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THE PROBLEMATIC APPLICATION OF THE "LAW OF THE COUNTRY FOR WHICH PROTECTION IS CLAIMED" RULE TO CROSS-BORDER TRADEMARK DISPUTES: A COMPARATIVE ANALYTICAL STUDY IN LIGHT OF YEMENI LAW AND DIGITAL CHALLENGES

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ABSTRACT

Trademark infringement is no longer territorially confined. The proliferation of cross-border e-commerce platforms and digital marketplaces raises intricate conflict-of-laws issues regarding the determination of applicable laws in transnational disputes. This study analyzes the lex loci protectionis rule as the optimal connecting factor for trademark disputes and assesses its operational efficacy in adjudicating multi-market digital conflicts, with particular attention to legislative lacunae within the Yemeni legal framework. Employing an analytical, comparative, and critical methodology, this study examines the Paris Convention, the Berne Convention, the TRIPS Agreement, and the Rome II Regulation alongside European, American, and Chinese jurisprudence. It further presents a qualitative critical analysis of a limited but purposive sample of six Yemeni and Egyptian judicial rulings. Findings indicate that while this traditional connecting rule aligns faithfully with the principle of territoriality, its practical utility diminishes significantly in the digital environment, thereby necessitating interpretive agility. The study further reveals that the Yemeni judiciary does not consciously apply the lex loci protectionis rule but defaults to the law of the forum, a practice that becomes structurally unsustainable in genuine cross-border disputes. As an original contribution, this study proposes the "direct market targeting" test as a supplementary interpretive mechanism anchored in Article 33 of the Yemeni Civil Code. This approach permits the functional application of Yemeni law to foreign acts that deliberately target the domestic market, thereby preserving national protection autonomy. The study concludes by advocating for a carefully calibrated legislative amendment to codify this mechanism while acknowledging the practical limitations of the empirical case sample.

KEYWORDS: Lex Loci Protectionis, Conflict of Laws, Trademarks, Transnational E-Commerce, Territoriality Principle, Direct Market Targeting.

1. INTRODUCTION

In a globalized digital economy, international trademark disputes transcend physical, single-state acts. They now involve multifaceted foreign elements: a trademark owned in one state, registered in another, and utilized via servers in a third jurisdiction to target consumers globally, including Yemen. This complex entanglement severely complicates the determination of the applicable law governing the right's existence, its scope of protection, and the resulting infringement liability (Treppoz, 2014; Torremans, 2014). The traditional territorial paradigm, which once provided clear demarcations of legal authority, has been fundamentally disrupted by the borderless architecture of the internet. Digital platforms enable a single infringing act to produce instantaneous, multi-jurisdictional effects that defy conventional spatial categorization. Consequently, private international law must confront an unprecedented challenge: how to reconcile the inherently territorial nature of intellectual property rights with the inherently universal reach of digital commerce (Kur & Maunsbach, 2019).

Traditional private international law rules prove fundamentally inadequate for this task. The rule of lex loci delicti commissi, which designates the law of the place where the harmful act was committed, requires a physical locus of either the act or the resulting damage. Trademark infringement, however, does not implicate an abstract material interest in the conventional tort sense. Rather, it violates a strictly territorial right that is contingent entirely upon a specific state's legislative grant (Peukert, 2012). Similarly, the application of lex originis, referring to the law of the country of origin, or the right holder's lex domicilii, representing the law of domicile, are equally inappropriate. Trademark protection derives from the targeted state's laws, not from the owner's nationality or residence. These traditional connecting factors were designed for a physical world where acts and injuries could be geographically localized with reasonable precision (Kono, 2012).

Consequently, the lex loci protectionis rule emerges as the most conceptually aligned connecting factor for trademark disputes. Under this rule, the governing law is that of the jurisdiction in which protection is sought. This law dictates the right's creation, its validity, the scope of exclusive prerogatives, the criteria for establishing infringement, and the subsequent legal remedies available to the right holder. The rule is deeply rooted in the principle of territoriality, which dictates that each state establishes an autonomous proprietary regime within its borders (Gervais, 2026). Rights granted in one jurisdiction do not produce extraterritorial effects unless explicitly recognized by another state's legal system. This doctrinal understanding has been progressively codified in international conventions, regional regulations, and academic restatements across multiple legal traditions.

Despite its theoretical elegance, the practical application of this rule encounters significant obstacles in the contemporary digital environment. The ubiquitous nature of online infringement means that a single digital act can trigger the simultaneous application of dozens of national laws, a phenomenon known as the mosaic approach (Morris, 2019). This multiplicity generates prohibitive litigation costs, imposes staggering evidentiary burdens on claimants, and creates opportunities for defendants to exploit jurisdictional complexities through forum shopping. These practical difficulties are compounded in legal systems that lack explicit choice-of-law provisions for intellectual property disputes (Al-Hasban, 2020). Yemen represents a paradigmatic example of such a system, where legislative silence on the applicable connecting factor has produced methodological confusion within the judiciary (Hassan, 2018). This study addresses these intersecting challenges through a comprehensive comparative and analytical framework.

1.1. Study Problem and Questions

The study problem transcends the mere theoretical grounding of the lex loci protectionis rule, a subject already exhaustively mapped in European literature. The core problem lies in testing the practical efficacy of this rule within complex digital paradigms and incomplete national frameworks. Specifically, this study investigates how legal systems without explicit intellectual property conflict rules navigate transnational trademark disputes, and whether the resulting judicial practices preserve or undermine the territorial foundation of trademark protection. The study further examines whether the traditional mosaic logic of territorial application can accommodate the unitary nature of digital acts without fragmenting disputes to the point of practical impossibility. Finally, it seeks to identify interpretive or legislative mechanisms capable of enabling developing legal systems to absorb digital challenges without subverting the foundational principles of private international law.

This problem crystallizes into three interconnected study questions:

1. In the absence of an explicit statutory provision, how does the Yemeni legal system adjudicate transnational trademark disputes? Do courts correctly apply Yemeni law as the lex loci protectionis, or do they improperly conflate it with the lex fori, leading to an inadvertent application that undermines legal certainty and doctrinal coherence?
2. To what extent can the mosaic approach, inherent in the logic of territoriality, accommodate ubiquitous digital infringements without fragmenting the dispute and inflating litigation costs to prohibitive levels? Can the traditional distributive application of multiple national laws survive the unitary architecture of the internet?
3. What interpretive or legislative mechanisms can enable Yemeni law to absorb digital challenges without subverting the rule's territorial foundation, thereby achieving a workable balance between national sovereignty and effective cross-border protection?

1.2. Objectives Of the Study

This study pursues four interrelated objectives that collectively address the theoretical, practical, and normative dimensions of the study problem.

1. This study seeks to deconstruct the theoretical basis of the lex loci protectionis rule, distinguishing it sharply from parallel connecting rules such as lex fori and lex loci delicti commissi, and demonstrating their divergent practical outcomes in trademark disputes.
2. This study conducts a critical case analysis of the rule's application in Yemen, based on a qualitative examination of a purposive sample of Yemeni and Egyptian judicial rulings, to determine the judiciary's actual stance on connecting factors and to test the hypothesis of implicit application.
3. This study assesses the operational limits of the rule in the digital sphere, treating these limits not as absolute flaws but as catalysts for doctrinal evolution and methodological refinement.
4. This study formulates an original normative framework by proposing the "direct market targeting" test, grounded in Article 33 of the Yemeni Civil Code, thereby equipping the Yemeni judiciary with a practical tool to apply domestic law to foreign digital acts without violating national autonomy or territorial principles.

1.3. Significance Of the Study

The significance of this study operates across three distinct dimensions that collectively justify its scholarly and practical contribution to the field of private international law:

Theoretically, this study provides a substantive Arab jurisprudential contribution to a heavily under-researched area of conflict of laws. It transitions the regional scholarly discourse from mere descriptive transmission of Western doctrines to genuine methodological critique and original normative proposal. This represents a meaningful shift in the intellectual trajectory of Arab private international law scholarship.

Practically, this study serves as a navigational tool for legal practitioners, judges, and policymakers operating within jurisdictions that lack explicit intellectual property conflict rules. It disentangles the pervasive judicial confusion among lex fori, lex loci protectionis, and lex loci delicti commissi, offering clear analytical criteria for distinguishing these connecting factors in actual litigation.

Methodologically, this study deviates from generic calls for legal flexibility by constructing a tangible, operational legal criterion. The proposed "direct market targeting" test is anchored in existing legislation and supported by specific, identifiable indicia. This provides an actionable normative proposal that can be immediately deployed by judges under current statutory authority or formally codified through legislative amendment.

1.4. Literature Review and Research Gap

Recent scholarship emphasizes that digital trademark disputes create localization problems that traditional connecting factors cannot easily resolve. Online infringement may involve a seller in one state, a platform in another, servers in a third state, and consumers in multiple markets. For this reason, several authors argue that mere online accessibility should not automatically justify applying every law of every state from which a website can be viewed (Dornis, 2017, 2018; Kur & Maunsbach, 2019; Morris, 2019). This supports the need for a more precise territorial nexus in digital trademark disputes**.**

A related body of literature examines the liability of online marketplaces and intermediaries. In the United States, Tiffany v. eBay required specific knowledge of infringing listings before imposing contributory liability, whereas European case law has increasingly examined whether the platform

plays an active commercial role in presenting, promoting, storing, or delivering infringing goods (Christian Louboutin v. Amazon, 2022; Senftleben, 2020). These developments are relevant because platform conduct may provide objective evidence of market targeting.

However, most existing scholarship focuses on European, American, and Chinese models, with limited attention to Arab legal systems that lack express intellectual property choice-of-law rules. This study addresses that gap by adapting the targeting concept to Yemeni law through Article 33 of the Yemeni Civil Code and by proposing objective indicia for distinguishing intentional market direction from incidental digital accessibility.

