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The Applicable Law to Civil Liability Arising From Cybercrime

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القانون الواجب التطبيق على المسئولية المدنية الناشئة عن الجريمة السيبرانية

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Abstract

There is no doubt that the increase in the abuse of computer data. Dealing through the use of the Internet raises many legal problems, as humanity has not known an acceleration in the growth of relations between them and each other or between human beings, as is happening today with the Internet.

The cybercrimes may take an international dimension when the legal relations permeate one or more foreign elements, such as:

The victim or the perpetrator of the harmful act is a foreigner, or the elements constituting the obligation are scattered between the territories of several countries, and then a problem arises the spatial focus of the cyber civil liability, or more precisely, choosing the applicable law to the cyber tort.

Cybercrime can be defined in general as any illegal, immoral, or unreformed behaviour related to the automated processing, transmission, or assault of data, or (it is a wrong or unlawful act of a criminal will be determined by law as a criminal or civil penalty or a precautionary measure. In the matter of determining the applicable law to non-contractual obligations, the doctrine of local law is applied as the applicable law in general.

We will discuss this opinion and its effectiveness and the extent to which it can be applied to civil liability arising from cybercrime in a manner commensurate with technological development and achieving justice at the same time, as well as international problems resulting from applying this doctrine, and then we will propose new solutions that are commensurate with the nature of the information network to determine the applicable law to civil liability arising from cybercrimes. By analysing technical problems and solving them in the light of private international law.

Keywords: Private international law, Cybercrime, Cyber law, Civil liability, copyright.

الملخص

مما لا شك فيه أن الزيادة في إساءة استخدام بيانات الحاسب الآلي ووقوع الجرائم السيبرانية على الإنترنت تثير العديد من المشكلات القانونية، خاصة أن البشرية لم تعرف تسارعًا في نمو العلاقات بينها وبين بعضها البعض، كما يحدث اليوم من خلال شبكة الإنترنت مما يؤدي الى وجود انفتاح في العلاقات بين البشر من جنسيات مختلفة، فقد تأخذ الجرائم السيبرانية بعدًا دوليًا عندما تتضمن العلاقات القانونية عنصراً أو أكثر من العناصر الأجنبية، على سبيل المثال: أن يكون المجني عليه أو الجاني أجنبياً، أو أن العناصر المنشئة للالتزام مبعثرة بين أقاليم بلدان مختلفة، ومن ثم تنشأ مشكلة التركيز المكاني للمسؤولية المدنية السيبرانية،

أو بشكل أكثر دقة تحديد القانون الواجب التطبيق على المسئولية التقصيرية الناشئة عن الجريمة السيبرانية، ويمكن تعريف الجريمة السيبرانية بشكل عام على أنها أي سلوك غير قانوني أو غير أخلاقي أو غير مصحح يتعلق بالمعالجة الآلية للبيانات أو نقلها أو الاعتداء عليها، أو (أنه فعل مخالف أو غير قانوني قام به مرتكبه سواء كان ذلك الفعل مؤثم بالقانون الجنائي أو مخالف للقانون المدني، أما فيما يتعلق بمسألة تحديد القانون الواجب التطبيق على الالتزامات غير التعاقدية فإن الرأي الغالب يتجه الى تطبيق القانون المحلي باعتباره القانون الواجب التطبيق المعمول به في ذلك الشأن، سنناقش هذا الرأي ومدى فعاليته ومدى إمكانية تطبيق القانون المحلي على المسؤولية المدنية الناشئة عن الجرائم السيبرانية بطريقة تتناسب مع التطور التكنولوجي وتحقق العدالة بذات الوقت، وكذلك المشكلات الدولية الناتجة عن تطبيق القانون المحلي، ومن ثم سنقترح حلولًا جديدة تتناسب مع طبيعة شبكة المعلومات لتحديد القانون الواجب التطبيق على المسؤولية المدنية الناشئة عن الجرائم السيبرانية وذلك من خلال تحليل المشكلات الفنية ومحاولة وضع الحلول الأمثل في ضوء القانون الدولي الخاص.

الكلمات المفتاحية: القانون الدولي الخاص، الجريمة السيبرانية، القانون السيبراني، المسئولية المدنية، حق المؤلف.

