



## **Study Guidelines**

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## **2026 – Study Question**

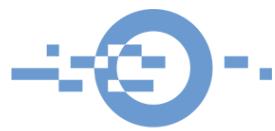
### **Online infringement and territoriality considerations**

#### **Introduction**

- 1) This Study Question relates to the application of copyright territoriality in the digital era and aims to examine the criteria for determining competent jurisdiction and applicable law in the case of online copyright infringement, with a particular focus on geoblocking.
- 2) Copyright online infringement is scourge for authors and the cultural industry. While determining the place of infringement is crucial to combating copyright violations, it becomes more complex in the digital world, where there are no tangible borders, and the location of the infringing acts is more ambiguous.

#### **Why AIPPI considers this an important area of study**

- 3) In cases of online infringement of copyrighted works, the fundamental difficulty lies in the fact that infringing acts are potentially committed in all countries where the infringed works are made available, and the author's loss may be worldwide.
- 4) In these circumstances, the essential questions for the author are to determine (i) which court(s) have jurisdiction to order the cessation of the



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infringement and award compensation, and (ii) which law(s) will be applicable to the infringing acts. The lack of harmonisation of the rules concerning jurisdiction and conflict of laws makes the situation extremely complex for authors.

- 5) Furthermore, an additional difficulty arises from the territorial nature of intellectual property rights. The principle of territoriality is often considered to have a compartmentalising effect, as only a national court can rule on the validity of a national IPR and, to a lesser extent, on the qualification of acts of infringement.

It is true that the importance of this principle of territoriality has tended to diminish in recent years (see, for example, the BSH judgment<sup>1</sup>). Furthermore, the territorial nature of IPRs that require registration (trademarks, patents, designs) is more pronounced than for copyright.

Nevertheless, the principle of territoriality continues to have a significant influence on copyright. And this principle of territoriality can lead to the fragmentation of the competent courts. Indeed, if each jurisdiction is only competent for acts of infringement committed on its own territory, no single jurisdiction can, in case of international copyright infringement, hear the entire infringement case. This fragmentation is obviously very detrimental to authors and copyright holders.

Another theory proposes a unified analysis of the copyright infringement process. Even if the copyright infringement process involves several acts (reproduction, representation, communication to the public, etc.) fragmented in different countries, this doctrine proposes identifying the territory with which the copyright infringement process has the most connections/links. Several different criteria can be used to determine this country: the place where the copyright infringement has a significant impact, the place where the event giving rise to the infringement occurred, the place where the target audience is located, etc. The purpose of identifying the country with the most connections/links to the copyright infringement process is to determine the competent jurisdiction and the applicable law.

- 6) Another difficulty arises from the fact that the protection of copyright may differ between jurisdictions, because copyright protection, the exceptions to

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<sup>1</sup> CJUE, 25 February 2025, C-339/22, BSH Hausgeräte GmbH v. Electrolux AB.



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copyright, and even the terms of such protection are not fully harmonised at the global level. A work that is in the public domain in one country may still be protected in another. A communication that falls under an exception in one country may constitute copyright infringement in another country that does not recognise such an exception.

The broad nature of the right of communication to the public, which includes the right of making works available to the public (Art. 8 World Copyright Treaty – WCT), may suggest that any publication of a work on a website falls under the scope of protection in any territory where the online work can be accessed. For example, this means that a copyright holder could obtain an injunction against an online publication in a protected country (country A), which de facto has the result that the injunction also extends to unprotected countries (country B).

Another approach consists in requiring that communication to the public is targeted at the public in a certain jurisdiction. Indications of this can include the language of the work, the language of the website, the extension of the website, and possibly whether the website operator provided for a geo-blocking for the protected country (country A). This means that there will be cases where a copyright owner cannot take action against the publication of a copyright protected work in a protected jurisdiction (country A), even though that work is available / accessible in the protected country, for example via VPN. These differences in protection are particularly problematic in online environments, as the internet transcends territorial borders.

### **Scope of this Study Question**

- 7) This Study Question will explore the legal challenges posed by online copyright infringement in a borderless digital environment.
- 8) The aim of this Study Question is to propose harmonised International Private Law Provisions in matters of online infringement, more precisely regarding both the competent jurisdiction and the applicable law in cross-border disputes. It also aims to propose a harmonised interpretation/construction of Article 5(2) of the Berne Convention on the applicable law.



