conflict of laws will be defeated.[xliii]

Two examples will show that English judges have been prepared to solve the problem of classification in this broad spirit. In ***De Nicols v Curlies***[xliv] the facts were as follows:

A couple, French by nationality and by domicile, were married in Paris without making an express contract as to their proprietary rights. Their property, both present and future, thus became subject by French law to the system of community of property. The husband died domiciled in England, leaving a will which disregarded his widow's rights under French law. The widow took proceedings in England to recover her community share. The rule of English private international law is that the proprietary rights of a spouse to movables are governed primarily by any contract, express or implied, that the parties may have made before marriage. Failing a contract, the rights are determined by the law of the matrimonial domicile of the parties. Thus the problem of classification was whether the right claimed by the widow was to be treated as contractual or testamentary, for only after that had been decided would it be possible to choose between the French law governing the contract and the English law governing testamentary questions[xlv].

It was clear that in the eyes of English internal law no contract had been made, but the House of Lords held that according to French law a husband and wife are bound by an implied contract to adopt the system of community, despite the absence of an express agreement to that effect. Thus the court, by its readiness to recognize a foreign concept, widened the category of contracts as understood by English internal law[xlvi] (This will equally apply in copyright infringement in the digital environment where, even without a contract, an infringer can be held liable for copyright infringement in the digital environment even if the holder is in another jurisdiction.

A second illustration of the international spirit in which English judges fulfill the task of classification is that, when required to determine whether or not the property in dispute is to be regarded as land and thus subject to the law of the situs, they abandon the distinction between realty and personality in favor of the more universal distinction between movables and immovable[xlvii]. Thus land in England, subject to a trust for sale but not yet sold, is regarded under the domestic doctrine of conversion as already possessing the character of personalty. If, therefore, the owner dies intestate domiciled abroad, it is arguable that he has died entitled not to land, but to pure personalty, and that the relevant intestacy rules are those of the law of his domicile, not of the law of the situs. Despite this, it is held that his right must be classified as a right to an immovable to be governed by the law of the situs,[xlviii]

There is, however, one type of case in which the English judge will probably not make the classification on the basis of English law as the law of the forum. This is where the only possible applicable law is either the law of country X or the law of country Y and both these laws classify the question in the same manner, though in a manner different from that usual in English law[xlix].

THE LAW GOVERNING CLASSIFICATION AND ITS IMPORTANCE FOR COPYRIGHT INFRINGEMENT IN THE DIGITAL ENVIRONMENT

The main worry or problem in the digital environment is to identify what legal system the court will use to clarify the cause of action for copyright infringement in the digital environment. For us to get a clear explanation and answer to this worry, the following illustration will be used to clarify this problem using the example of English law.

A, an Englishman, while in France entered into a contract of marriage with B, a French spinster. He intended to marry her and settle in France but later changed his mind and returned to England. B sued him in England for breach of promise to marry. Under French law the cause of action would be regarded as tortious whereas in English law it is contractual. In this case, the question is, should the English court look upon the matter as tortious or contractual? It will be seen later when examining the choice of law that in private international law different rules

apply to contract and tort. Alternatively should the court make no specific reference to either English or French law but try instead to classify by reference to universal legal principles in such situations?. From this example, a copyright infringement may happen against a holder in a jurisdiction of tort but in the actual jurisdiction in England it can be regarded as a contract. So to have clarity or to answer the question raised above, the law and English courts provide three possible solutions:

(a) The lex fori.

(b) The lex causae.

(c) Principles of analytical jurisprudence and comparative law.

CONCLUSION

From the above explanations, in law, there are several aspects which must be present before you can take one to court and these elements are known as causes of actions. However, even if you have a cause of action, if the elements of duty, breach of duty, causation and damages are not present, one can't get a remedy. It is even more difficult in the digital environment because infringers are always located in different jurisdictions. However, from the above explanations, whenever there is a problem of determining cause of action or the category in the digital environment, the lex foxi, lex causae, and the analytical jurisprudence and comparative law perspectives are all taken into consideration to solve the puzzle.

BIBLIOGRAPHY

Lydia L, (2019), Proving Infringement: Burdens of Proof in Copyright Infringement Litigation, 2nd edition, Lewis & Clark Publication,.

James D, (2012), Shedding light on copyright trolls: an analysis of mass copyright litigation in the age of statutory damages, 9th edition, Heinonline,.

Andrew J L, (2005), A Study of secondary copyright liability in the peer-to-peer context, 2nd edition, JSTOR Publication,.

Christopher J, (2003), ‘’The more things change, the more they stay the same: copyright, digital technology, and social norms’’, Stan Law Journal, 56, 531

Bill H, (2013), The fight over digital rights: the politics of copyright and technology, 1st edition, Cambridge University Press,.

Ben D, (2008), ‘’Technology and uncertainty: the shaping effect on copyright law’’, University of Pansylvania Law Review, 157, 1831

Scott A.W, (1972), Private International Law: conflict of laws, 1st edition, Macdonald and Evans Limited

Fawcett J J & Carruthers J M (2008), Private International law, 14th edition, Oxford University Press

David C J, (1975), The Conflict Process, 1st edition, Cambridge University Press

Bernard C G, (1933), ‘’A pragmatic definition of the cause of action’’, University of Pennsylvania Law Journal, 82(2), pp.129-149.