2. METHODOLOGY

This study adopts a qualitative analytical, comparative, and critical methodology. It does not seek to produce statistical generalizations about all Yemeni trademark litigation. Rather, it examines how courts reason when trademark disputes involve, expressly or implicitly, a foreign element.

First, the study analyzes relevant international and comparative instruments, including the Paris Convention, TRIPS Agreement, Rome II Regulation, and the Chinese Law on the Application of Laws to Foreign-Related Civil Relations. This analysis clarifies the doctrinal foundation of lex loci protectionis and its relationship to territorial trademark protection (Basedow et al., 2010; Kono, 2012; Torremans, 2014).

Second, the study uses functional comparison. Europe, the United States, and China are examined because they represent three different models: strict codification, statutory-scope analysis, and codification with flexibility. Additional references to India and the UAE are included to broaden the comparative perspective and to show how developing and regional systems respond to digital trademark enforcement challenges (Satyam Infoway Ltd. v. Siffynet Solutions Pvt. Ltd., 2004; Federal Decree-Law No. 36 of 2021).

Third, the study analyzes a purposive sample of six Yemeni and Egyptian rulings. The cases were selected because they involve trademark protection, raise territorial or foreign-element issues, and are among the available decisions capable of testing whether courts distinguish lex fori from lex loci protectionis. The sample is necessarily limited due to the scarcity of published Yemeni commercial judgments. Accordingly, the case analysis is exploratory and doctrinal rather than statistically representative. Its value lies in identifying patterns of reasoning that require legislative and judicial attention.

Finally, the study develops the proposed "direct market targeting" test as a constructive legal solution grounded in Article 33 of the Yemeni Civil Code, comparative case law, and soft-law principles such as CLIP and the ILA Kyoto Guidelines (CLIP, 2011; ILA, 2020).

3. THEORETICAL FRAMEWORK

3.1. Chapter One: Theoretical Foundations of the Lex Loci Protectionis in Trademark Disputes

The lex loci protectionis rule posits that the existence, scope, and infringement of trademark rights are governed by the law of the state where protection is sought. This rule transcends a mere mechanical connecting factor; it serves as the doctrinal manifestation of the territoriality principle in intellectual property. Territoriality dictates that each state establishes an autonomous proprietary regime within its borders, precluding rights granted elsewhere from producing extraterritorial effects (Dinwoodie, 2004). The following sections deconstruct the rule's conceptual foundations, distinguish it from analogous connecting rules, and trace its evolution through conventional, legislative, and academic architectures.

3.1.1. Conceptual Nuances and Philosophical Underpinnings

3.1.1.1. Definitional Precision and Functional Scope

Lex loci protectionis designates the substantive law of the country for whose territory protection is sought. Regardless of the forum's nationality, the litigants' domicile, or the jurisdictional nexus, the adjudicator must apply this law to determine four essential elements.

Existence and Validity: The original acquisition of the trademark right, including registration requirements, use, and acquired distinctiveness.

Scope and Content: The boundaries of exclusive prerogatives, including the right to exclude and licensing capabilities.

Infringement: The characterization of the defendant's conduct, including similarity tests, likelihood of confusion, and fair use defenses.

Remedies: The available legal and equitable redress.

It is essential to stress that the applicable law is not contingent on the plaintiff's subjective claim. Rather,

it is an objective connecting factor inherently dictated by the right's nature. A trademark does not exist in vacuo as a universal right; it is fundamentally a "bundle of independent national rights, each possessing its own territory and its own law" (Treppoz, 2014, p. 4). This doctrinal understanding necessitates a "mosaic approach," logically resulting in the distributive application of multiple national laws when an infringement spans several territories (Kono, 2012).

3.1.1.2. Philosophical Basis: Economic Sovereignty and Market Regulation

The philosophical rationale extends beyond spatial legislative demarcation to encompass a state's economic and legal sovereignty. Trademark protection inherently functions as an internal market regulation mechanism, designed to combat commercial deception. Each state exercises exclusive competence to calibrate protection thresholds and delineate exclusive rights based on its socio-economic policies. This sovereign imperative explains the modern legislative trajectory, exemplified by the Rome II Regulation, which classifies this rule as mandatory and non-derogable, deeply intertwined with the public interest of the protecting state (Torremans, 2014). However, this very rigidity has attracted criticism for inflating litigation costs in disputes involving multiple protected territories, an issue addressed in subsequent chapters (Basedow et al., 2010).

3.1.2. Doctrinal Demarcation from Analogous Connecting Rules

Distinguishing lex loci protectionis from lex fori and lex loci delicti must extend beyond theoretical taxonomy to expose divergent practical outcomes. This demarcation is frequently blurred in judicial practice, particularly in jurisdictions lacking mature, specialized conflict-of-laws rules, such as Yemen (Hassan, 2018).

3.1.2.1. Lex Loci Protectionis Versus Lex Fori

Doctrinal conflation typically stems from two factors. First, litigation frequently occurs in the state where protection is sought, leading to a coincidental overlap. Second, the phrasing of Article 5(2) of the Berne Convention (1886), stating that "the extent of protection, as well as the means of redress… shall be governed exclusively by the laws of the country where protection is claimed," has historically led some scholars to misinterpret it as a reference to the lex fori (Salamah, 1996). This interpretation is fundamentally flawed, conflating procedural mechanics with substantive rights.

1. The lex fori governs the adjudicative machinery: international jurisdiction, civil procedure, evidentiary rules, and appellate mechanisms. It is substantively neutral and does not confer rights.
2. The lex loci protectionis governs the proprietary right itself: its genesis, validity, scope, and infringement.

A practical paradigm illustrates this dichotomy. Assume a Yemeni court exercises jurisdiction over two domestic companies regarding an infringement occurring in Egypt, involving a trademark registered solely in Egypt. Here, lex fori is Yemeni law (governing procedure), while lex loci protectionis is Egyptian Intellectual Property Protection Law No. 82 of 2002. If the Yemeni court applies Yemeni substantive law under the guise of lex fori, it subjects the trademark to a regime granting it zero protection, absent registration or notoriety in Yemen, effectively nullifying the Egyptian protection. This constitutes a gross methodological error, a phenomenon critically analyzed in Chapter Three.

This demarcation is firmly entrenched in contemporary Arab scholarship. Abu Dalu (2008, p. 45) cautions against conflating procedural and substantive references, asserting that "the right's existence is exclusively governed by the law of the protecting country". This distinction becomes acute in the digital environment, as emphasized by the European Max Planck Group on Conflict of Laws in Intellectual Property (CLIP, 2011), which staunchly advocate for the absolute decoupling of protection law from forum law.

3.1.2.2. Lex Loci Protectionis Versus Lex Loci Delicti

This distinction presents a more complex jurisprudential challenge. The lex loci delicti serves as the default connecting rule for non-contractual liability, premised on damage as a localized material event. However, this rule is inherently incapable of governing intangible, territorial trademark infringement due to two primary reasons.

Ontological Reason: An act only materializes as a legally cognizable "harm" if it infringes upon a recognized right. If counterfeit manufacturing occurs in State A (where the mark is unprotected), no legal tort exists there. If the goods are sold in State B (where protection exists), the legal injury vests in State B. Thus, identifying the locus of harm requires a priori reference to the law recognizing the right, namely, lex loci protectionis.

Functional Reason: Trademark infringement

constitutes a multi-jurisdictional chain of acts (manufacturing, offering, and advertising). Relying on lex loci delicti invariably triggers intractable characterization disputes regarding the locus. Conversely, lex loci protectionis eliminates this uncertainty by directly anchoring the dispute to the targeted territory.

While the two rules may coincidentally align in purely domestic disputes, cross-border litigation exposes their fundamental divergence. This precise divergence compelled the European legislature to explicitly carve out intellectual property from the general tort rule (Article 4) in the Rome II Regulation (2007), dedicating Article 8 to affirm the inadequacy of lex loci delicti for such rights (Peukert, 2012).

Table 1: Comparative Distinction Between the Principle Connecting Factors.

Connecting factor	Legal function	Typical subject matter	Trademark suitability	Digital-commerce risk if misapplied
Lex loci protectionis	Applies the law of the state for whose territory trademark protection is claimed.	Existence, validity, scope, infringement, and remedies of the trademark right.	Highly suitable, because trademark rights are territorial and depend on the protecting state's legal grant.	Strict application may produce excessive mosaic fragmentation unless moderated by targeting or closest-connection mechanisms.
Lex fori	Applies the law of the forum court.	Jurisdiction, procedure, evidence, remedies classified as procedural, and enforcement mechanisms.	Unsuitable as a substantive trademark connecting factor unless the forum is also the protecting state.	Courts may wrongly apply domestic law merely because they are seized of the dispute, thereby nullifying foreign trademark rights.
Lex loci delicti	Applies the law of the place where the wrongful act or damage occurred.	General non-contractual obligations and physical torts.	Structurally inadequate for trademarks, because infringement presupposes the existence of a territorial intangible right.	Online acts may occur, be hosted, accessed, and cause effects in multiple states, making localization artificial and unpredictable.

This comparison demonstrates that lex loci protectionis is not simply another tort connecting factor. It derives from the legal architecture of intellectual property itself. Lex fori may coincide with it when protection is claimed in the forum state, but such coincidence must not obscure their conceptual separation. Lex loci delicti, although appropriate for ordinary torts, is unable to localize digital trademark infringement without first identifying the territory in which the trademark right exists and is protected.

3.1.3. Conventional, Legislative, And Academic Architectures

The rule evolved progressively through the accretion of international treaties, domestic codifications, and academic restatements.

3.1.3.1. The International Conventional Matrix

International intellectual property conventions reinforce the territorial foundation of trademark rights but generally stop short of providing a complete choice-of-law code. The Paris Convention (1883) establishes the core logic through national treatment and the independence of national registrations, particularly Article 6(3), which confirms that the fate of a trademark in one Union country is independent from its fate elsewhere. Although the Berne Convention (1886) concerns copyright rather than trademarks, Article 5(2) historically supplied the classic formula that the extent of protection is governed by the law of the country where protection is claimed. TRIPS, in turn, harmonizes minimum standards without displacing national legal systems as the operative source of protection (Gervais, 2026; Treppoz, 2014).