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- 9) This Study Question also focuses on geoblocking as a potential regulatory and technical tool to reconcile the territorial nature of copyright protection with the inherently transnational character of the Internet.
- 10) This Study Question does not address other situations/issues, such as:
  - breach of contract.
  - copyright infringement as a criminal offense.
  - definition of acts that should be qualified as copyright infringement in the online environment.

## **Definitions**

- 11) In the context of this study, the following terms have the following definitions:
  - a. The expression "**International Private Law Provisions**" or "**National Law**" means national/regional provisions, as well as treaties (e.g. Berne Convention), that are applicable, in a specific jurisdiction/country, in order to determine the competent jurisdiction and the applicable law.
  - b. The term "**Domicile**" means:
    - For a natural person, the place of his/her habitual residence/permanent home.
    - For a legal person, the place where it has its statutory seat, central administration, or principal place of business.
  - c. The term "**Nationality**" refers to the citizenship of a natural person and place of registration/statutory seat for a legal person.
  - d. The term "**Place of Infringement**" or place of the events which give rise to and are the origin of the copyright infringement, means:
    - the place where the initial/principal/direct/main acts that caused the copyright infringement occurred (e.g., where the infringing content was first uploaded or where an AI system/model is trained), and
    - the place where any subsequent acts took place (e.g., where the infringing content are stored on servers, etc.).

The Place of the Infringement is focused on the infringer.



- e. The term "**Place of Damage**", or place where the damage occurred, means the place where the infringing act produced its effects, e.g. places of the communication of works, meaning communication to users in the targeted countries or communication in countries where the infringing works are accessible.

The Place of Damage is more focused on the public, on users.

- f. The term "**Place of Prejudice**" means the place where the author (or copyright holder) suffers the prejudice. The prejudice is the consequence of the copyright infringement, i.e. losses and/or missed profits for the author. The prejudice is in principle suffered at his/her/its Domicile. This criterion is less commonly used.

The Place of the Prejudice is focused on the copyright author/holder.

- g. The term "**Law of the Forum**" means the law of the competent jurisdiction.

- h. The expression "**the laws of the country where protection is claimed**" refers to article 5(2), second sentence of the Berne Convention.

- i. The term "**Accessibility**" or "**Accessible Country**" is one of the two theories used to determine the Place of Damage and refers to whether the public in the relevant country or region can access the website or app (application software).

- j. The term "**Targeting**" or "**Targeted Country**" is one of the two theories used to determine the Place of Damage and refers to whether the website or app is directed or targeted at the public in the relevant country or region.

- k. The term "**Website Operator**" means a natural or legal person who creates, controls, and is responsible for the content and presentation of a website, including deciding what is published and how it is accessed by the public.



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- I. The term "**Website Hosting Provider**" means a service provider that supplies the infrastructure and technical resources required to run and display a third-party website on the internet, including server space and connectivity.
- m. The term "**Domain Name Hosting Provider**" means a service provider that registers, manages, and maintains domain names, enabling users to assign a readable address to their website. It doesn't include domain name regulatory institutions, such as ICANN, JPNIC, etc.
- n. The term "**Country of First Publication**" refers to the notion as used in the Berne Convention, i.e. the country of the initial disclosure of the work to the public, authorised by the author.

### **Application of the Definitions to copyright online infringement**

12) A general context is that a streaming website proposes to consumers and users copyrighted contents (either for free or not), e.g. a work that has been published for the first time in country G (**Country of First Publication**).

The situation involves many different jurisdictions, that can be divided into three main categories.

#### **1/ Place of Infringement**

A streaming website (**Streaming Website**) is owned and operated by a company (**Website Operator**).

The Website Operator has **Domicile** and **Nationality** in a country A (country of the **Website Operator**).

The copyrighted works are uploaded by the Website Operator in the country A. The Website Operator is the principal/direct/main copyright infringer.



The Streaming Website is hosted by a **Website Hosting Provider** in a country B, where contents, such as copyrighted works are hosted/stored (country of the **Website Hosting**).

