

Law Applicable to Initial Ownership of Copyrights in the case of an Employment Relationship (Summary)

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This paper examines what is the most appropriate law applicable to initial ownership of copyrights in the case of an employment relationship.

There is no express conflict of law rule for intellectual property included in the 2006 Act on the General Rules of Application for Law (*Hō no Tekiyō ni Kansuru Tsūsokuhō*), which is the most important source of private international law in Japan. Some courts and lawyers generally share a certain view that copyright matters in transnational civil disputes should be governed by the law of the country for which protection is claimed (*lex protectionis*). It is unclear, however, whether or not initial ownership of copyrights should also be determined in reference to the law; moreover, placed within the context of an employment relationship, the issue becomes particularly problematic. This issue is very important, but it seems that judgements and arguments are not enough to resolve the question mentioned above yet.

In order to elaborate on the problem, the paper compares four proposals by four study groups for conflict of laws rules related to the initial ownership issue: the American Law Institute (ALI), the European Max Planck Group on Conflicts of Laws in Intellectual Property (CLIP), the Transparency of Japanese Law Project and the Waseda University Global COE Project. The CLIP proposes applying *lex protectionis* to the matter whether or not it is in the context of employment relationships, and the Transparency of Japanese Law Project also recommends the law of the country that granted the intellectual property right. These proposals can be classified together as the mosaic approach. On the other hand, recommendations from the ALI and the Waseda University Global COE Project can be understood as the universal approach, because they suggest applying the law of the country that governs an employment relationship to the initial ownership issue in the case of the relationship. Both mosaic and universal approaches are examined in the paper from several points of view: characteristics of substantive law concerning initial ownership of copyrights, consistency with other conflict of laws rules, allocation of the issue to choice of law rules relating to labour contract on the basis of the 2006 Act on the General Rules of Application of Law, and others.

Taking account of all considerations, including court cases in Japan on other matters related to the initial ownership of copyrights, this article concludes that the most appropriate applicable law to the issue in the case of an employment relationship should be *lex protectionis*.