The combined effect of these instruments is therefore structural rather than exhaustive. They preserve the autonomy of national protection regimes and support lex loci protectionis as the most coherent connecting factor, but they do not resolve all questions arising when a domestic court adjudicates a foreign or multi-territorial infringement. That unresolved space is filled by regional legislation, domestic conflict rules, and academic principles such as ALI, CLIP, and the ILA Kyoto Guidelines (ALI, 2008; CLIP, 2011; ILA, 2020).

3.1.3.2. The Comparative Legislative Framework: Mandatory Application Versus Party Autonomy

Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (2007): Represents a paradigm shift. Article 8(1) codifies the rule comprehensively, and Article 8(3) expressly prohibits party autonomy. This rigid legislative posture stems from characterizing IP

rights as instruments of state public policy (Torremans, 2014; Basedow et al., 2010). Nevertheless, this rigidity is not without criticism: in business-to-business contexts, the mandatory mosaic application can lead to prohibitive litigation costs and fragmented proceedings, particularly when a single digital act triggers the laws of multiple Member States.

Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations (2010): Article 50 of the Law on the Application of Laws to Foreign-Related Civil Relations explicitly adopts the rule but permits ex post party autonomy to select lex fori. This antithetical approach to the European model demonstrates a pragmatic posture toward commercial dispute resolution (Chen & Xue, 2024).

Swiss (Article 110) and Belgian (Article 93) Codes: Both rigorously enshrine the rule with minimal exceptions, cementing a strict territorialist doctrine (Kur & Maunsbach, 2019).

3.1.3.3. Academic Initiatives: Mitigating Methodological Rigidity

Recognizing that strict mosaic application in the digital sphere generates impracticable fractionalization, initiatives such as the American Law Institute (ALI, 2008), CLIP (2011), and International Law Association (ILA, 2020) have advanced corrective mechanisms. While preserving lex loci protectionis as the foundational axiom, they propose three complementary adjustments.

Application of the law of the state with the "closest connection" to the dispute in toto (see, e.g., CLIP Article 3:603; CLIP, 2011).

Focusing on the law of the "substantially affected market."

Granting judicial discretion to consolidate the connecting factor when practical severability is unattainable.

These doctrinal proposals do not abrogate the foundational rule but rather infuse it with necessary elasticity. They provide the theoretical scaffolding for the "direct market targeting" criterion, proposed in Chapter Four, as a functional interpretive mechanism for Yemeni law. Crucially, the "targeting" analysis is distinct from a general "effects" test; it requires objective indicia of purposeful direction toward a specific market, not mere incidental accessibility (ALI, 2008).

3.2. Chapter Two: Comparative Judicial Operationalization of Lex Loci Protectionis: From Rigid Territoriality to Functional Flexibility

While statutory frameworks establish the normative baseline for the lex loci protectionis rule, judicial adjudication tests its operational efficacy. This chapter deconstructs three distinct judicial paradigms: the European, American, and Chinese models. Rather than examining them as parallel structures, they are analyzed as divergent jurisprudential trajectories reflecting distinct legal philosophies in balancing territorial sovereignty with market globalization. This comparative analysis establishes an evaluative benchmark to assess the jurisprudential awareness of Yemeni courts in Chapter Three.

3.2.1. The European Model: Strict Codification Counterbalanced by Functional Adjudication

The European Union serves as a mature laboratory for the rule, merging mandatory unified legislation, Rome II Regulation (2007), with an integrated internal market. However, domestic case law reveals doctrinal variances in implementation, oscillating between rigid territorial formalism and functional elasticity.

3.2.1.1. Dogmatic Territoriality: The Adolf Loos-Werke II and Sisro Jurisprudence

In *Adolf Loos-Werke II* (Austria), multi-jurisdictional trademark infringement prompted a strictly distributive application of the rule. The Austrian court applied Austrian law to domestic infringements and German law to German infringement. The judiciary eschewed consolidating the applicable law under the regime of the most affected market, adhering meticulously to the autonomy of national titles (Zhao, 2012).

Similarly, the French Court of Cassation in *Sisro v.* Ampersand Software affirmed that EU member states maintain autonomous proprietary regimes. Consequently, French courts could not extend French law to extraterritorial infringements (Torremans, 2014). This rigid implementation reflects a philosophy that views the judiciary as a mechanism to apply legislative plurality, rather than unify it, even at the cost of procedural fractionalization.

3.2.1.2. Functional Territoriality: The Lagardère and Citroën Paradigms

Conversely, other European judicatories have introduced functional elasticity without subverting the rule's core. In *Lagardère v. SPRE*, a satellite broadcasting copyright dispute, the Court of Justice of the European Union localized the legal injury in

the state of reception, where the public was targeted. This "targeted broadcasting doctrine" provides a conceptual foundation for resolving digital trademark conflicts (Peukert, 2012).

In trademark jurisprudence, the French decision Citroën v. Polestar (Tribunal judiciaire de Paris) (European Union Intellectual Property Office (EUIPO), 2025), as reported by the EUIPO Observatory, exemplifies this functional transition. The Swedish EV manufacturer Polestar utilized a logo similar to Citroën's in digital advertisements across Europe. Rather than treating the dispute as a monolithic European infraction, the French court localized its inquiry strictly to the protection claimed in France. The court evaluated the substantial commercial effect of online usage on the reputation of the mark within the French market. Finding that the unauthorized digital presence diluted the distinctive character of the renowned French mark, the court ordered localized cessation and damages.

Citroën v. Polestar demonstrates that lex loci protectionis can operate efficiently without causing mosaic fractionalization, provided the targeted market is clearly isolated (EUIPO, 2025). This trajectory has gained traction in Arab scholarship. Qasim (2025) observes that contemporary EU jurisprudence increasingly confines conflict analysis to the market experiencing the gravitational mass of commercial effects, reflecting a purposive interpretation that transcends mechanical territorial rigidity.

European Corollary: The lex loci protectionis remains foundational, and the mosaic approach is its logical consequence in multi-market disputes. However, European courts increasingly concentrate the connecting factor on the law of the state acting as the genuine economic locus of protection. This methodology is directly utilized in the normative framework proposed in Chapter Four.

3.2.2. The American Model: The Statutory Scope Paradigm and the Presumption Against Extraterritoriality

The United States represents an antithetical model, lacking explicit choice-of-law rules for transnational trademark disputes. Instead, federal courts navigate conflict issues through two structural doctrines: the principle of territoriality inherent in the Lanham Act (Trademark Act of 1946), and the presumption against extraterritoriality, a canon of statutory construction precluding the application of federal legislation to foreign conduct absent clear congressional intent. Consequently, U.S. courts bypass the bilateral question of which law applies in favor of a unilateral inquiry: does the domestic statute apply?

3.2.2.1. Judicial Evolution: From Extraterritorial Expansion to Strict Retrenchment

In Steele v. Bulova Watch Co. (1952), the U.S. Supreme Court extended the Lanham Act to acts in Mexico, the manufacturing of counterfeit watches, because the conduct generated a "substantial effect on U.S. commerce" when the goods filtered back into the domestic market. While developed to calibrate the statute's extraterritorial reach, this "effects test" gained comparative recognition as an American functional translation of territoriality (Alharbi, 2015). It is critical to note, however, that Steele's effects test should not be simplistically equated with the "targeting" criterion proposed in this study; the latter requires affirmative purposeful direction, not just any downstream commercial effect.

Conversely, Vanity Fair Mills v. T. Eaton Co. (1956) restricted this expansion. The Second Circuit refused to apply the Lanham Act to a Canadian defendant's conduct in Canada, citing the defendant's prior, independent Canadian trademark registration. The court emphasized the sovereign independence of national registrations, mirroring the core philosophy of lex loci protectionis by refusing to allow domestic law to override an autonomous foreign title.

The definitive modern consolidation of this doctrine occurred in Abitron Austria GmbH v. Hetronic International, Inc. (2023). The U.S. Supreme Court severely restricted the Lanham Act's extraterritorial application, ruling that its liability provisions extend exclusively to domestic "use in commerce." The Court rejected damages for foreign sales executed by an Austrian defendant, even though the conduct misappropriated an American trademark. Abitron effectively dismantled the expansive extraterritorial effects doctrine, reaffirming that trademark protection is strictly tethered to the territorial market (Dinwoodie, 2004; Dornis, 2018).

This retrenchment means that the early Steele framework now operates within a very narrow band, and any comparative borrowing must account for this limitation.

American Corollary: While achieving identical functional outcomes, confining regulatory authority to the territorial market, the methodology differs fundamentally from the European approach. The U.S. model operates via statutory interpretation and subject-matter scope, whereas the European model

utilizes classic choice-of-law rules. The residual value of the pre-Abitron "substantial effects" benchmark is its emphasis on a genuine economic nexus. When combined with indicia of intentional targeting, this notion helps shape the "direct market targeting" test proposed herein.

3.2.3. The Chinese Model: Explicit Codification and Post-Infringement Flexibility

The Chinese legal framework provides a highly pragmatic intermediate model for developing legal systems seeking modern codification. Article 50 of the Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations (2010) explicitly codifies lex loci protectionis: "liability for infringement of intellectual property rights shall be governed by the law of the country where protection is claimed." Crucially, it appends a flexible exception: "the parties may, after the infringement occurs, agree on the application of the law of the forum."

This statutory architecture demonstrates an acute awareness of the rule's operational limits. It establishes lex loci protectionis as the baseline default but introduces post-dispute party autonomy to select lex fori. This mechanism recognizes that in commercial litigation, consolidating the applicable law to mitigate costs and procedural friction often outweighs absolute sovereign interest. This effectively resolves the systemic rigidity of Rome II Regulation (2007). Kono (2012) notes that the Chinese model successfully balances the predictability of a fixed connecting factor with the commercial agility required by the digital economy.

