

## How to Obtain a Global Injunction in a Copyright Infringement Case (Guest Blog Post)

October 2, 2018 · by [Eric Goldman](#) · in [Copyright](#)

by guest blogger [Marketa Trimble](#)

Prompted by the set of Canadian and U.S. court decisions in *Equustek v. Google*, the audience at a recent copyright conference discussed whether a plaintiff could obtain a global injunction in a copyright infringement case. In *Equustek*, which was a trademark and trade secrets case, a Canadian court issued a global injunction, ultimately **affirmed** by the Supreme Court of Canada, a U.S. court **pronounced** the injunction unenforceable, after which a Canadian court still **confirmed** the injunction.

*Equustek* involved a claim of misappropriation of trade secrets – a claim for which courts, including U.S. courts, often issue global injunctions (e.g., in *Lamb-Weston*). Although not all trade secrets require global secrecy, many of them do, and when they do, secrecy in only the jurisdiction under whose law a trade secrets case was adjudicated is inadequate. In an age of instant communications, the secrecy of a trade secret in Canada could not be adequately protected if a court ordered it to be kept secret only in Canada.

But what about a copyright infringement claim (as opposed to a trade secrets misappropriation claim) brought only under the law of a single country – could the claim lead to the issuance of a global injunction? Copyright is territorially limited – it extends only to the limits of the prescriptive jurisdiction of a particular nation’s copyright law. If a court – any court – adjudicates copyright infringement according to, say, U.S. law, the resulting injunction should apply only in the United States. This result is problematic for copyright owners who want to protect their copyright everywhere, yet as I discussed in [one](#) of my articles, many copyright owners cannot litigate in multiple countries and/or under the copyright laws of multiple countries.

A court with general jurisdiction over a defendant may adjudicate claims under the laws of any or all countries, as long as the claims are **transitory causes of action**. In copyright cases, the courts of some countries have treated copyright infringement claims as transitory (e.g., [London Film](#) in the United States, [Lucasfilm](#) in the United Kingdom). This treatment should theoretically allow a copyright owner to bring a copyright infringement suit in the courts of these countries under the laws of all countries (not only under the forum law), and thus request a global injunction. But doing so is impractical, costly, and sometimes not even possible.

There might be one possibility for a global injunction in copyright cases when a court has general jurisdiction over a defendant; this possibility could exist in countries where it is upon the parties to raise, plead, and/or prove foreign law (e.g., [Rule 44.1](#) in the United States). In these countries, a copyright owner might be able to bring claims based on the copyright laws of all countries in the world and ask that the court proceed on the presumption that the copyright laws of all countries are identical to the law of the forum. Without an objection from the defendant – which is unlikely in cases that result in a default judgment – the court could apply the presumption, which should allow the court to adjudicate the copyright infringement



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globally and issue a global injunction.

Two caveats apply to the presumption strategy above: First, the strategy could fail in contested cases if the defendant attacks the plaintiff's ownership of copyright in other countries. An attack would create a new problem for the copyright owner unless the court, following its own rules on choice of applicable law, also applied forum law to the issue of copyright ownership globally. Second, the strategy would work only if the court employs the presumption – which might or might not be the case in the United States (see Professor Teitz's [article](#) on the situation in U.S. courts).

In some cases, a copyright owner might have reasons to file a lawsuit in a court that has only specific jurisdiction over a defendant. For example, the defendant might be located in a country where the copyright owner does not wish to litigate, and the court in the country where the infringement took place (a court with specific jurisdiction) is a better litigation option for the copyright owner. A court having only specific jurisdiction should adjudicate infringements only in the forum country, and any resulting injunction should also apply only in the forum country. But there could still be a possibility for issuing a global injunction under these circumstances: courts could conclude that the protection of the right arising under the law of the forum requires a global injunction. This is the same reasoning that supports the issuance of global injunctions in trade secrets cases.

When would a claim of copyright infringement actually warrant a global injunction, if a court has only specific jurisdiction in a case? Possibly in online infringement cases, if the court concluded that there would otherwise be no satisfactory means to territorially delineate the defendant's conduct on the Internet. The court would need to conclude that it could not order the defendant to cease copyright infringing activity in the forum country unless it ordered the defendant to cease its activity on the Internet – everywhere in the world – because geoblocking would not prevent users in the forum from accessing the infringing content. This would be a good result for copyright owners, but it is based on reasoning that is problematic for copyright owners – the reasoning contradicts the argument, used by copyright owners, that geoblocking is effective and feasible and should be used to territorially partition the Internet in other contexts for the benefit of copyright owners, for purposes such as territorial licensing and staggered release of content.

The increasing reliability and the decreasing cost of geoblocking might make the “insufficient means” argument (that geoblocking is an “insufficient means” for territorially partitioning the Internet) for global injunctions in specific jurisdiction cases not only problematic from a copyright owner's perspective, but also unacceptable for courts, who seem to be increasingly aware of the capabilities of geoblocking technologies (see my earlier [blog post](#) regarding geoblocking). Additionally, even if a court with specific jurisdiction does issue a global injunction, the enforcement of the injunction might be difficult if the infringer (or the relevant ISP) is not located in the forum country.

Ultimately, the circumstances might be quite limited under which a copyright owner could succeed in obtaining a global injunction in a copyright infringement case. A global injunction strategy might work only when (1) a court has general jurisdiction over the defendant, (2) the court is in a country where it is upon the parties to raise, plead, and/or prove foreign law and the court is willing to employ the presumption that foreign law is identical to forum law, (3) the court considers copyright infringement a transitory cause of action, and (4) the defendant does not overcome the presumption that foreign laws are identical to the forum law. It is up to a future plaintiff to seize the opportunity to test this strategy; it is not inconceivable that we will see all four of these prerequisites fulfilled in a case before a U.S. court.

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