Introduction

In only two decades ,the using of the internet ,social media ,and ,information networks in general has undoubtedly led to deep changes in the functioning of our society which represent a constantly increasing threat and challenge for the protection of fundamental rights. Computer technology not only increased extremely access to information and exchange of data ,it also ,produce potentially infringements to data protection and privacy of worldwide citizens[(1)]. The cybercrimes may take an international dimension when the legal relationship contains one or more foreign elements, such as: The victim or the perpetrator of the harmful act is a foreigner, or the elements constituting the obligation are scattered between the territories of several countries, then a problem arises the spatial focus of the cyber damage, or more precisely, the applicable law to the cyber tort. Therefore, the legal sciences have largely kept pace with the development in information technology, study ,and analysis, but national and international legislations are still experiencing difficulties in adapting to these unfamiliar situations. There is no doubt the abuse of computer data increased. through using of the Internet which raises many legal problems that needs solutions suit the nature of digital community to achieve safety, as humanity has not known an acceleration in the growth of relations between and each other, as is happening today with the Internet[(2)]. If the historical experience has shown on many occasions that the technical progress made by the human

[(1)]Maja Brkan ,Data protection and European private international law :observing a bull in a China shop ,International Data Privacy Law ,Volume ,5 Issue ,4 November ,2015 https//:doi.org/10.1093/idpl/ipv022, Page257

[(2)]Brenner ,Susan W .and Koops ,Bert-Jaap ,Approaches to Cybercrime Jurisdiction .Journal of High Technology Law ,Vol. ,4No ,2004 ,1 .Available at SSRN :https//:ssrn.com/abstract , 786507=Page189

consequently brings good and bright experiences, further the historical experience has also affected the human in a terrible way, by the misuse of this technical progress. It's necessary for humans to confront the developments of contemporary life which includes standing in front of the tremendous scientific and technical progress with its positives and negatives aspects on human life, including the problems arising from the use of the global network of information. Significantly, everyone in our time uses the internet, it's not limited to the large companies and also small start-ups or individuals are using the cyber-space.

A cyber-crime can be defined as the wrongful and unauthorized use of unprotected computer or data files, or intentional malicious use of computer hardware or data files.

Also, cybercrime could be defined in general as any illegal, immoral, or unreformed behavior related to the automated processing, transmission, or assault of data, or) it is a wrong or unlawful act of a criminal will be determined by law as a criminal or civil penalty or a precautionary measure, affecting Knowledge, use, trust, national security, national sovereignty, profit, money, reputation, and prestige[3] In the current period, the conflict of laws rules, especially the rules governing civil liability relations with international nature in the digital age, have become necessary to adapt cyberspace to suit the specificity of harmful acts committed on this network, by adopting jurisdiction rules that correspond to the non-spatial or virtual nature of this digital community. The International Informatics Network is, in this sense, is the most significant means of violating private life, personal data and intellectual property rights. Furthermore, harmful crimes such as economic crimes and crimes of incitement to hatred and racism.

Importance and Problem

When we discuss the applicable law to civil liability arising from cybercrime ,this means that I am looking in the field of conflict of laws to determine the law applicable to the civil dispute related to cybercrime, if there is a foreign element in this conflict. It would not be an exaggeration to describe this subject as very important; Cybercrimes are very widespread these days, as the world is no longer the same as it was in the past, so the issue of conflict of laws had a place only very rarely, but the technological development led to an amazing boom in private international relations, so the issue of conflict of laws has become of great importance, Cybercrime has become one of the most fertile fields for conflict, due to its frequent occurrence and the great damage that it entails, as it is something that is apparent to all of us.

[3]Mitsilegas, Valsamis. Money laundering counter-measures in the European Union: A new paradigm of security governance versus fundamental legal principles. Vol. 20 Kluwer Law International BV2003,

The problem of this paper appears in the presence of research difficulties related to the scarcity of references and objective difficulties related to the lack of international conventions or national legislation regulating the determination of the applicable law to civil liability arising from cybercrime, and due to the terrible technological development and the widespread spread of the Internet, the commission of these crimes is increasing rapidly. Which results in a lot of damage without international deterrence. Assume that X, who is Mexican, has committed a cybercrime from France on an internet server located in the USA and harmed Y, who is an Egyptian, who lives in Norway. The problem here is the choice of law. Which of the aforementioned countries will have an applicable law to the civil conflict arising from that cybercrime? Will it be considered in determining the applicable law the place of residence, the nationality ,the location of the Internet server, the place where the act began, or the harm occurred?