Michael P, (1999), Identifying the harm done: a critique of the reliance theory of estoppel, 2nd edition, Informit Publication,.

Pamela S, (2017), ‘’Regulating technology through copyright law: a comparative perspective”, European Journal of Law and Politics, 34, pp.678-690.

David I B, (2012), intellectual property, 9th edition, Ashford Colour Press Ltd, Gospot, Hamphire,

Michael E, (2005), Media, Technology and copyright: integrating law and economics, 2nd edition, Edaward Elgar Publishing

Simpson A.B, (2007), ‘’The Salmond Lecture’’, Victoria University Law Journal, 38, 669

Merrick D, (1998), ‘’Jurisdiction in personal actions’’, International Law Journal, 23, P.427.

John H (1997), ‘’Jurisdiction, congressional power and constitutional remedies’’, Georgia Law Journal, 86, P.2513.

Robertson A H, (1940), Characterization in the conflict of laws, 3rd edition, MTLAND Publication

ENDNOTES

[i] Lydia L, (2019), Proving Infringement: Burdens of Proof in Copyright Infringement Litigation, 2nd edition, Lewis & Clark Publication, P.23.
[ii] James D, (2012), Shedding light on copyright trolls: an analysis of mass copyright litigation in the age of statutory damages, 9th edition, Heinonline, P.79.
[iii] Andrew J L, (2005), A Study of secondary copyright liability in the peer-to-peer context, 2nd edition, JSTOR Publication, P.20.
[iv] ibid
[v] Christopher J, (2003), ''The more things change, the more they stay the same: copyright, digital technology, and social norms'', Stan Law Journal, 56, 531.
[vi] Bill H, (2013), The fight over digital rights: the politics of copyright and technology, 1st edition, Cambridge University Press, P.23.
[vii] Ben D, (2008), ''Technology and uncertainty: the shaping effect on copyright law'', University of Pansylvania Law Review, 157, 1831.
[viii] Tezcan v Tezcan (1992), 87 DLR (4th) 503 at 509-511
[ix] Re Musurus's Estate (1936) 2 ALL ER 1666 at 1667
[x] Scott A.W, (1972), Private International Law: conflict of laws, 1st edition, Macdonald and Evans Limited, P.10
[xi] 1965/1/QB/390
[xii] ibid
[xiii] 1900/P/211/16/TLR/354
[xiv] Scott A.W Op cit P.11
[xv] (1956/1/ALL/E.R/27
[xvi] Section 33(1)
[xvii] Fawcett J J & Carruthers J M (2008), Private International law, 14th edition, Oxford University Press, P.42
[xviii] ibid
[xix] *Re Martin, Loustan v Loustan*, (1900)/2/RUSS/EWCA/P211
[xx] 1889/15/BYBIL/46/50
[xxi] IBID
[xxii] The French Court Applied the Matrimonial law of Malta
[xxiii] David C J, (1975), The Conflict Process, 1st edition, Cambridge University Press PP 72-82
[xxiv] *RE Beckett* (1934)/15/BYBIL/46/59
[xxv] Ibid
[xxvi] Bernard C G, (1933), ''A pragmatic definition of the cause of action'', University of Pennsylvania Law Journal, 82(2), pp.129-149.
[xxvii] IBID
[xxviii] Michael P, (1999), Identifying the harm done: a critique of the reliance theory of estoppel, 2nd edition, Informit Publication, P.21.
[xxix] Pamela S, (2017), ''Regulating technology through copyright law: a comparative perspective", European Journal of Law and Politics, 34, pp.678-690.
[xxx] Gordon S E, (1998), OP Cit P.89
[xxxi] David I B, (2012), intellectual property, 9th edition, Ashford Colour Press Ltd, Gospot, Hamphire, P.256.
[xxxii] ibid
[xxxiii] Michael E, (2005), Media, Technology and copyright: integrating law and economics, 2nd edition, Edaward Elgar Publishing, P.50.
[xxxiv] Simpson A.B, (2007), ''The Salmond Lecture'', Victoria University Law Journal, 38, 669 .
[xxxv] Merrick D, (1998), ''Jurisdiction in personal actions'', International Law Journal, 23, P.427.

[xxxvi] John H (1997), ''Jurisdiction, congressional power and constitutional remedies'', Georgia Law Journal, 86, P.2513.
[xxxvii] Nevertheless, the correct choice of law will depend on some connecting factors such as domicile, the situation of immovable, and definite legal systems.
[xxxviii] Fawcett J & Carruthers op cit P.43
[xxxix] *Trafigura Beheer Bv v Kookmin Bank* , (2006)/EWHC/1450
[xl] *Macmillan Inc v Bishopsgate Trust* , (1996)/1/WLR/387
[xli] *G&H Montage v Irvani*, (1990)/1/WLR/6667 at 676
[xlii] Nussbum R OP CIT P.1470
[xliii] Robertson A H, (1940), Characterization in the conflict of laws, 3rd edition, MTLAND Publication, P.78
[xliv] (1900)/AC/HCL/21
[xlv] Fawcett Suppra
[xlvi] ibid
[xlvii] *Re Berchtold*, (1923)/ EWCA/1CH/192
[xlviii] IBID
[xlix] Robertson op cit P.76.