

Cross-border IP infringement

European perspectives on foreign
use of IP rights online

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Cross-border IP infringement

The application of intellectual property (IP) law to the cross-border marketing and sale of goods on the internet has become an increasingly problematic issue. IP rights are territorial rights and therefore only provide protection against unauthorised use of the right in the territory of protection. For example, a trade mark proprietor will have protection against unauthorised use of the mark in the territories in which it is registered.

However, the marketing and sale of goods online does not adhere to these traditional territorial boundaries. A website marketing and selling goods can be viewed by consumers globally. EU jurisprudence has sought to tread the line between IP rights becoming ineffective in the context of the internet and the unacceptable extension of IP rights' territorial jurisdiction. Osborne Clarke's international IP team considers the different approaches in a range of jurisdictions, focusing principally on trade marks and copyright.



EU jurisprudence

The legal framework for addressing cross-border IP rights infringement is guided by the [recast Brussels Regulation](#). In the case of torts, such as trade mark and copyright infringement, Article 7(2) stipulates that jurisdiction can be established based on either the place where the damage occurred (*locus damni*) or the place where the event giving rise to the damage took place (*locus delicti*). For the purposes of cross-border infringement actions, much of the case law focuses on establishing the *locus damni*, as this allows a party to claim infringement regardless of the physical location of the defendant entity.

This jurisprudence is relevant to EU Member States and has continuing relevance in the UK as assimilated case law. The recast Brussels Regulation, along with subsequent case law from the Court of Justice of the European Union (CJEU), provide the framework for all EU Member States. While the recast Brussels Regulation no longer applies to the UK, the relevant concept of "targeting" is EU derived, and this was recently affirmed by the UK Supreme Court, despite its EU jurisprudential roots.

Despite overarching principles arising from EU jurisprudence, various European jurisdictions take different approaches to considering whether there has been IP infringement in cross-border cases. While there are some common themes, some jurisdictions take a stricter approach to finding infringement, which should be noted by businesses selling to European jurisdictions from foreign websites.

Belgium

Historically, Belgian courts have oscillated between two criteria for determining the place where the damage occurred. The first criterion is the "accessibility" criterion, which involves verifying whether the alleged infringing goods are accessible in Belgium (for example, a website may be accessible in Belgium even if the website does not contain the ".be" domain specifically targeting Belgium).

The second criterion is the "targeting" criterion, where courts assess whether Belgium was specifically targeted by the alleged infringer (for example, a website specifically aimed at Belgian consumers with a Belgian flag, an explicit possibility to ship to Belgium and so on).

Following the CJEU decisions in [Pinckney](#) and [Pez Hejduk](#), the accessibility criterion has become predominant in Belgium.

This criterion, as applied in Belgium, means that a Belgian court is validly seised as soon as the allegedly infringing goods are accessible from Belgium (that is, it is sufficient for a website to be accessible in Belgium). Nonetheless, in such cases, jurisdiction is limited to the damage caused within the Belgian territory. A Belgian tribunal stated that "this is a form of forum shopping permitted within the legal and treaty framework". ([Tribunal of enterprises Antwerp, 6 June 2018](#)).

Once the Belgian courts have jurisdiction, they will verify whether there is infringement based on: (i) whether the applicant can indeed demonstrate that it holds an IP right, and (ii) whether the alleged infringing good is infringing on this IP right (for example, because it reproduces its essential characteristics).

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In France, the general principle is that the court of competent jurisdiction will be that of the place where the defendant is domiciled. However, as an exception in accordance with the [recast Brussels Regulation](#), the court may be seised where a harmful event has occurred or may occur in the jurisdiction. When applying this exception, the claimant may either opt for the jurisdiction where (i) the event giving rise to the damage occurs or the jurisdiction where (ii) the damage itself occurs.

French courts have endorsed the rulings of the CJEU in [Pinckney](#) and [Pez Hejduk](#). When assessing where the event giving rise to the damage occurs, the focus is on the location of the owner of that website. In contrast, when assessing where the alleged damage itself occurs, it is [settled case law](#) that "targeting" is not a relevant factor. For the French Supreme Court, when committed via the internet, the "accessibility" of websites or social media accounts within the jurisdiction of the court seised is sufficient to establish the jurisdiction of that court (Supreme Court, 23/06/2021, 20-10.635).