Are any of these criteria consistent with the nature of cybercrime, or are there other criteria consistent with the complexities of the Internet? Since the crime occurs on the Internet, on what basis will we define the applicable law on conflict, when one of the elements of which is foreign?

Scope and Methodology

This paper presented to you is entitled" The Applicable Law to Civil Liability Arising from Cybercrime ". It does not include conflict of jurisdiction and is not related to contractual obligations in private international law. It specializes in the applicable law to civil liability resulting from cybercrime on the Internet. The scope of this paper includes a global international view of national legislations and international conventions to reach an appropriate solution according to the latest ideas in line with the digital nature. We decided to exclude defining the applicable law in the criminal field and limit that paper to the civil field only due to the specificity of that topic. In order to gain familiarity with as much as possible of the subject's aspects, because it is within the scope of international private relations, and our determination to clarify, present and refute the opinions of jurists related to the applicable law to the subject of the paper and to make a comparison between them. Clarify the new variables in the field of private international law in relation to our topic in the digital environment. In the first chapter, we presented the local law, then we presented the proposed solutions that are consistent with the Internet in four points.

As for the methodology, in this paper we will follow the comparative method, comparing articles related to private international law between Egyptian law and various laws at the

global level, Portuguese law, Austrian law, Tunisian law, Hungarian law, Turkish law, Swiss law, Roman law Spanish Civil Code and the Second Rome Regulation on the Law Applicable to Non-Contractual Obligations.

As well as European Directive No 46/95 of 1995 on the protection of natural persons in relation to the automated processing and free handling of personal data.

The paper also includes some references to the opinions of Egyptian, French and American jurisprudence. The most prominent international conventions such as the Berne Convention on the Protection of Literary and Artistic works, and the International Convention on Human Rights.

In order to understand the aspects of this topic, we will deal in the first part of this paper with the rule that the crime is subject to the law of the place of its commission local law. And in the second part there are other solutions aimed at overcoming the difficulties surrounding the application of local law in proportion to the nature of cyberspace to determine the applicable law.

Local Law

It was established in private international law that crimes are subject to the law of the place where they occurred. Supporters of this view rely on many arguments such as:

The legal incident is considered the only objective element that can be relied upon, and it is the reason behind the obligation as well, some believe that granting jurisdiction to the local law achieves the required balance between the rights of the perpetrator and the victim and also the expectation of solutions. Likewise, it allows the behavior of the perpetrator of the harmful act to be subject according to the law that occurred in this act, which leads to an increasing level of legal security. We knew this principle in the era of the jurists of the Italian School of Status in the thirteenth century, where the jurists subjected the harmful act to what was called the law of the place of the crime, as was established by the jurists of the Dutch school in the seventeenth century In accordance with the general rule in their jurisprudence, which is the territoriality of laws, it was also adopted by the jurist Mancini in the nineteenth century by subjecting the harmful act to the law in which it occurred as an exception to his theory based on the principle of the personality of the laws .arising from the act and then this law is considered appropriate to legally regulate liability[(4)].

Indeed ,some law historians have seen that this principal dates to an ancient Greek and

[(4)]Prof. Dr. Ahmed Mohamed Al-Hawari/Private International Law and the Internet, paragraph,106, pg80.

Roman times, but the local law in its current form did not appear until after the distinction was made between the procedures and the origin of the right, as it was not possible to apply a foreign law except on the basis of differentiation between the two sides. The procedural aspect that remains subject to the law of the judge and the aspect relating to the origin of the dispute that may be subject to foreign law[5].

If the element of the parties in a family relations in which the rule of the two leads to the application of the law of the nationality of the parties, and the element of the place will be the center of gravity in the financial link or the issues related to the financial link in which the rule of attribution to the application of the law of the location of the place, then the cause element in the relationships associated with it is tort liability It is he who constitutes the center of gravity in which the rule of attribution refers to the applicable law.