The judicial application of this rule is illustrated in a landmark decision noted by Chen and Xue (2024). A Chinese court applied Japanese law to an infringement dispute between two Chinese corporations because the underlying trademark protection was localized in Japan. This demonstrates that Chinese courts seamlessly decouple lex fori (Chinese procedural law) from lex loci protectionis (Japanese substantive law), a jurisprudential distinction routinely obscured in Arab judicatories.

Chinese Corollary: A contemporary conflict-of-laws framework can successfully reconcile rigid sovereign principles with commercial pragmatism by marrying a clear default rule with flexible exceptions. Furthermore, the Chinese experience underscores that judicial acumen, rather than the mere existence of a statutory text, dictates the successful operationalization of choice-of-law rules.

3.2.4. Additional Comparative Experiences: India And the Gulf Region

India provides a useful comparative reference because its courts have adapted trademark principles to digital identifiers. In Satyam Infoway Ltd. v. Siffynet Solutions Pvt. Ltd. (2004), the Supreme Court of India recognized that domain names perform a source-identifying function and may be protected through passing-off principles. Indian intermediary disputes also show the importance of distinguishing passive hosting from active participation in the sale or promotion of infringing goods. This distinction is relevant to the proposed targeting test because platform structure, fulfilment, and promotion may indicate purposeful direction toward a market**.**

The Gulf region also offers a relevant regional comparison. UAE Federal Decree-Law No. 36 of 2021 on Trademarks reflects a modernized approach to trademark protection, while UAE enforcement practice increasingly relies on digital evidence, customs recordation, and online takedown mechanisms. Although the UAE model does not provide a complete private-international-law solution, it illustrates how a Middle Eastern jurisdiction may strengthen territorial trademark protection in a digital economy. These examples confirm that Yemen need not transplant a foreign model wholesale; rather, it can adopt a structured evidentiary approach to determine when online activity targets the Yemeni market.

3.2.5. Jurisprudential Extraction and Analytical Benchmarks

Three pivotal lessons emerge from this comparative analysis, forming the criteria to evaluate the Yemeni legal framework in Chapter Three.

Judicial Acumen: The distinction between lex fori and lex loci protectionis requires specialized judicial training. The operational success of the European and Chinese models depends on this acumen, which is bypassed in the U.S. through alternative statutory construction tools. The subsequent chapter tests whether this awareness exists within the Yemeni judiciary.

Statutory Necessity: Absent an explicit conflict rule, such as China's Article 50, judges are forced into ad hoc judicial improvisation, which invariably leads to doctrinal confusion.

Targeting as a Mitigating Mechanism: The narrowed post-Abitron U.S. approach and the localized market analysis in Citroën v. Polestar point toward a viable solution for digital ubiquity. Anchoring the connecting factor to the market affirmatively targeted by the infringer through

objective indicia of purposeful direction, rather than every jurisdiction experiencing incidental digital exposure, provides the foundation for the proposed "direct market targeting" criterion.

3.3. Chapter Three: Case Study: The Connecting Factor in Trademark Disputes Under Yemeni Law (From Implicit Application to Methodological Impotence)

Having examined how the lex loci protectionis rule is applied legislatively and judicially in comparative systems, we now arrive at the pivotal question: what is the position of the Yemeni legal system regarding this rule? This chapter does not aim to assume the application of the rule in Yemen; rather, it seeks to test the hypothesis of implicit application hinted at in earlier scholarship. The study was conducted using a dual methodology: a critical legislative analysis of the Yemeni Civil Code and Trademarks Law, followed by a qualitative judicial analysis of a limited but purposive sample of Yemeni and Egyptian rulings. This chapter demonstrates that sampled Yemeni courts do not apply the rule as a conscious connecting factor. Instead, they reach results that may occasionally coincide with it through legislative or territorial coincidences. This reliance on domestic law entangles judicial reasoning in methodological contradictions, flaws that become glaringly apparent in genuine cross-border disputes. It is important to stress that the conclusions drawn from this small sample are indicative rather than statistically generalizable; they point to a pattern that warrants further empirical investigation.

3.3.1. Critical Analysis of the Yemeni Legislative Framework: Legislative Vacuum and Doctrinal Conflation

In Yemeni law, most notably in Yemeni Civil Code No. 14 of 2002 and the Yemeni Trademarks and Geographical Indications Law No. 23 of 2010, there is no explicit text adopting the lex loci protectionis rule or any specific connecting rule for intellectual property. This legislative vacuum transcends mere deficiency; it engenders profound methodological flaws. As Treppoz (2014) argues, the territorial nature of trademarks demands explicit conflict rules to prevent judicial conflation between procedural and substantive connecting factors.

3.3.1.1. Analysis Of the Civil Code Provisions: Articles 31 And 33

The Yemeni Civil Code (No. 14 of 2002) addresses conflict-of-laws issues in Articles 24 through 35. Two of these provisions are highly critical to our study. However, both suffer from drafting ambiguities that precipitate doctrinal confusion.

Article 31: "Redress for liability arising from a non-contractual act, or its fine, shall be governed by Yemeni law if committed abroad…" (Yemeni Civil Code No. 14 of 2002, Article 31). This text codifies the traditional rule of lex loci delicti commissi. As established in Section I, this rule is structurally ill-suited for trademark disputes. It presupposes a physical model of harm, which fundamentally conflicts with the territorial nature of intellectual property rights (Peukert, 2012). If a Yemeni judge strictly applies this provision to an infringement physically originating abroad but impacting the Yemeni market, jurisdictional complications arise: the judge might be compelled to apply foreign law. If that foreign system does not recognize the trademark, statutory protection is nullified. Consequently, this article exacerbates the conflict rather than resolving it.

Article 33: "If no legislative text exists to govern a conflict of laws, the judge shall apply the provisions of Islamic Sharia, and in the absence thereof, the most prevalent principles of private international law" (Yemeni Civil Code No. 14 of 2002, Article 33). This text serves as the sole legislative safety valve. The mandate to apply "the most prevalent principles of private international law" theoretically obliges the Yemeni judge to invoke the lex loci protectionis rule, as it is the universally recognized standard in IP disputes (Basedow et al., 2010). However, the efficacy of this article remains contingent upon two factors: the judge's awareness of these principles and their willingness to explicitly ground their judgments upon them. This hypothesis is tested in the judicial analysis that follows.

3.3.1.2. Analysis Of the Yemeni Trademarks Law No. 23 Of 2010

The Yemeni Trademarks Law is a strictly territorial, substantive statute. Article 5 conditions protection in Yemen upon registration in the domestic Register. Article 6 grants exceptional protection to well-known unregistered trademarks, provided their fame extends "among the relevant sector of the public in the Republic" (Yemeni Trademarks and Geographical Indications Law No. 23 of 2010, Article 6). Designed exclusively to regulate the domestic market, the statute lacks multilateral conflict rules for extraterritorial disputes.

Consequently, Yemeni law fails to answer a fundamental jurisdictional question: if a dispute is brought before the Yemeni judiciary concerning a

trademark not protected in Yemen, which law must the judge apply? The sole recourse remains Article 33 of the Civil Code. This legislative lacuna is endemic across Arab jurisdictions, prompting scholars to advocate for the codification of IP-specific connecting rules. Al-Hasban (2020) highlights that the absence of explicit statutory guidance drives the judiciary toward procedural improvisation, ultimately weakening the protection of foreign trademarks. Similarly, Hassan (2018) concludes that Arab legislatures must adopt the lex loci protectionis rule, augmented by flexible mechanisms for digital infringements, an objective this study advances via the proposed targeting criterion.

3.3.2. Critical Analysis of Arab Judicial Praxis: Testing the Hypothesis

Transitioning from statutory analysis to judicial praxis, we now examine how the judiciary handles these disputes. We hypothesize that the Yemeni and Egyptian judiciary, lacking an explicit connecting rule, conflates the law of the forum with the law of protection. Courts default to national law not through a conscious choice-of-law methodology, but simply as their sole operational tool. Analyzing a purposive sample of six rulings validates this hypothesis. This analysis is highly significant given the scarcity of empirical studies on Arab jurisprudence. As Al-Hasban (2020) observes, regional judgments frequently omit choice-of-law reasoning, resulting in jurisprudential inconsistency. The reader is cautioned, however, that the present sample is small and qualitative; the observations therefore identify a strong tendency rather than a statistically verified phenomenon.

3.3.2.1. Yemeni Jurisprudence: Unconscious National Application

Case 1: Supreme Court Judgment in Appeal No. 55018 (The Aspen and Nicepen Trademarks)

A dispute regarding trademark similarity, involving a prior judgment issued by a foreign court. The Supreme Court disregarded the foreign judgment, ruling that "the Yemeni judiciary is not bound by what is issued by foreign courts, and that what matters is what is established in the Yemeni Register" (Supreme Court of Yemen, 2011). While correctly addressing the res judicata of foreign judgments, the ruling betrays a strictly localized judicial mindset. The court perceives its mandate exclusively as safeguarding the Yemeni Register via Yemeni law. It bypasses the choice-of-law inquiry entirely: is the trademark protected in another jurisdiction? Could a foreign lex causae govern specific aspects of the dispute? By automatically defaulting to the domestic register, the court treats Yemeni law as an absolute lex fori, rather than the law of a protecting state within a pluralistic international framework, a conflation that Abu Dalu (2008) warns produces doctrinal confusion in the absence of explicit statutory guidance.

