

Legal Regulation & Education: Doing the Right Thing?

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Article 5 (3) of the Brussels I Regulation and its applicability in the case of intellectual property rights infringement on the Internet

Article 5(3) of the Brussels I Regulation provides that a person domiciled in a Member State may be sued in another Member State in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful events occurred or may occur. For a number of years art. 5 (3) of the Brussels I Regulation has been at the centre of the debate regarding the intellectual property rights infringement over the Internet. Nothing has been done to adapt the provisions relating to non-internet cases of infringement of intellectual property rights to the context of the Internet. The author's findings indicate that in the case of intellectual property rights infringement on the Internet, the plaintiff has the option to sue either: - in the Member State of the event giving rise to the damage; - in the Member State where the damage occurred. However, it must be admitted that whilst infringement over the Internet has some similarity to multi-State defamation by means of newspapers, the position is not entirely analogous due to the cross-border nature of the Internet. A simple example which may appropriately illustrate its contentious nature is a defamatory statement published on a website accessible in different Member States, and available in different languages. Therefore, we need to answer the question: how these traditional jurisdictional rules apply in the case of intellectual property rights infringement over the Internet? Should these traditional jurisdictional rules be modified? These questions will be discussed in detail. Indeed, suing at the place of intellectual property rights infringement is usually regarded as the most effective way to obtain the judicial protection of intellectual property rights as this place is the most closest to the factual elements of the dispute and to the evidence.