National courts applied jurisdiction only over alleged infringement of intellectual property given by their local law, and this provided protection only against conduct occurring in that country[6]. In the civil law, the Egyptian legislator adopted the rule of local law and stipulated the following in Article (1) - 21 The law of the country in which the act creating the obligation took place applies to non-contractual obligations (2). However, regarding the obligations arising from the harmful act, the provisions of the preceding paragraph do not apply to facts that occur abroad and are lawful in Egypt, even if they are considered unlawful in the country in which the lawsuit took place[7]. It is clear to us from the aforementioned article that the Egyptian legislator decided a general rule that applies to non-contractual obligations, whether they are beneficial or harmful. The national judge who decides on the liability case must ascertain the illegality of the act creating the obligation.

There is an aspect of jurisprudence that criticizes the local law. We can summarize the most important points in adopting the local law regarding the responsibility for harmful acts .This criticism concludes that this point of view is characterized by an accidental course, as it depends on the sheer chance that led to the occurrence of the work in the state without the other. However, the application of this principle regarding cyber damage is colliding with many difficulties. Information that is published within a specific country can be accessed from all countries of the world. Therefore, it may lead to attributing these crimes to the law

[5]Phegan ,C .(1983) .Principles of the Conflict of Laws ,National and International .By K .Lipstein .The Hague ,Boston, London :Martinus Nijhoff Publishers .1981 ,Pp .xii .144 ,Index .Dfl .33$;75.American Journal of International Law,(3)77 , .699-701doi , 10.2307/2201111:Page7

[6]Graeme B .Dinwoodie ,Developing a Private International Intellectual Property Law :The Demise of Territoriality51 ,? Wm & .Mary L .Rev ,(2009) 711 .https//:scholarship.law.wm.edu/wmlr/vol51/iss2/12 , Page733

[7]Egyptian Civil Code :Article21 :

of the place where they occurred, to the application of many laws to the same legal reality as well. Crimes committed via the Internet are difficult to be limited to one legal category, as they differ and vary in relation to the nature of the rights that should be protected) the right of private life, the right of the image, the right to compose literary, philosophical and artistic literature, etc, (which are the legal requirements that It can be relied upon to protect these rights) at the civil level, compensation for damage, the right of restitution, the right of correction, the principle of comprehensive compensation and the principle of disciplinary compensation (In addition, it is often difficult to determine the place of committing these crimes, especially in the case where the elements of attribution differ between the lands of several countries, and then the problem arises of determining what is meant by the place of occurrence of the act creating the obligation. Is it the law of the place where the harmful act was committed, or is it the law of the place where the damage was achieved? We will divide and explain the two jurisprudential opinions as the following:

A. The local law is the law of the place where the harmful act was committed:

The jurisprudence regarding determining the meaning of the place of occurrence of the act which created the obligation was divided into two main directions, part of which tended to say that what is meant by the local law is the law of the place where the harmful act was committed. The perpetration of the harmful act occurs before the effects resulting from these acts. There is no doubt that the main factor upon which the liability is based on is the fault, and the damage is only a consequence of it. Moreover, the law of the place of occurrence of the fault is what determines the concept of fault and whether the committed act is legal or illegal, and therefore this is incompatible with the application of another law. In the field of civil liability, priority is given to the element of behavior or action ,and then the law of the country in which the behavior or action occurs is the applicable law on the damages resulting from this behavior or action, regardless of the place where the damage itself is achieved, therefore, protecting society which is one of the rules of civil security[8]. This opinion was accepted, partially, by some comparative laws. The Portuguese law[9], the Austrian law[10], and the Tunisian law[11], as well as the French Court of Cassation, adopted it in its decision issued on April 1988, 13 in the famous case. In the case of "Farah DIBA," it stated that": The law applicable when the elements of attribution are dispersed between the lands of several countries is the law of place. The occurrence of the harmful act and the offense of

[8]de Sloovère, Frederick J. The Local Law Theory and Its Implications in the Conflict of Laws. Harv. L. Rev.421 :(1927) 41

[9]Portuguese Law of November, 25, 1966 art45 .