Case 2: Supreme Court Judgment on the Evidentiary Weight of Foreign Trademark Registration (Shuja' al-Din, n.d)

A litigant relied on trademark registrations across multiple foreign jurisdictions. The court dismissed the argument, holding that "registration of the trademark in several foreign countries is not proof before the Yemeni judiciary, because the court is bound by the provisions of national law" (Supreme Court of Yemen, 2016). The substantive outcome, upholding the independence of national registrations, is sound and consistent with Dinwoodie's (2004) argument that trademarks are territorially bounded rights. However, the reasoning is methodologically hazardous. It implicitly elevates Yemeni law to an omnipresent lex fori. Consider a dispute over a mark registered solely in Saudi Arabia, with infringements isolated to Saudi territory. Under this rationale, the court would erroneously compel the application of Yemeni law. This demonstrates a severe conflation between the judge's jurisdictional authority and their obligation to apply the competent foreign law.

Case 3: Commercial Court of First Instance (Capital Secretariat) concerning the "Rolex" Trademark (2007)

A dispute over the local registration of the "Super Rolex" trademark, opposed by the Swiss owner of the original "Rolex" mark registered in Yemen. The court annulled the local registration, protecting the Swiss mark (Commercial Court of First Instance, Capital Secretariat, 2007). This exemplifies apparent coincidence. The court protected a foreign trademark strictly because it was registered in Yemen. It did not apply Yemeni law as the lex loci protectionis via private international law methodology; it applied it as domestic administrative law governing the local registry. The trademark had acquired local nationality. This ruling confirms a strictly territorial application of substantive law, consistent with Treppoz's (2014) characterization of trademarks as a "bundle of independent national rights," yet it offers no viable precedent for unregistered foreign marks.

Case 4: Hypothetical Applications under the Yemeni Trademarks Law (Testing the Limits)

If a Yemeni judge currently faced a dispute concerning a foreign, well-known, but unregistered

trademark, they would directly invoke Article 6 of the Trademarks Law. This occurs not through a conscious conflict-of-laws analysis, but because it is the only legal instrument the court recognizes. While the substantive outcome may be fair, the lack of a defined connecting factor leaves the legal system structurally incapable of accommodating genuine foreign-law applications. The peril of this incapacity is evident in the following scenarios.

3.3.2.2. Egyptian Jurisprudence: Defaulting To Lex Fori

Case 5: The "Nido" Trademark Case (Egypt)

A dispute concerning the internationally recognized "Nido" trademark. The court applied Egyptian Intellectual Property Protection Law No. 82 of 2002. Mirroring the Yemeni approach, the court applied domestic law because protection was sought locally and the mark was locally recognized. However, the judgment lacks any choice-of-law reasoning. It does not articulate that because protection is claimed in Egypt, Egyptian law governs. Instead, it automatically applies domestic statutes. This reflects a mechanical application of lex fori, not a considered connecting process, a pattern Alharbi (2015) similarly documents in Saudi judicial practice, where courts default to forum law without explicit conflict-of-laws analysis.

Case 6: The Egyptian Lacuna in the Absence of Local Protection (A Comparative Analysis)

Consider a scenario where two Egyptian companies litigate over a trademark registered in Japan but not in Egypt. Egyptian IP law offers no protection. The Civil Code's conflict rules provide no specific mechanism. Existing jurisprudence shows no precedent for applying foreign IP law. Consequently, the claim would likely be dismissed, prejudicing rights that a clear lex loci protectionis rule would have safeguarded. This jurisdictional blind spot is precisely the peril confronting Yemen, and illustrates what Treppoz (2014) describes as the protective void created when territoriality is not operationalized through explicit conflict rules.

The researcher concludes from this qualitative analysis that the sampled Yemeni courts do not consciously apply the lex loci protectionis rule. When judicial outcomes align with the rule, it is a byproduct of substantive territoriality, not private international law methodology, confirming Abu Dalu's (2008) warning that legislative silence produces doctrinal conflation. The structural peril arises when courts confront complex cross-border disputes where lex fori is legally untenable; at this juncture, the system's methodological impotence is fully exposed. While the limited size of the sample cautions against unqualified generalization, the consistent pattern observed across the available rulings strongly suggests that targeted legislative intervention or scientifically grounded judicial reasoning is an urgent necessity, not a mere academic luxury.

3.4. Chapter Four: Digital Challenges to the Lex Loci Protectionis Rule and a Proposed Solution: Towards The "Direct Market Targeting" Criterion

3.4.1. Digital Challenges and the Limits of Strict Mosaic Application

The lex loci protectionis rule faces profound challenges in the digital environment due to its inherent territorial logic. These challenges do not invalidate the rule. Rather, they necessitate recalibrating its application mechanisms to prevent legal protection from yielding to rigid formalism at the expense of practical efficacy.

3.4.1.1. The Problem of Ubiquitous Infringement

In the physical world, infringing effects are typically territorially confined. In the digital space, a single act, such as using a famous trademark as a search engine keyword or selling counterfeits via e-commerce, produces instantaneous, multi-jurisdictional effects. Crucially, these effects often lack a genuine nexus to the affected markets. This raises a critical question: must the judge apply the law of every jurisdiction the digital material reaches? A strict mosaic application yields untenable results: a staggering multiplicity of applicable laws obliging the claimant to prove the content of dozens of national laws; prohibitive litigation costs practically obstructing access to justice; and diluted legal protection permitting defendants to exploit jurisdictional complexities or forum shop in states with weak intellectual property frameworks (Basedow et al., 2010).

3.4.1.2. The Problem of the "Illusion of Global Presence" And the Absence of a Substantial Connection

Mere technical accessibility of a website within a state does not establish that the conduct is directed at that state's market. Consequently, subjecting the conduct to that state's law is jurisprudentially unsound. The lex loci protectionis rule presupposes a claimed right and a targeted market. However, digital effects are frequently marginal or incidental. For instance, a small Austrian commercial website

operating in German might feature a mark resembling a Yemeni trademark, with zero actual operations in Yemen. Triggering liability in Yemen based on this fleeting effect constitutes an unacceptable territorial overreach. U.S. jurisprudence, such as the Abitron ruling, mitigates this by restricting protection to "use in commerce" within the United States (Abitron Austria GmbH v. Hetronic International, Inc., 2023). This necessitates a criterion distinguishing incidental digital spillover from substantial market targeting.

Private international law scholarship corroborates this exigency. Dornis (2017) asserts that extending choice-of-law to every electronically accessible act transforms territoriality into an instrument of legal chaos rather than regulation. Therefore, redefining the jurisdictional nexus is a structural imperative of the digital age (Kur & Maunsbach, 2019).

3.4.1.3. The Problem of Fragmenting the Contractual and Tortious Nexus

A digital act emanating from a single actor materializes in multiple markets, each governed by distinct infringement standards. Law A might classify unauthorized keyword use as fair comparative advertising, while Law B penalizes it as infringement. The mosaic approach forces the claimant into substantive fragmentation, risking irreconcilable judgments against the same platform. This reality requires mechanisms to concentrate the connecting factor on the law of the most affected market or the platform's commercial domicile, aligning with soft-law instruments like CLIP (Article 3:603; CLIP, 2011) and ILA (principle of "substantial harm"; ILA, 2020).

3.4.2. Towards A Supplementary Criterion: Establishing "Direct Market Targeting" As An Interpretive Aid

To navigate these challenges without abandoning territoriality, the targeting doctrine has emerged in comparative jurisprudence to delineate the scope of national law. This study proposes elevating this concept into a direct market targeting criterion, serving a dual interpretive function. As Al-Hasban (2020) demonstrates, the absence of explicit methodological guidance in developing jurisdictions makes such structured criteria particularly urgent.

Selective (Negative) Function: The judge utilizes it to exclude the application of a state's law to a digital act lacking purposeful direction toward its market. This filters out incidental spillover, negating the concept of claimed protection in a functional sense.

Unifying (Positive) Function (Specifically for Yemen): It justifies extending Yemeni law, as the lex loci protectionis, to extraterritorial acts. If an act directly targets the Yemeni market and produces substantial effects therein, Yemeni law governs without fragmenting the dispute across non-targeted jurisdictions.

3.4.2.1. Comparative Legal Foundations of the Targeting Concept

This doctrine is deeply rooted in comparative systems. In the European Union, the Court of Justice utilizes the "directed to" criterion in consumer protection (Rome I Regulation, 2008, Article 6) and jurisdiction (Brussels I Regulation [recast], 2012). In the United States, the Abitron ruling restricts Lanham Act application to domestic "use in commerce" (Abitron Austria GmbH v. Hetronic International, Inc., 2023), effectively requiring purposeful market engagement. In academic initiatives, CLIP (Article 3:603; CLIP, 2011) permits applying the law of the state with the closest connection in ubiquitous infringements, explicitly citing market targeting as a primary indicator. ILA (principle of "substantial harm"; ILA, 2020) echoes this via the substantial harm principle, concentrating the applicable law in the state where the harm is most significant.

3.4.2.2. Definition Of The "Direct Market Targeting" Criterion

The researcher proposes the following definition: "Direct market targeting dictates that an infringing digital activity, by virtue of its nature, content, and circumstances, is purposefully directed, or produces a substantial effect, toward the consumer public in a specific state. Consequently, this state crystallizes as the functional market for which protection is claimed."

Mere technical accessibility is insufficient; the court must infer targeting from objective, empirical indicia. It is essential to distinguish this criterion from a purely economic effects test: the focus is on the purposeful direction of the commercial activity, evidenced by objective factors, while the substantial effect component serves to confirm the materialization of the targeting in that market. The two elements operate cumulatively, not disjunctively.

3.4.2.3. Elements And Indicia of Direct Market Targeting

The Yemeni judge should examine the following variables, which are adapted from the CJEU's jurisdictional targeting criteria and modified for use

as choice-of-law connecting-factor indicia, to confirm whether the foreign digital activity justifies applying domestic law.