For instance, in a dispute concerning the alleged reproduction of a "tutti frutti" watermelon design used on a collection of household linen items and marketed in particular on a website based in Belgium, the Court of Appeals of Paris affirmed the jurisdiction of the French courts based on the place of realisation of the damage, despite the fact that it was a Belgian website and that the targeted public was not French or francophone (CA Paris, 23/03/2021, 19/17274).

Therefore, the "accessibility" factor is used to assess the competent jurisdiction. It does not mean that it would be sufficient to establish the infringement itself on the merits, which is an independent matter. In the context of Paris 2024 Olympic Games, the French Court recently affirmed its jurisdiction for alleged infringing acts (involving notably French trademarks and other Olympic assets) based on the accessibility of videos (using deep linking) published by a Chinese company, on Chinese websites and social networks, in Chinese, and for a Chinese public, and reminded that the question as to whether these items constitute a violation of protected rights relates to the merits of the case (Paris Civil Court, 17/10/2025, 24/11032).

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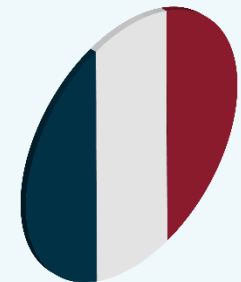


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Germany

Under German law, the infringement of a national IP right requires a "commercial effect" of the contested use in the territory of Germany. The Federal Court of Justice recently explicitly transferred this principle – that had long been recognised in trade mark law – to copyright law and held that the infringement of a German copyright can only be assumed where an economically relevant domestic connection exists.

German courts determine the "commercial effect" by way of an overall balancing of interests, taking into account all facts of the individual case. If the contested conduct has its focus abroad, it requires special findings to answer the question whether a relevant infringement has occurred in Germany. The factors that need to be taken into consideration in the overall assessment are multifaceted, and the following may be relevant:

- The use of a **top-level domain** serves as an indication as to the target public.
- The **language** of the website and the **terms and conditions** are a relevant factor as well.
- The indication of prices in a certain **currency** can speak in favour of the targeting of a specific market.
- **Contact details** such as phone numbers or email addresses may indicate that the use is directed at a German public.
- **Shipping policies** and the **actual delivery** to customers in Germany are a strong indication of commercial effect in Germany. By contrast, sending the goods from Germany to a foreign country does not say anything about the target public.

Not excluding German users by geo-blocking does not *per se* lead to the assumption that a website targets consumers in Germany. In contrast to some other EU jurisdictions, the mere accessibility of allegedly infringing content in Germany is not sufficient in itself.

All in all, owners of IP should carefully examine whether the contested use does have commercial effect in Germany before asserting claims based on German IP rights. A suitable means to prove commercial effect is still a test purchase: if the ordered product is delivered to Germany, that is at least a strong indication of a targeting of the German market in the overall assessment.

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Italy

In Italy, the mere accessibility of online content is generally sufficient to establish jurisdiction for copyright claims, as **clarified** by the Court of Rome. In this case the court ruled that, in cases of copyright infringement, Italian jurisdiction is established under the *locus delicti* criteria. The harmful event occurred in Italy, where the applicant is based and exercises its rights. The mere accessibility of the infringing website from Italy suffices to establish jurisdiction, regardless of whether the website targets Italy specifically.

By contrast, mere accessibility is not, by itself, enough to establish either jurisdiction or infringement in matters of trade marks and other industrial property rights. In these cases, courts look for elements of direction or targeting towards the Italian public, or concrete effects in Italy. For the purposes of establishing infringement, a targeting analysis is normally decisive for industrial IP rights; for copyright, the focus is primarily on “communication to the public”, with accessibility playing a more central role.

Copyright: the key element is “communication to the public” under Italian law. Accessibility to the Italian public is an important indicator; strict “targeting” is less central than for trade marks. Other factors may nonetheless be relevant (awareness of illegality, the role of intermediaries, absence of geo-blocking, actual audience).