[10]Austrian Private International Law of 1979 Article48

[11]Tunisian Journal of Private International Law, 1998 art70 .

defamation is subject to the law of the place where it was committed[12]. According to what was referred to above, the law applicable to the proponents of this opinion is the law of the place of sending the information, i.e. the law of the place where the cybercrime was committed and not the law of the place where the damage was achieved. However, the number of cybercrimes that involve a foreign element have greatly increased in the cyber-space, so the application of this view is not to be taken into account because of the weak position of the victim, in addition to that it will incur many expenses to pursue the perpetrator and obtain compensation.

B. Local law is the law of the place where the damage occurred:

The other opinion considers that the law that is applicable when the elements of attribution are dispersed between several countries applies the law of the place where the damage is occurred, the jurists support this opinion with the following, the provision of damage is more important in the liability than the harmful act and considered an effective factor demanding compensation, the claimant has no interest in filing the case unless the actual damage occurred[13]. In addition to the fact that the time of the occurrence of the damage is the criterion in the issue of the statute of limitations for the case, the limitation period starts from the time the damage was realized and not from the time the harmful act occurred. If we want to focus on the legal relationship from a spatial point of view, the place where the damage occurred should be taken into consideration as the place where the material elements of the relationship came into existence. Therefore, the goal of the liability system is to restore the balance which has been disturbed by the harmful act ,and this balance is only returned by determining compensation for the injured, and this can only be achieved after considering the amount of damage, which entails the necessity of applying the law of the place where the damage was occurred, in addition to the fact that reliance on the element of damage Responds with realism in determining the law applicable to liability, as this realism means moving away from imagination in in the characterization of the relationship and resorting to elements of a material nature and in the area of responsibility. Damage is the material element that is embodied in a tangible external appearance that is dependable in determining the applicable law. Unlike behavior that has many needs, it does not constitute a physical manifestation that can be analyzed where it occurs, as is the case with liability for negative actions or omissions. Most jurisprudence in Egypt, as well as the judiciary, tend to this opinion. The principle of applying the place of the law of the place where the damage

[12]Cass civ 13 ,avril" ,1988 Farah DIBA ,"Revue critique de droit international privé ,1989 ,p.546

[13]Lorenzen ,Ernest G" .Tort Liability and the Conflict of Laws ".LQ Rev.483 :(1931) 47 .

is achieved has been adopted by many comparative legislations, including the Hungarian Private International Law, 1979[14] Turkish Private International Law, 1982[15] Swiss Private International Law, 1987[16] Portuguese Civil Code, 1966[17] and the Rome II Regulation on the Law Applicable to Non-Contractual Obligations of 2007[18]. In my point of view ,this contradicts the interpretation of Article, 21 paragraph 1 of the Egyptian civil code, of which it is clearly understood that the applicable law is the law of the place where the harmful act occurred and not the law of the place where the damage occurred. However, the jurisdiction of local law governing tort liability has been criticized by modern jurisprudence.

Difficulties manifest at the level of practical reality, the exchange of information often involves conflicts of an international nature, which makes the traditional attribution criteria adopted in this field weak and inappropriate with the distinctive characteristics of the virtual world[19] Therefore ,it seems appropriate to search for other solutions to bypass the difficulties in applying local law on cyber damage. There is also a strong opinion calling that the rules of conflict of laws should not be taken into consideration in the field of tort liability arising from cyber-crimes in general, thence that the rules of private international law cannot develop an appropriate solutions to deal with the nature of disputes on the Internet, due to the lack of Political borders that separate countries in the digital space, which makes it difficult to use conflict of laws rules in determining the applicable laws. Some jurists called for the development of effective technical rules commensurate with the nature of digital attacks to establish a rapid system that keeps pace with the digital nature with what is known as cyber law. But this opinion was criticized ,and we noticed that these critiques are similar to the criticism directed to the law of merchants, Including, but not limited to:

- The cyber law can be a code of conduct and not a law.
- Electronic transactions on the Internet did not live up to the degree of binding custom for users of the Internet.
- There is no real will to reach an express agreement from states or users to create a separate law from positive laws to govern civil matters via the Internet.