1. Language: Using Arabic, specifically the Yemeni dialect, in interfaces or product descriptions.
2. Currency and Payment: Displaying prices in Yemeni Rials or accommodating local payment gateways.
3. Domain Name: Utilizing the Yemeni country-code top-level domain (.ye) or regional equivalents.
4. Contact and Distribution Data: Listing local phone numbers, authorized domestic distributors, or offering local after-sales support.
5. Directed Digital Advertising: Employing geo-targeted social media campaigns, partnering with local influencers, or using localized SEO keywords.
6. Nature of Goods/Services: Offering products uniquely relevant to the Yemeni market.
7. Actual Commercial Volume: Evidencing actual sales, consumer contracts, or substantial web traffic originating from Yemen.

These variables operate as flexible judicial presumptions, not cumulative prerequisites. The judge weighs them holistically to determine whether the activity actively penetrated the Yemeni market rather than incidentally surfacing there. This objective, criteria-based approach reconciles strict territoriality with the internet's borderless architecture (Morris, 2019) and mitigates the risk of doctrinal conflation that Abu Dalu (2008) identifies in jurisdictions lacking explicit statutory guidance.

3.4.3. Operationalizing The Targeting Criterion in Yemeni Law: Legislative Basis and Mechanisms

3.4.3.1. The Current Legislative Basis: Article 33 Of the Yemeni Civil Code

The Yemeni judiciary need not await legislative intervention to operationalize this criterion. Article 33 of the Civil Code provides an ample statutory anchor, activated via a three-step methodology.

Step One (Characterization): The judge categorizes the dispute as a cross-border digital trademark infringement lacking a specific domestic conflict rule.

Step Two (Invocation): The judge invokes "the most prevalent principles of private international law" (Yemeni Civil Code No. 14 of 2002, Article 33). This encompasses the overarching lex loci protectionis rule, alongside supplementary frameworks (CLIP, Article 3:603; CLIP, 2011; ILA, 2020) that permit concentrating the connecting factor on the targeted market in ubiquitous infringements.

Step Three (Application): The judge applies the direct market targeting test. If the foreign act targets Yemen, Yemeni law applies, not mechanically as lex fori, but functionally as the law of the targeted market. Conversely, if the act targets another jurisdiction, the judge applies that foreign law pursuant to Article 33.

3.4.3.2. Practical Illustration

The operation of the direct market targeting criterion may be clarified through several digital-commerce scenarios. The following illustrations reflect the distinction, increasingly emphasized in comparative private international law and trademark jurisprudence, between mere technical accessibility and purposeful commercial direction toward a protected market (Dornis, 2017; Kur & Maunsbach, 2019; Morris, 2019).

First, mere accessibility without targeting. A Chinese website sells clothing bearing a sign similar to a Yemeni trademark. The website is written entirely in Mandarin and English, prices are displayed only in Chinese Yuan and US Dollars, the platform ships exclusively within East Asia, and no Yemeni delivery option is available. Although the website is technically accessible from Yemen, the objective indicia of targeting are absent. Yemeni law should not apply merely because a Yemeni user can view the page. Protection is not functionally claimed in Yemen because the Yemeni market has not been deliberately addressed. This approach is consistent with the view that online accessibility alone should not transform every digitally reachable state into a legally relevant protecting market (Dornis, 2017; Kur & Maunsbach, 2019; Lifestyle Equities CV v. Amazon UK Services Ltd, 2024).

Second, direct targeting of the Yemeni consumer market. The same platform introduces Arabic product descriptions, displays prices in Yemeni Rials, offers delivery to Sana'a and Aden, accepts payment through methods commonly used by Yemeni consumers, and runs social-media advertisements aimed at users located in Yemen. In this scenario, the act has deliberately penetrated the Yemeni market. Yemeni law applies not mechanically as lex fori, but substantively as lex loci protectionis of the targeted market. Such reasoning accords with comparative targeting doctrine, which treats language, currency, delivery arrangements, and localized advertising as relevant indicators of

directed commercial activity (CLIP, 2011; ILA, 2020; Lifestyle Equities CV v. Amazon UK Services Ltd, 2024).

Third, online marketplace fulfilment and platform participation. A global marketplace allows third-party sellers to offer counterfeit products bearing a Yemeni-registered mark. If the platform merely hosts the listing and removes it promptly upon specific notice, its role may be characterized as relatively passive. However, if the platform groups the infringing goods with its own offers, advertises them to Yemeni users, stores the goods, arranges shipment to Yemen, collects payment, and communicates delivery times in Arabic, these factors may indicate active commercial participation in targeting Yemen. The court should consider these elements both for choice-of-law purposes and, where applicable, for assessing intermediary liability under substantive law. Comparative case law similarly distinguishes passive hosting from active commercial involvement in the presentation, promotion, storage, or delivery of infringing goods (Christian Louboutin v. Amazon Europe Core Sàrl, 2022; L'Oréal SA v. eBay International AG, 2011; Senftleben, 2020; Tiffany [NJ] Inc. v. eBay Inc., 2010).

Fourth, keyword advertising and localized search-engine marketing. A foreign competitor purchases Arabic keywords corresponding to a Yemeni trademark and configures its advertisement campaign to appear to users whose IP addresses are located in Yemen. The landing page offers delivery to Yemen and compares the advertised goods with the Yemeni trademark owner's products. Here, targeting is established not through the location of the server or the advertiser's domicile, but through geo-targeted advertising and localized consumer solicitation. This reflects the broader comparative understanding that digital trademark use may be localized by reference to the market toward which the advertisement is directed, rather than by the purely technical location of servers or intermediaries (Google France SARL v. Louis Vuitton Malletier SA, 2010; CLIP, 2011; Morris, 2019).

Fifth, dual or multi-market targeting. A platform simultaneously targets Yemen, Saudi Arabia, and the UAE through separate Arabic interfaces, local currencies, and country-specific delivery options. In such cases, the mosaic approach may remain necessary for claims relating to each protected national mark. However, where the infringement is functionally inseparable and one market bears the gravitational center of the commercial harm, the court may rely on Article 33 of the Yemeni Civil Code, CLIP-style closest-connection reasoning, and objective evidence of market concentration to determine whether Yemeni law should govern the Yemeni segment of the dispute or whether another law is more closely connected. This solution corresponds with soft-law proposals that allow concentration of the applicable law in cases of ubiquitous infringement where strict distributive application would be impracticable (ALI, 2008; CLIP, 2011; ILA, 2020; Kono, 2012).

These scenarios show that the direct market targeting test is not satisfied by technical accessibility alone. It requires a holistic assessment of purposeful direction and material commercial effect, supported by objective evidence. This approach preserves the territorial foundation of lex loci protectionis while avoiding the excessive fragmentation associated with a rigid mosaic approach in digital disputes (Basedow et al., 2010; Dornis, 2017; Treppoz, 2014).

3.4.3.3. Implementation Challenges and Evidentiary Requirements

Although the direct market targeting criterion provides a workable solution to digital ubiquity, its practical application raises several evidentiary and institutional challenges. These challenges are particularly significant in legal systems, such as Yemen, where intellectual property choice-of-law rules remain uncodified and where courts may lack specialized experience in digital evidence and foreign-law proof (Al-Hasban, 2020; Hassan, 2018).

First, courts must distinguish subjective intention from objectively inferred intention. A defendant will rarely admit that it intended to target the Yemeni market. Therefore, intention should be inferred from external facts: language, currency, delivery options, advertising settings, payment methods, local distributors, customer-service channels, and actual sales data. The test is thus evidentiary rather than psychological. It asks whether a reasonable observer would conclude, from the structure of the digital activity, that the Yemeni market was purposefully addressed. This objective approach is consistent with comparative targeting analysis and soft-law instruments that emphasize observable indicators of market direction rather than subjective intent alone (CLIP, 2011; ILA, 2020; *Lifestyle Equities CV v. Amazon UK Services Ltd*, 2024).

Second, digital evidence must be preserved in a reliable form. Screenshots alone may be insufficient if they lack metadata, dates, URLs, IP-location context, or proof that the content was accessible to Yemeni consumers at the relevant time. Courts should therefore require notarized or expert-certified web captures, transaction records, test-purchase

documentation, shipping confirmations, advertising-dashboard reports, platform analytics, and payment records where available. Expert evidence may be necessary to establish geo-targeting, search-engine optimization, algorithmic recommendation, or localized advertising. Such evidentiary rigor is necessary because digital infringement often depends on technical facts that cannot be reliably assessed through ordinary documentary proof alone (Dornis, 2018; Morris, 2019; Senftleben, 2020).

Third, the burden of proof should rest initially on the claimant, who must establish a prima facie case of purposeful market direction and substantial effect in Yemen. Once such a showing is made, the burden may shift evidentially to the defendant to explain contrary facts, such as technical geoblocking, absence of Yemeni delivery, lack of Yemeni sales, or automated and unintended display of content. This burden-shifting approach prevents speculative claims while ensuring that defendants controlling relevant platform data cannot evade scrutiny. It also reflects the practical need to balance effective trademark protection with predictability and proportionality in cross-border digital disputes (Basedow et al., 2010; CLIP, 2011; ILA, 2020).

Fourth, courts must guard against overextension. A finding of targeting should not be based on one isolated factor unless that factor is especially strong. The use of Arabic alone, for example, may target several Arab markets and not Yemen specifically. Likewise, a single accidental sale into Yemen should not automatically trigger Yemeni law unless accompanied by additional indicia showing deliberate market penetration. The analysis must remain holistic, proportional, and sensitive to the risk of transforming territoriality into excessive extraterritorial control. This caution is consistent with the principle that lex loci protectionis must remain territorial, even when adapted to digital commerce (Dornis, 2017; Kur & Maunsbach, 2019; Treppoz, 2014).

Fifth, institutional capacity is essential. Yemeni commercial courts may require specialized training in digital evidence, online advertising systems, platform architecture, and foreign-law proof. Without such capacity, the targeting test may become unpredictable. For this reason, the proposed legislative amendment should be accompanied by procedural guidelines on digital evidence and by judicial training programs in intellectual property conflicts of law. Comparative experience shows that the effectiveness of any connecting factor depends not only on doctrinal coherence but also on judicial competence, evidentiary infrastructure, and institutional readiness (Alharbi, 2015; Al-Hasban, 2020; Kono, 2012).

