

# **Welcome to APNIC 48**

**"Internet and Jurisdiction: Nepali Perspective"**

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# Resource Personal Profile

- Head – Digital Banking, Sanima Bank Ltd.
- President – Nepal Internet Foundation
- Vice Chair – Nepal IGF
- Past President – Internet Society Nepal
- ICANN – Fellow Alumni
- Executive Member – CAN Federation
- Technical Coordinator – Card Industry Council of Nepal. (Under Nepal Banker Association)



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# THE CHANGING WORLD



- ✧ **Geopolitics**
- ✧ **Resources**
- ✧ **Innovation**
- ✧ **Technology**
- ✧ **Ideation**
- ✧ **Internet**
- ✧ **Jurisdiction**





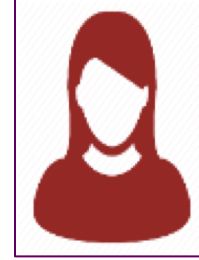
# Understanding Nepal



APNIC 48



30  
million



14  
million  
(50%)



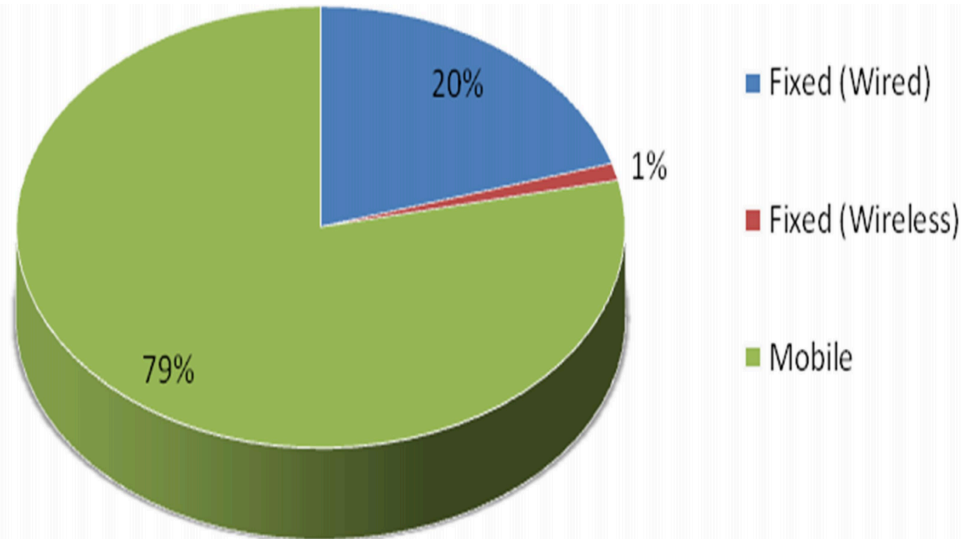
20  
million  
(70%)



1.6  
million  
(6%)

Nepal	
Region	Asia
Sub-Region	Southern Asia
Income*	Low Income
Mobile Penetration	137.55%
Mobile Internet (2G-4G) users	51.64%
Broadband Internet users	65.87%
e-Participation index	0.7809 Rank 55 of 193
e-Government Development Index	0.4748 Rank 117 of 193

## Market Share of Broadband Services in Nepal



- ✧ Very few initiatives in R&D our country
- ✧ Have to adopted new technology of developed countries
- ✧ No Cyber security law & policy in Nepal yet.
- ✧ 13 years before Electronic Transaction Act 2006.