[14]Article32/2

[15]Article25/2

[16]Article133 .

[17]Article45/2

[18]Article4

[19]Reidenberg, J. R. (1998) Lex informatica: The formulation of information policy rules through technology. Texas Law Review, (3)76 Page553

Presented Solutions that Suit the Nature of the Internet

A. The application of the personal law of the injured

Part of the jurisprudence called for the application of the personal law of the injured in relation to crimes committed through the computer network, especially if the attack occurred on private data and personal rights. The arguments of the Jurists of this opinion since the matter in this hypothesis is related to the personality of the individual, and the rules related to organizing personal data are mainly aimed to protect the right of individuals to have a private life. Part of the jurisprudence called for the application of the law of the country in which the headquarters of the institution or establishment that processed the data is located, and this was followed by European Directive No 46/95 issued in 1995 related to the protection of natural persons in relation to for automated processing and free circulation of personal data. This directive included several objective rules aimed at achieving this Protection against the prohibition of collecting or processing personal data by commercial establishments without the consent of the person who owns that data or an express provision in the law. The directive also ensures that the data should be processed in a legitimate way for explicit and legitimate purposes, and that it should not be used later in any way to achieve other goals. Some comparative laws grant freedom to the injured party to choose the applicable law to issue of tort liability, including the Swiss private international law of 1979[(20)] states": It applies to violations that affect Private life and personal rights through the means of communication, and in particular, the press, radio, television, or all media General, according to the choice of the injured:

- The law of the country of habitual residence of the injured, considering the element of expectation for the responsible person.
- The law of the country in which the domicile or habitual residence of the offender is located.
- The law of the place where the damage occurred ,considering the element of expectation for the responsible person.

In the same direction, the Romanian Private International Law of 1996[(21)] states": It applies to a lawsuit". Responsibility arising from the violation of private life and personal rights through modern means such as the press, radio, television, and other media other public media, as per the choice of the injured:

[(20)] Article139

[(21)] Article113

- Law of domicile or habitual residence.
- The law of the place where the damage occurred ,considering the element of anticipation.
- The law of the domicile or residence of the offender.

It is noted that granting the choice to the victim, although it is consistent with the requirements of justice and fairness[22], but this may be a favoritism in favor of the victim, enabling the latter to choose the applicable law may result a disturbing in the required balance between the rights of the two parties, and the lack of impartiality, especially in the absence of the element of expectation on the part of the responsible person.

B. Law of the place where the infringed material was uploaded

Part of the jurisprudence called for the application of the law of the country in which the assaulted material was uploaded regarding cybercrimes[23], those who hold this view point out that the place where the material was uploaded, is the starting point.

As for the violation process, which can be easily identified before distributing the substance to all countries of the world. Moreover, the application of this solution guarantees the unity of the applicable law if the work is received or transmitted to more than one country, and the country of upload is considered the country of first publication where the provider of the uploaded material is stationed or the location of the service provider, which the perpetrator can choose to broadcast messages coming from a country where authors do not enjoy strong protection and where he can change his position during upload. This is what the European Commission has adopted in what is known as the Green Book on Copyright and Related Rights issued on July 1995[24] 19 However, if the application of the law of the place where the infringed material was uploaded leads to the jurisdiction for a law that does not achieve adequate protection, especially in cases where the perpetrators of the harmful act resort to broadcasting their material in countries with a weak level of protection, then the law of the receiving country can be applied if it is Provides adequate protection.

The proponents of this approach derive their ideas from the American jurisprudence, which holds that information is not published on the Internet with) PUSH technique - (as is

[22]Xiaoliang, F & ,.Qingming, L (2015) Comparative study on selected aspects of the latest private international law legislation across the Taiwan straits .Frontiers of Law in China, (2)10 Page +316 342 https//:link.gale.com/apps/doc/A435501001/AONE?u=anon~b5fdbd89&sid=googleScholar&xid8=cdfa0b6

[23]Brenner, Susan W, and Bert-Jaap Koops" Approaches to cybercrime jurisdiction ".J .High Tech .L .1 :(2004) 4 Page10