3.4.3.4. Legislative Recommendation (Filling the Gap)

Despite the viability of Article 33, legal certainty demands explicit codification. We recommend amending the Trademarks Law or the Civil Code with the following provision.

"Disputes concerning the infringement of intellectual property rights shall be governed by the law of the country for which protection is claimed. However, in cases of ubiquitous digital infringement where applying multiple laws is impracticable, the judge may apply the law of the state whose market the infringing activity has directly targeted and in which substantial harm has materialized, or with which the dispute otherwise has the closest connection. The assessment of targeting shall be based on objective indicia such as language, currency, delivery arrangements, and geo-targeted promotional activities."

This text formally codifies the overarching rule while legitimizing the interpretive exception, ensuring predictability in cross-border litigation. The phrase "targeted that market" deliberately incorporates the active, purposeful-direction element, while "substantial harm" confirms the material nexus. The two concepts are thus linked but distinguished: a market may be targeted without substantial harm (no liability), or substantial harm may occur without targeting (incidental), and neither alone should automatically trigger the application of that state's law. As Kono (2012) demonstrates through comparative analysis, the effectiveness of any connecting factor depends critically on the institutional and legislative context in which it operates.

Digital challenges demand doctrinal evolution, not the abandonment of the lex loci protectionis rule. The proposed direct market targeting criterion translates the abstract notions of substantial effect and closest connection into a practical test. It equips the Yemeni judge with a robust choice-of-law methodology under existing statutes to distinguish incidental digital access from genuine market penetration, effectively resolving the methodological impasse diagnosed in this study.

4. DISCUSSION

The findings of this study reveal a fundamental disconnect between the theoretical elegance of the lex loci protectionis rule and its practical operationalization within jurisdictions lacking explicit conflict-of-laws provisions for intellectual property. The exploratory qualitative analysis of Yemeni and Egyptian judicial rulings demonstrates that courts in such jurisdictions do not engage in conscious choice-of-law reasoning but instead

default to the mechanical application of forum law. This pattern corroborates the observations of Al-Hasban (2020), who documented similar jurisprudential inconsistencies across Arab jurisdictions, and aligns with Abu Dalu (2008), who warned that the absence of explicit statutory guidance inevitably produces doctrinal conflation. The critical implication is that legislative silence does not produce neutrality; rather, it systematically favors the lex fori, thereby undermining the territorial autonomy of foreign trademark regimes. This finding challenges the assumption that general civil code provisions, such as Article 31 of the Yemeni Civil Code, can adequately serve as surrogate conflict rules for intellectual property disputes (Hassan, 2018).

The comparative analysis of European, American, and Chinese models further illuminates the structural conditions necessary for effective operationalization of the lex loci protectionis rule. The European mosaic approach, while theoretically coherent, generates prohibitive litigation costs in multi-market digital disputes, as documented in ongoing debates regarding amendments to Rome II Regulation (2007), Article 8 (Torremans, 2014). The American statutory-scope model, particularly post-Abitron, achieves territorial confinement through unilateral jurisdictional analysis but sacrifices the bilateral choice-of-law clarity that classical private international law demands (Dinwoodie, 2004; Dornis, 2018). The Chinese model, by contrast, demonstrates that explicit codification combined with pragmatic flexibility, specifically post-infringement party autonomy, can reconcile territorial sovereignty with commercial efficiency (Chen & Xue, 2024). These divergent trajectories suggest that no single model is universally optimal; rather, the effectiveness of any connecting factor depends on the institutional and legislative context in which it operates (Kono, 2012).

The proposed "direct market targeting" criterion represents an attempt to bridge the gap between rigid territorial logic and the borderless reality of digital commerce. By anchoring the connecting factor to objective indicia of purposeful direction, language, currency, delivery infrastructure, and geo-targeted advertising, the criterion operationalizes the abstract notions of "substantial effect" and "closest connection" that appear in soft-law instruments such as CLIP (2011) and ILA (2020). However, the criterion is not without limitations. As Dornis (2018) cautions, targeting-based tests may grant judges excessive discretion, potentially undermining the predictability that the lex loci protectionis rule is designed to ensure. Dinwoodie (2004) similarly cautions that detaching trademark law from territorial constraints requires careful doctrinal safeguards. Furthermore, in cases of dual targeting, where an infringer deliberately targets multiple markets with equal intensity, the criterion may fail to resolve the connecting-factor question. These limitations are acknowledged and partially addressed through the cumulative requirement of both purposeful direction and substantial effect, which raises the threshold for triggering the application of a state's law beyond mere technical accessibility (Morris, 2019).

Finally, the study's normative proposal, codifying the targeting criterion through amendment to the Yemeni Trademarks Law or Civil Code, must be situated within the broader discourse on intellectual property governance in developing jurisdictions. ALI (2008) and CLIP (2011) were primarily designed with developed legal systems in mind, assuming institutional capacities and judicial training infrastructures that may not exist in Yemen. The present study's contribution lies in its explicit tailoring of the targeting doctrine to a jurisdiction that lacks explicit intellectual property conflict rules, relying instead on the residual gateway of Article 33 of the Yemeni Civil Code. This approach demonstrates that doctrinal innovation need not await legislative reform; rather, it can be activated through creative judicial interpretation of existing general provisions. Nevertheless, the long-term viability of the proposed framework depends on complementary institutional measures, including specialized judicial training and the eventual codification of explicit conflict-of-laws rules for intellectual property (Basedow et al., 2010; Alharbi, 2015).

4.1. Limitations And Future Research

This study has three main limitations. First, the judicial analysis relies on a limited purposive sample of Yemeni and Egyptian rulings due to the scarcity of published Yemeni commercial judgments. Therefore, the conclusions are exploratory and doctrinal rather than statistically representative. Second, the study focuses on trademark disputes. Other intellectual property rights, such as copyright and patents, may require different connecting factors or evidentiary adjustments. Third, the proposed direct market targeting test has not yet been tested by Yemeni courts or codified by the Yemeni legislature**.**

Future research should expand the judicial dataset by examining more Yemeni and Arab trademark decisions, including unpublished judgments where accessible. Comparative studies should also examine targeting in additional jurisdictions, such as India, the UAE, Singapore,

South Korea, and selected African systems. Finally, interdisciplinary research should develop evidentiary standards for proving geo-targeting, algorithmic advertising, and online market penetration in intellectual property disputes.

5. CONCLUSION

This study confirms that the lex loci protectionis rule remains the optimal connecting factor for trademark disputes. Intellectual property rights are inherently territorial; they fragment alongside national legal boundaries. A trademark derives its existence and scope solely from the law of the protecting country. It does not stem from the lex patriae, lex fori, or lex loci delicti commissi.

However, a mechanical application of this rule creates two critical predicaments. The first is practical: judiciaries lacking an explicit choice-of-law rule, such as Yemen's, routinely conflate lex fori with the law of protection. The present qualitative analysis of a limited sample of Yemeni and Egyptian judicial rulings reveals a consistent pattern of unconscious default to the law of the forum, underscoring the need for methodological reform. The second predicament is substantive: the traditional mosaic logic collapses under ubiquitous digital infringements, where a single act can trigger dozens of national laws, leading to prohibitively fragmented litigation. These conclusions, however, should be read in light of the study's qualitative design and limited case sample; they establish a strong doctrinal basis for reform but invite broader empirical verification through future judicial-data research.

To resolve this, we propose the "direct market targeting" criterion. This is not a substitute for the primary rule, but a supplementary interpretive mechanism rooted in Article 33 of the Yemeni Civil Code. It empowers courts to assert jurisdiction over foreign acts deliberately penetrating the domestic market, modernizing territorial protection without fracturing the independence of national legal systems. The criterion distinguishes between purposeful market direction, evidenced by objective indicia such as language, currency, and delivery infrastructure, and mere incidental digital accessibility, thereby filtering out insubstantial connections. This targeted approach, informed by comparative jurisprudence and the soft-law instruments of CLIP (2011, Article 3:603) and ILA (2020), preserves the territorial foundation while adapting it to the borderless digital reality.

6. FINDINGS

Based on the preceding analysis, the study concludes the following:

1. The functional distinction between lex loci protectionis and lex fori is a practical necessity, not a theoretical luxury. Applying the forum's law to substantive protection constitutes a severe breach of choice-of-law principles. The examined rulings suggest that Yemeni courts systematically commit this methodological error due to a failure to conceptualize this distinction.
2. The inadequacy of traditional tort rules is confirmed. The study establishes that lex loci delicti commissi cannot govern trademark infringements. This rule seeks a physical occurrence, whereas infringement impacts an intangible, territorial right that exists only via state grant. This justifies the European approach of dedicating a specific connecting factor to intellectual property, even as the rigidity of Rome II Regulation (2007) invites criticism in multi-market digital contexts.
3. A legislative choice-of-law vacuum exists in Yemen. Yemeni legislation explicitly lacks the lex loci protectionis rule. Article 31 of the Yemeni Civil Code (2002) erroneously enshrines the ill-suited tort rule. The sole viable gateway is Article 33 of the Yemeni Civil Code (2002), which refers to the "prevalent principles of private international law" when texts are silent.
4. The methodological inadequacy of the judiciary refutes the implicit application hypothesis. Based on the qualitative case analysis conducted, the sampled Yemeni courts do not engage in a conscious choice-of-law process. They apply domestic law exclusively because they treat it as the sole competent authority. This apparent coincidence is an inevitable byproduct of territorial legislation, not conflict-of-laws awareness. While the limited sample size precludes broad statistical generalization, the consistent pattern observed warrants serious attention and further empirical study.
5. The limits of the mosaic approach in the digital environment are clear. Strict territorial application creates prohibitive evidentiary burdens, escalates costs, and weakens protection against ubiquitous infringements. This is not an inherent flaw, but a symptom of rigid territorial logic. It demands supplementary tools adapted to the unitary nature of digital acts.
6. The effectiveness of the direct market targeting

criterion is established. The study demonstrates this criterion as a viable interpretive mechanism under Article 33 of the Yemeni Civil Code (2002). It relies on objective judicial indicia and requires both purposeful direction and substantial effect to trigger the application of a state's law. This allows judges to isolate deliberate market penetration from mere digital spillage, preserving territoriality while ensuring effective protection.