# Landlinked, not Landlocked!

## Boarder Between India and China

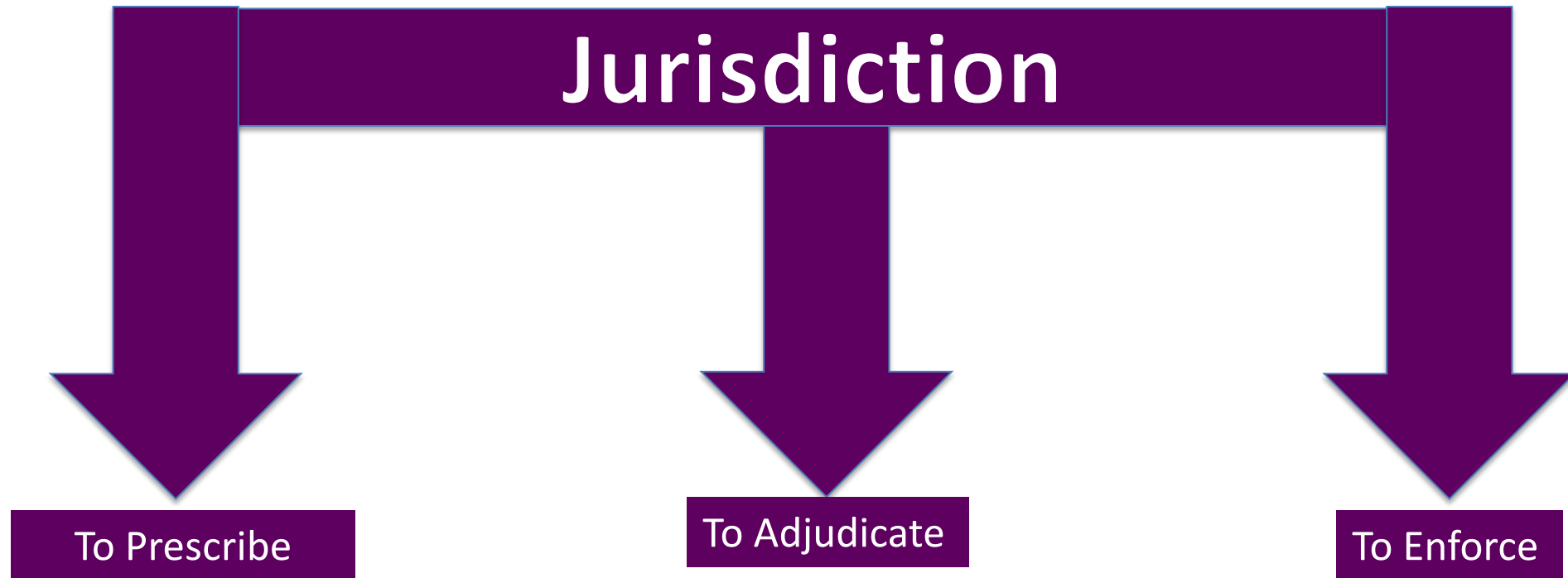


## Major Fiber Backbone and Exits



- 1996 Private Operators start using VSAT directly
- 1997 1st optical fiber in Birgunj (Nepal) - Raxual (India) by Nepal Telecom with DOT India.(No Internet)
- 2000 Incumbent Nepal telecom finally starts Internet Service
- 2007 Internet bandwidth over Optical Link between Nepal and India via Bhairawa(Nepal)- Sunauli(India) by Nepal Telecom

There are three types of jurisdiction generally recognized in international law.  
These are:



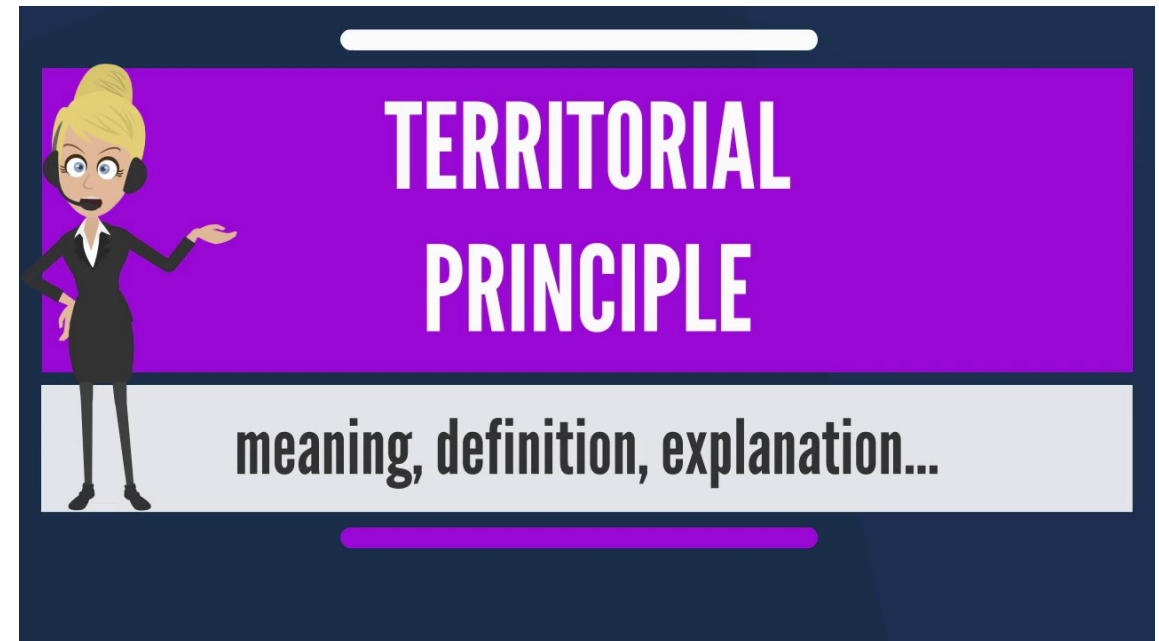
Jurisdiction to prescribe means a State's authority to make its substantive laws applicable to particular persons and circumstances.