[24]Dinwoodie, Graeme B" A new copyright order: why national courts should create global norms ".University of Pennsylvania Law Review.469-580 :(2000) 149.2

the case in the field of journalism or radio and television broadcasting - [25]but the information is searched individually ,meaning that publication is not done here by push ,but by pull, which means that the user initiates contact with websites in order to obtain information, Accordingly, the law of the place where the infringed material was the uploaded acquires practical importance in determining the applicable law cyber tort. However, this approach was criticized[26], as it was said in response to it, that basing the determination of the applicable law on cyber tort on purely technical concepts and ignoring the basic function of the law in social organization, which is aiming to monitor the social consequences of this technique, not the development of technical standards.

C. The law of the place of downloading the infringed material

Another opinion goes to applying the law of the place of downloading the infringed material, whether it is infringing a copyright, false advertisement or any of personal rights, etc. The opinion indicates that the damage resulting from this attack is achieved in a country receiving or unloading the information material that was illegally used[27], as well as ,in this country the positive role is achieved with regard to the perpetrator of the harmful act, since the latter is the one who dumped the data on the computer, which controls how the abused material is obtained[28]. This jurisprudence is basing its choosing of this law by virtue of the liability lawsuit arising from the infringement of intellectual property rights, the damage resulting from this infringement is achieved in a country receiving or downloading the literary or artistic informational material that was improperly infringed, therefore the balance between interests has been disturbed which the law of the receiving state aims to restore. If downloading the protected material on the information network obviates the presence of physical copies of it, i.e. hard copies ,then separating the material from the network is a form of illegal copying and distribution if it is done without the consent of the right holder. However, this approach has been criticized, as the application of the law of the place of unloading the infringed material may be unfair to the to the perpetrator of the harmful act, as

[25]For a deeper understanding, read Allarcom Pay Television, Ltd. v. General Instrument Corp 69 ,.F3.d3819) th Cir(1995 . holding that a transmission of broadcasting signals did not infringe U.S .copyright law ,although the broadcasts originated in the United States, and that state law claims related to the unauthorized broadcast from the United States into Canada were therefore not pre-empted.

[26]Frohlich, Anita B" Copyright Infringement in the Internet Age—Primetime for Harmonized Conflict-of-Laws Rules "?Berkeley Technology Law Journal, vol, 24 no ,2 University of California ,Berkeley, University of California, Berkeley, School of Law, 2009 pp 96–851 http//:www.jstor.org/stable .24118564/Page883

[27]Brenner, Susan W, and Bert-Jaap Koops" Approaches to cybercrime jurisdiction ".J .High Tech .L .1 :(2004) 4 .Page19

[28]SHONNING: La loi applicable aux transmissions en ligne transnationales, Revue international de droit d'auteur,1996, p.36

the responsibility of the latter may be determined according to the laws of many countries in which the offended material was unloaded, Moreover, locating the unloading place may encounter many difficulties at the practical level, in the case in which it is carried out the use of the personal computer in many places and countries. Furthermore, the application of the reception law will not often lead to a ruling for comprehensive compensation, as the judge will be limited to applying his law with respect to the damage in his country only because the judge who decides on the liability case will not be able to apply his law except to the damages that have been achieved on the territory of his country, in While the court of the place where the harmful act was committed is only competent to consider the full compensation that arose from this act.

D. The law of the country in which protection is requested

The application of the law of the country in which protection is requested is based on many justifications, perhaps the most important of which is that the idea of applying the law of the country in which protection is sought leads to the unification of the applicable law, because the diffusion characteristic of the international information network makes it difficult to collect damage, and the law of the state in which protection is sought, it is often the law of the state in which the damage occurred and the law of the victim's habitual residence, and is consistent with the requirements for the protection of the weak party in the legal relationship[(29)]. This position has been adopted by many international treaties, agreements and national legislation, including the Bern Convention of 1886 relating to the protection of literary and artistic property[(30)], the International Convention on Human Rights signed in Geneva on 1952[(31)] the Spanish Civil Code of 1974[(32)] the Hungarian Private International Law of 1979[(33)] and the Swiss Private International Law of 1987[(34)] and Egyptian Law No. 354of 1954[(35)] and UAE Law No 40 of 31992[(36)] Most national courts are applying the lex loci protectionis to determine the applicable law in intellectual property cases ,Furthermore, international treaties expressed a preference for the lex loci protectionis as a choice of law rule. There has been a greater controversy in copyright, most commentators would agree