7. RECOMMENDATIONS

In light of these findings, the study recommends the following:

1. Codify the primary connecting factor. The Yemeni legislature must fill the current vacuum. We recommend adding an explicit provision to the Trademarks Law (No. 23 of 2010) or the Yemeni Civil Code (2002). This text must formally adopt lex loci protectionis as the general rule for IP disputes, as formulated at the conclusion of Chapter Four.
2. Embed the targeting mechanism legislatively. The proposed text must include an explicit exception for ubiquitous digital infringements. It should grant judges discretionary authority to apply the law of the state suffering substantial harm, guided by the direct market targeting indicia outlined in this study and anchored in the combined requirements of purposeful direction and material impact.
3. Immediate judicial activation of Article 33 of the Yemeni Civil Code (2002). Pending legislative reform, commercial courts must halt the automatic application of lex fori. Judges must actively invoke Article 33 of the Yemeni Civil Code (2002) to deploy prevalent private international law principles. They must consciously differentiate between Yemeni law as the procedural forum and Yemeni law as the substantive protecting state.
4. Restructure judicial reasoning. Mere technical accessibility of a website does not justify jurisdiction. Courts must base judgments on an objective evaluation of targeting elements. Judicial reasoning must explicitly demonstrate how and why a foreign act targeted the Yemeni market, and that this targeting produced a substantial effect. This will generate sophisticated conflict-of-laws precedents.
5. Develop specialized judicial training. Training institutes must design workshops focused specifically on IP choice-of-law rules. Judges require practical training on distinguishing connecting factors and operationalizing the direct market targeting mechanism, with emphasis on the dual requirements of purposeful direction and substantial effect.
6. Direct future research. We urge scholars to comparatively analyze the targeting criterion across jurisdictions, empirically test its applicability by expanding the judicial sample beyond the limited selection used here, extend it to other IP domains such as copyright and patents, and monitor its impact on judicial outcomes to refine its effectiveness.

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REFERENCES

Abitron Austria GmbH v. Hetronic International, Inc., 600 U.S. ___ (2023). https://www.supremecourt.gov/opinions/22pdf/21-1043_7648.pdf

Abu Dalu, A. M. (2008). Conflict of laws in intellectual property: A comparative study (1st ed.). Dar Wael Publishing.

Al-Hasban, N. A. (2020, February). An analytical study of judicial precedents in intellectual property rights in the Arab region. World Intellectual Property Organization. https://www.wipo.int/publications/en/details.jsp?id=4496

Alharbi, M. N. (2015). Trademark and patent disputes in Saudi Arabia: An analysis of private international law [Doctoral dissertation, Brunel University London]. https://bura.brunel.ac.uk/handle/2438/11387

American Law Institute (ALI). (2008). Intellectual property: Principles governing jurisdiction, choice of law, and judgments in transnational disputes. https://www.ali.org/publications/principles-law/intellectual-property-principles-governing-jurisdiction-choice-law-and

Basedow, J., Kono, T., & Metzger, A. (Eds.). (2010). Intellectual property in the global arena (Materialien zum ausländischen und internationalen Privatrecht, Vol. 49). Mohr Siebeck. https://www.mohrsiebeck.com/en/book/intellectual-property-in-the-global-arena-9783161512964/

Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886. https://treaties.un.org/doc/Publication/UNTS/Volume%20828/volume-828-I-11850-English.pdf

Chen, S., & Xue, Y. (2024). Study on the application of foreign intellectual property infringement laws in China. Open Journal of Legal Science, 12(3). https://www.researchgate.net/publication/379423063_Study_on_the_Application_of_Foreign_Intellectual_Property_Infringement_Laws_in_China

Christian Louboutin v. Amazon Europe Core Sàrl, Joined Cases C-148/21 and C-184/21, Court of Justice of the European Union (2022).

Commercial Court of First Instance, Capital Secretariat (Yemen). (2007). Judgment in the dispute concerning the Rolex and Super Rolex trademarks.

Dinwoodie, G. B. (2004). Trademarks and territory: Detaching trademark law from the nation-state. Houston Law Review, 41. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=616661

Dornis, T. W. (2017). Trademark and unfair competition conflicts: Historical-comparative, doctrinal, and economic perspectives. Cambridge University Press. https://doi.org/10.1017/9781316651285

Dornis, T. W. (2018). Behind the Steele Curtain: An empirical study of trademark conflicts law, 1952–2016. Vanderbilt Journal of Entertainment & Technology Law, 20(3). https://scholarship.law.vanderbilt.edu/jetlaw/vol20/iss3/2/

Egyptian Intellectual Property Protection Law No. 82 of 2002.

European Max Planck Group on Conflict of Laws in Intellectual Property (CLIP). (2011). Principles for conflict of laws in intellectual property (CLIP Principles).

European Union Intellectual Property Office (EUIPO). (2025). Case summary: Citroën v. Polestar (Tribunal judiciaire de Paris). https://euipo.europa.eu/ohimportal/en/web/guest/caselaw

Federal Decree-Law No. 36 of 2021 on Trademarks (United Arab Emirates).

Gervais, D. J. (2026). The TRIPS Agreement: Drafting history and analysis (5th ed.). Sweet & Maxwell.

Google France SARL v. Louis Vuitton Malletier SA, Joined Cases C-236/08 to C-238/08, Court of Justice of the European Union (2010).

Hassan, H. I. H. A. (2018). Conflict of laws in intellectual property matters [Doctoral dissertation, Cairo University].

International Law Association (ILA). (2020). Kyoto guidelines on intellectual property and private international law.

Kono, T. (Ed.). (2012). Intellectual property and private international law: Comparative perspectives. Hart Publishing.

Kur, A., & Maunsbach, U. (2019). Choice of law and intellectual property rights. Oslo Law Review, 6(1).

Lanham Act (Trademark Act of 1946), 15 U.S.C. §§ 1051 et seq. (2012). https://www.govinfo.gov/content/pkg/USCODE-2012-title15/pdf/USCODE-2012-title15-chap22.pdf

Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations, (October 28, 2010).

Lifestyle Equities CV v. Amazon UK Services Ltd, [2024] UKSC 8.

L'Oréal SA v. eBay International AG, Case C-324/09, Court of Justice of the European Union (2011).

Morris, P. S. (2019). From territorial to universal: The extraterritoriality of trademark law and the privatizing of

international law. Cardozo Arts & Entertainment Law Journal, 37(1).

Paris Convention for the Protection of Industrial Property, March 20, 1883. https://wipolex.wipo.int/en/text/288514

Peukert, A. (2012). Territoriality and extraterritoriality in intellectual property law. In G. Handl, J. Zekoll, & P. Zumbansen (Eds.), Beyond territoriality: Transnational legal authority in an age of globalization (Queen Mary Studies in International Law, Vol. 11). Martinus Nijhoff Publishers.

Qasim, M. M. A. (2025). The law applicable to industrial property rights according to conflict of laws rules. Journal of Legal and Economic Research, (92), 1–65. http://search.mandumah.com/Record/1627444

Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II Regulation). (2007). Official Journal of the European Union, L 199, 40–49. http://data.europa.eu/eli/reg/2007/864/oj

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I Regulation). (2008). Official Journal of the European Union, L 177, 6–16. http://data.europa.eu/eli/reg/2008/593/oj

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 (Brussels I Regulation recast). (2012). Official Journal of the European Union, L 351, 1–32. http://data.europa.eu/eli/reg/2012/1215/oj

Salamah, A. A. (1996). The science of the rule of conflict and choice between laws: Foundations and methodology (1st ed.). Dar al-Nahdah al-'Arabiyyah.

Satyam Infoway Ltd. v. Siffynet Solutions Pvt. Ltd., (2004) 6 SCC 145 (Supreme Court of India).

Senftleben, M. (2020). Intermediary liability and trade mark infringement: Proliferation of filter obligations in civil law jurisdictions? In G. Frosio (Ed.), *The Oxford Handbook of Online Intermediary Liability* (pp. 381–403). Oxford University Press. https://doi.org/10.1093/oxfordhb/9780198837138.013.20

Shuja' al-Din, A. (n.d.). The evidentiary weight of trademark registration in other countries: A commentary on the Yemeni Supreme Court judgment in the commercial appeal.

Steele v. Bulova Watch Co., 344 U.S. 280 (1952). https://supreme.justia.com/cases/federal/us/344/280/

Supreme Court of Yemen. (2011). Judgment in Commercial Appeal No. 55018 concerning the Aspen and Nicepen trademarks.

Supreme Court of Yemen. (2016). Judgment in a commercial appeal concerning a foreign trademark.

Tiffany (NJ) Inc. v. eBay Inc., 600 F.3d 93 (2d Cir. 2010).

Torremans, P. (2014). Intellectual property and the EU rules on private international law: Match or mismatch? Edward Elgar Publishing.

Treppoz, E. (2014). International choice of law in trademark disputes: From a territorial approach to a global approach. Columbia Journal of Law & the Arts, 37(4).

TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), April 15, 1994. https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

Vanity Fair Mills v. T. Eaton Co., 234 F.2d 264 (2d Cir. 1956).

Yemeni Civil Code No. 14 of 2002.

Yemeni Trademarks and Geographical Indications Law No. 23 of 2010.

Zhao, N. (2012). Choice-of-law in cross-border copyright and related rights disputes: Comparative inspiration for the PRC [Doctoral dissertation, Rijksuniversiteit Groningen].