

International Jurisdiction for Infringement of Personality Rights on the Internet: Interpretation of the Japanese Code of Civil Procedure (summary)

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Since contents placed online are accessible by an unlimited number of internet users throughout the world, it is difficult to determine the places where the damage occurred in the case of infringement of personality rights on the Internet. The purpose of this article is to clarify when the Japanese Code of Civil Procedure confers international jurisdiction for online infringement of personality rights on national courts, as compared with the EU and Germany.

The opinions expressed in the EU and Germany can be organized as follows: (1) Some scholars argue that since personality rights are located in the place of the rights holder's domicile, only the court of the place where the victim has his/her domicile should have jurisdiction over disputes relating to the infringement of the victim's personality rights. (2) Other scholars consider that since the damage would occur in all the places where the disputed contents are accessible, the courts of all the place where the contents are accessible should have jurisdiction. However, according to this opinion, the courts exercising jurisdiction may rule only in respect of the harm caused in the state of the court seised (the so-called mosaic theory). (3) Some other scholars contend that the number of competent jurisdictions that are likely to deal with personality rights infringements on the Internet should be restricted. From this standpoint, the BGH held that it is necessary when deciding the issue of international jurisdiction of the national courts that collision of conflicting interests – i.e. the plaintiff's interest in protecting his/her personality rights and the defendant's interest in forming his online appearance and news reporting – has actually occurred or may occur domestically. On the other hand, some scholars suggest that the targeting test in order to reduce the number of the eventual competent jurisdictions. Under this test, what would be examined is whether the publisher of the disputed content targeted domestic readers in the state where the harm occurred. These two criteria seem to be similar from the point of view of the factors to be taken into account.

By contrast in Japan, the opinions of Japanese scholars are as follows: (1) According to the idea underlying Article 19 of Japanese Act on General Rules for Application of Laws,

[Chisato NAKAMURA]

infringement of personality rights may occur in several places irrespective of the place of the victim's domicile. (2) The mosaic theory seems to be useless in Japan because the Japanese Code of Civil Procedure allows the objective joinder of claims. (3) In effect, Japanese scholars did not admit that jurisdiction be based only on the accessibility in Japan of the disputed contents but considered that international jurisdiction of national courts should be restricted. Moreover, according to some recent cases, Japanese courts tend to take in account the language and the content of disputed articles in order to restrict the international jurisdiction of Japanese courts.

As a conclusion, the following comments can be made: (1) In Japan, the place of the domicile of the victim is not considered as the only place where the infringement of personality right may occur. (2) Since the mosaic theory does not apply under the Japanese rules of international civil procedure, it is not possible to confer international jurisdiction on national courts only on the basis of accessibility in Japan. Therefore, (3) international jurisdiction should be restricted to cases where, having regard to the language and the content of the disputed article, or the character and the influence of the website on which the article placed, it is probable that domestic Internet users read the article or where the publisher targets the domestic readers. This test should be considered as an interpretation of the so-called special circumstances doctrine under Article 3-9 of Code of Civil Procedure.