[(29)]Eechoud, Mireille van" .Choice of Law in Copyright and Related Rights :Alternatives to the Lex Protectionis.(2003) ". Page105

[(30)]Article5/2

[(31)]Article1/4

[(32)]Article3/10

[(33)]Article19

[(34)]Article1/110

[(35)]Article49

[(36)]Article3

that copyright infringement is still a question for the lex loci protectionis[37]. We believe that the legislator's adoption of the law of the state in which protection is requested regarding cyber civil liability is enough to overcome the difficulties surrounding the application of the rule of local law, as the adoption of the rule of law of this state will lead to the unification of the applicable law, especially in the case where the components of the obligation disperse among the territories In several countries[38], this is consistent with the opinion that based on giving the victim the right to choose the applicable law as the weak party in the legal relationship. The criterion of hypothetical damage that accompanies the idea of cyberspace and under which jurisdiction is held for all the laws of the countries that connect to the Internet according to the spatial plurality theory is much preferred for some jurists. The injured person has several options, including: On the one hand, if the injured person mostly seeks protection in the country in which he sustained the greatest amount of damage resulting from the cybercrime, therefore the victim will go to this country and ask for compensation, On the other hand, if the aim of the protection request is to stop the damage and prevent it from continuing, then the victim here mostly resorts to the country of the place of upload or the place of broadcasting and transmitting harmful or abused information material to stop this transmission or broadcast .Some scholars have questioned the resilience of that rule in view of the increased international flow of copyrighted works and the ubiquity of works distributed online[39]. It is also important to note that we do not believe that the Berne Convention contained a conflict of laws rule, the national treatment principle is not truly a conflict rule because it doesn't direct application of the law of any country, it just requires that the country in which protection is claimed the national and foreign authors should be treated the same.

Conclusion

The research concluded that cybercrimes raise many problems that need solutions suit their nature and achieve safety and prosperity. The internet has the perfect environment which enables people to do whatever they want, which facilitates cybercrime .In addition to the presence of a cybercriminal, a large percentage of the hacking crimes that he commits are still not revealed due to the complexity of the Internet system and the inability of legisla-

[37]Graeme B. Dinwoodie, Developing a Private International Intellectual Property Law: The Demise of Territoriality51,? Wm & Mary L. Rev, (2009) 711 https//:scholarship.law.wm.edu/wmlr/vol51/iss2/12, Page729

[38]Eechoud, Mireille van" Choice of Law in Copyright and Related Rights: Alternatives to the Lex Protectionis.(2003) ". Page106

[39]Echessa, Willis W. Multinational patient protection: lex loci protectionis, a case for harmonizing international patent law. Diss. University of Nairobi.2014 ,

tion to keep pace, except for some countries that dealt with some few problems, such as the European Community, while the Arabic Legislation in general has not taken a serious step to confront the problems of the digital age. In the current period, private international law, especially the rules regulating civil liability relationships with international nature, are facing the challenge of the Internet imposed by technological progress ,and it has become necessary for it to adapt its rules to suit the uniqueness of harmful acts committed on this network, by adopting conflict of law rules consistent with the non-spatial or virtual nature of this the digital society. And perhaps the most important of these criteria are the legitimate expectations of the parties of the liability lawsuit, which is one of the significant determinants of characterizing cybercrime in a way that leads to the jurisdiction of the court closest to the conflict and the law most closely related to it. Therefore, we believe the law of the country in which protection is requested is the applicable law, because this law is often the law of the country most closely related to the relationship as we referred to. We believe that more legislative attention should be given to the issue of determining the applicable law to civil liability arising from cyber-crimes committed through the information network, because most of those crimes committed have an international nature, which calls for the adoption of a specific attribution criterion in relation to Arab legislation, and we believe that the criterion of the law of the country in which protection is requested, is the best because it gives more protection to the interests of the injured person, as it achieves the required impartiality and balance between the parties.