

International Jurisdiction and Applicable Law Related to Copyrights (summary)

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This paper on private international law issues arising copyright protection clarifies the following points with respect to both international jurisdiction and applicable law. As regards jurisdiction, (1) it is not necessary for a “protecting country” court to apply an exclusive jurisdiction rule in any copyright lawsuit; and (2) to sustain tort jurisdiction (or jurisdiction of objectively joint claims for damages from harms caused in multiple countries) in the case of infringement via the Internet, deliberate consideration should be made so as not to cause an unnecessary exercise of jurisdictional power (and reference should be made to the rules once proposed in the Hague Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters or particular developments in the domestic laws of foreign countries such as the U.S.) As regards applicable law, (1) it is impossible to find clear grounds for the so-called “principle of territoriality” which confines the extent of one country’s copyright within its borders; (2) rather, this principle should be abandoned because it would make it difficult to regulate cross-border exploitation of copyrighted works such as by internet transmission (it would be better to say simply “application of the protecting country’s law or the law of the country in which a significant event has occurred”); (3) it can be said that the Berne Convention for Protection of Literary and Artistic Works contains no conflict of laws rule providing for the applicable law in copyright disputes, and this interpretation might be advantageous in light of independent regulation of satellite transmissions developed in the European region; (4) there has developed a controversy as to whether the first ownership of copyright, etc. should be connected to one country’s law which has the most significant relationship with that question, and this ultimately depends on policy analysis evaluating the advantage and disadvantage caused by such “dépeçage”; (5) copyright infringement actions, such as claims for injunction or damages, should be analyzed by characterizing such actions as tort claims and governed by the applicable law of tort; (6) because of the multiple application of receiving countries’ laws as applicable

laws in cases involving infringement via the Internet, each country's law should apply to evaluate only that harm caused within its borders.

Copyright infringement via the Internet is a global phenomenon. It is not possible to identify a single country as the place where the infringement occurred.

Therefore, it is necessary to identify the country whose law should apply to evaluate the harm caused by the infringement. The harm caused by the infringement is the loss of the right to control the reproduction and distribution of the copyrighted work. The harm is caused by the unauthorized reproduction and distribution of the work. The harm is caused by the unauthorized reproduction and distribution of the work. The harm is caused by the unauthorized reproduction and distribution of the work.

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