Jurisdiction to hear and settle cases or disputes by competent court or the mechanism prescribed by the State.

Jurisdiction to enforce the decision made by the competent court of law/mechanism.

Some of the principle are known as;

- ✓ Territoriality Principle
- ✓ Nationality Principle
- ✓ Effects Principle
- ✓ Protective Principle
- ✓ Universality Principle



## Territoriality Principle

- The territoriality principle is by far the most common basis for the exercise of jurisdiction to prescribe, and it has been generally free from controversy."
- This principle would allow a State to order service providers who operate on its territory to obey its regulations. It would further allow barring access to certain Web sites from machines operating within the state's territory.

## Nationality Principle

Nationality is the basis for jurisdiction where the forum state asserts the right to prescribe a law for an action based on the nationality of the actor. The right of a State to regulate the conduct of its citizens or nationals anywhere in the world is, like territorial jurisdiction, basically non controversial.

## Effects Principle

The effects principle can be invoked when an act committed in one State causes injury in the territory of another State. Jurisdiction is grounded in the fact that the injurious effect, although not the act or omission itself, occurred in the territory of the State.



## Protective Principle

- The protective principle, allows a State to protect its own governmental functions.
- International law recognizes the right of a State to punish a limited class of offenses committed outside its territory by persons who are not its nationals.

## Universality Principle

- Universality provides for jurisdiction over a crime which customary or conventional law labels as egregious as to be of universal concern.
- Unlike the other principles of jurisdiction, universality does not require a direct connection such as the place of the offense, the nationality of the offender, or the effects of the offense on the prescribing State.

# Electronic Transaction Act, 2006

- Electronic Transaction Act, 2006 is the first law in Nepal that recognized the extra territorial jurisdiction in ICT related crimes. This is a huge departure in the legal regime.
  - “It shall extend to the whole of Nepal and, save as otherwise provided in this Act, it applies also to any offence or contravention there under committed outside Nepal by any person.”

# Nepal Case Studies

- The defendant, a Nepal based boy, threatened a women and her family up to death through web based short messages. The Australian Police, through Interpol, informed Nepal police and Nepal police arrested. He was successfully prosecuted under the Electronic Transaction Act, 2006 in Nepali court.
- A Nepal based man hosted a party in Facebook and promised to provide minor girls if anyone join the party. New Zealand police informed Nepal police and he was prosecuted for child abuse and indecent publication. In yet another case, the defendant was brought from one of gulf country only for the prosecution against his allegedly defamatory remarks on Facebook.

# Conclusion

- ✧ No universally applicable jurisdictional rule in practice
- ✧ Least developed and developing countries lack the legal skills, knowledge and capacity relating to jurisdiction
- ✧ Clear rules relating to jurisdiction is essential to attract investment and technology transfer
- ✧ Model law on jurisdiction may help countries to formulate necessary laws
- ✧ IG related organization including APNIC should think about coming forward to build knowledge, skills and capacity relating to jurisdiction





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