Trade marks and other IP rights: it is necessary to prove “use in the course of trade” in Italian territory (for national marks) or in the EU (for EUTMs). Here, targeting is crucial: Italian courts require that the online offer/sale is actually directed at Italian consumers or has produced effects in Italy (orders, shipments, customer support in Italian, geo-targeted advertising campaigns, and so on). Mere accessibility of the site, without such elements, rarely suffices to establish infringing use in Italy.

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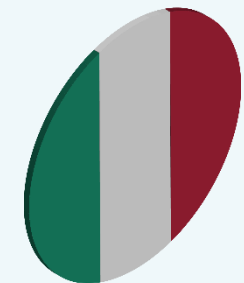
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Poland

Polish courts do not have a significant body of case law directly addressing cross-border IP infringement or the overseas use of IP rights. However, like other EU Member States, Polish courts are required to interpret and apply the recast Brussels Regulation and the case law of the CJEU, such as [Wintersteiger](#) (trade marks), and [Pinckney](#) and [Pez Hejduk](#) (copyright). Notably, while *Pinckney* suggests that mere availability of infringing content online is sufficient to establish jurisdiction, the reasoning within that judgment introduces ambiguity by also referencing the ability to acquire the work, potentially leading to inconsistent application in national courts.

In practice, Polish courts have shown a cautious and conservative approach, leaning towards the targeting test when evaluating jurisdiction over cross-border online IP infringements. A 2022 [ruling](#) by the District Court in Warsaw serves as a key example.

In this case, a Polish company brought an unfair competition claim against a German entity over negative test results published on the defendant's German-language website. The court declined jurisdiction, finding that the plaintiff had not demonstrated direct harm within Poland, such as reputational damage or a drop in sales in the Polish market. The court emphasised that the content was in German and not directed at Polish consumers, and it referenced relevant CJEU case law, including [eDate Advertising](#) and [Bolagsupplysningen](#).

While Polish courts formally adhere to EU jurisprudence, in practice they appear to require a clear demonstration of targeting and tangible effects within Poland in order to assume jurisdiction in cross-border IP disputes. This aligns with a more restrictive interpretation of the "place where the damage occurred" under Article 7(2) of the [recast Brussels Regulation](#), limiting jurisdiction to cases with demonstrable domestic impact.

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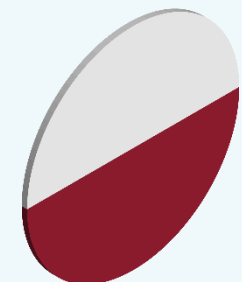
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Spain

When it comes to the use of IP rights registered in Spain by parties operating from outside its borders, Spanish case law consistently upholds the principle of territoriality. That is, IP rights are protected only within the territory where they are registered or recognised, unless they are EU-wide rights or benefit from international treaty protection. For example, the lawful use of a sign in another country, even if similar to a Spanish trade mark, will not automatically constitute an infringement in Spain.

That said, if such use targets the Spanish market or has a tangible impact on Spanish consumers, the Spanish courts may consider the existence of an infringement, provided that damage within Spain can be established. In this regard, Spanish courts have rejected a broad "accessibility" test and instead require a genuine territorial link – effectively a targeting or effects-based approach – before asserting jurisdiction in cross-border IP cases. The Supreme Court's [ruling](#) of 26 February 2025 (the *Farola Latina* case) reaffirmed this position. The court clarified that, for IP infringements committed abroad, the mere fact that the plaintiff's centre of interests or creative process originated in Spain is insufficient to establish Spanish jurisdiction. Instead, jurisdiction hinges strictly on whether the harmful event or its direct effects occurred within Spanish territory.

Accordingly, mere accessibility of a foreign website or act from Spain does not suffice to confer jurisdiction. Spanish courts will only assume competence where the infringing activity is directed at Spain or produces a real impact in its territory – for instance, through sales, downloads, or commercial exploitation in Spain. This confirms that, in the cross-border context, Spain follows a targeting/effects test, rather than an accessibility one, when assessing jurisdiction for online or foreign IP infringements.

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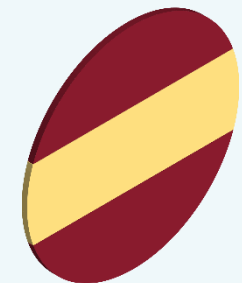
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United Kingdom

In the UK, mere accessibility of a website is not enough to establish jurisdiction in the case of foreign use of UK IP rights – there needs to be targeting. The concept of targeting is relevant for both foreign use of trade marks and copyright, and there is an overlap in the concepts and authorities relied on in the different cases.

The concept of targeting itself is derived from the EU, with the CJEU having first explored the concept. It is clear that the targeting assessment is multifactorial, meaning that the court must consider all of the relevant circumstances.

The targeting concept was most recently considered by the UK Supreme Court in [*Lifestyle Equities v Amazon*](#). This case concerned the sale of trade marked goods from Amazon's US website. It is worth noting that the events concerned in this case all occurred before the end of the Brexit transition period and, therefore, the court did not have to grapple with the post-Brexit position, particularly now that the supremacy of EU law has been abolished by the [*Retained EU Law \(Revocation and Reform\) Act 2023*](#).

The Supreme Court found that the website was targeted at UK/EU consumers and therefore trade mark infringement was made out. It held that in the trade mark context, targeting has to be judged from the perspective of the average consumer – that is, whether a significant proportion of relevant consumers would consider the website to be directed and targeted at them.

To conduct this assessment, the website as a whole has to be considered. The Supreme Court conducted a forward review of the consumer's journey through the website and the buying process prior to purchase. What happened after the sale was completed was not considered relevant to the assessment.

Significant factors that pointed towards targeting included:

- The fact that a "deliver to the UK" message appeared on all webpages by design.
- The website specified and labelled which goods could be shipped to the UK.
- Delivery was offered to UK addresses, with UK delivery times.
- There was the option to pay in GBP.

The Supreme Court placed little weight on the low number of UK sales compared to US sales because the average consumer would not be aware of this.

As targeting had been established, the Supreme Court declined to answer whether non-targeted UK sales would also amount to trade mark infringement. It did make clear that this doctrine operates separately from targeting and that there was some uncertainty in the EU authorities on the point. This is likely to be point of debate in English case law moving forward.



United Kingdom (continued)

The English courts have also found YouTube videos to be targeted to the UK in *Entertainment One*, which involved a dispute regarding the Peppa Pig and Woffoo characters. This case concerned both copyright and trade mark infringement. Here, the defendants' intention was important to the finding of targeting, particularly because there were contemporaneous online articles setting out their intention to target UK consumers. Other significant factors were:

- The number of views from the UK.
- UK advertising on YouTube, which included adverts in GBP.
- The fact that the defendants had taken no steps to block UK viewers.

In the copyright context, whether there is targeting is judged from the perspective of the public in the UK. The test is objective but, as in *Entertainment One*, evidence of intention can still be relevant. *Warner Music v Tuneln* (affirmed on *appeal*) concerned the infringement of the copyright communication right by an internet radio operator. Mr Justice Birss (as he then was) held that the question of whether the website as a whole needs to be analysed or whether a more fine-grained analysis is needed is fact-dependent. Depending on the structure of the website, not all pages may be targeting to the same territory. In this case, important factors included:

- The appearance of the webpages.
- Explicit statements of intention.
- The language used.
- Currency.
- The number of visits made by the UK public.

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Osborne Clarke comment

We are seeing a divergence in approach between European countries when it comes to establishing jurisdiction and infringement in cross-border IP cases. While some countries (UK, Germany, Poland) require specific targeting of the jurisdiction by the infringing party, other countries have adopted the lower "accessibility" threshold. It is also possible that there could be further divergence in the UK in the future depending on how the courts wish to approach the issue in the post-Brexit context.

As a result, businesses must think carefully about how to manage their presence online. To avoid inadvertently targeting markets, businesses should avoid advertising in local currencies and languages, disable shipping to those jurisdictions and consider geo-blocking. However, it is important to note that even these measures may not be sufficient to prevent infringement findings in jurisdictions such as Belgium and France.

For rightsholders, careful consideration must be given to litigation strategy when pursuing cross-jurisdictional enforcement campaigns. It is crucial to consult with local experts in different countries to ensure that there is a sufficient basis to establish that damage is being done in the jurisdiction.



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