The domain name of the Streaming Website is hosted by a **Domain Name Hosting Provider** on servers located in a country C (country of the **Domain Name Hosting**).

## **2/ Place of Damage**

The Streaming Website is accessible from all around the world (**Accessible Countries**).

The Streaming Website is targeted at country D and E (language and currency) (**Targeted Countries**).

## **3/ Place of Prejudice**

The author has Country F Nationality and Domicile (**country of author**). The author suffers the prejudice (losses, lost profits, etc.) in this Place of the Prejudice.

13) The aim of this Study Question is to answer the following questions, in case the author wants to sue an online copyright infringer(s) (Streaming Website, etc.), in order to obtain injunction and damages, etc.:

- which country(ies) should have jurisdiction over copyright infringement?
- what law(s) should be applicable?
- what should be the scope of the territorial competence of the judge (only its territory, or other territories)?



This Study Question is not limited to Streaming Websites. For example, a major current issue that Groups are invited also to address concerns AI and copyright, particularly the training of AI systems/models and their exploitation.

### **Previous work of AIPPI**

14) AIPPI has not yet studied the determination of the place of copyright infringement in the digital era, unlike trademark law, which was the subject of the Q281 resolution “Trade Marks and the Internet and Social Media” (San Francisco, 2022).

Furthermore, relevant discussions have taken place in other areas, including:

#### Resolutions:

- Resolution on Q164 - “The Use of Trademarks and other Signs on the Internet” (Melbourne, 2001)
- Resolution on Q251 - Linking and making available on the Internet (Milan, 2016)

#### Panel sessions:

- “Role of the Territoriality Principle in Copyright” (San Francisco, 2022)

This Study Question seeks to build on these prior works by focusing on the particular implications of territoriality for copyright enforcement in a global, dematerialized environment.

### **Discussion**

15) The issues of competent jurisdiction and applicable law pose difficulties in all jurisdictions, notably because the rules of International Private Law Provisions are not harmonised.

Although Article 5(2) of the Berne Convention exists, it only deals with the applicable law. Certain regional texts, particularly in European Union law, address these issues, but they are mostly general legal texts. They are not specific to copyright law, let alone online infringement. Consequently, case



law must therefore interpret these texts in order to apply them to the specific situation of online infringement of copyrighted works.

### **International treaties**

- 16) Article 5(2) of the Berne Convention provides that, regarding the applicable law, "the enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed." This principle underscores the territorial nature of copyright protection and the centrality of national law in defining both rights and remedies.
- 17) The WIPO Copyright Treaty (WCT), which complements the Berne Convention, further seeks to ensure international recognition of copyright in literary and artistic works, while balancing authors' exclusive rights with the broader public interest (Art. 1). Adopted in 1996 and now ratified by 118 contracting parties<sup>2</sup>, it includes in Article 11<sup>3</sup> an obligation to provide legal protection and remedies against the circumvention of "effective technological measures" used to restrict unauthorised acts in respect of protected works. In the context of online dissemination of copyrighted works, a key question concerns whether geoblocking may be regarded as such a "technological measure." Geoblocking techniques were not prevalent at the time the Treaty was drafted, and Article 11 contains no express reference to territorial access controls, creating interpretative uncertainty. However, in line with the principles of treaty interpretation under the Vienna Convention<sup>4</sup>, geoblocking could be viewed as restricting access to copyrighted works in territories not authorised by the rightsholder. Therefore, while the wording of Article 11 may accommodate geoblocking within its scope, the absence of

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<sup>2</sup> Contracting Parties/Signatories WIPO Copyright Treaty (Total Members: 118), [WIPO website](http://www.wipo.int/treaties/en/signed_treaties/wc.html)

<sup>3</sup> WCT, Article 11: "*Obligations concerning Technological measures - Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law*".

<sup>4</sup> Vienna Convention on the Law of Treaties (VCLT), 1969, Article 31 - "General rule of interpretation", "§1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."



explicit terminology leaves room for ambiguity. This lack of clarity, combined with scarce doctrinal and judicial analysis at the international level, reinforces the importance of further legal examination.

### **European Union**

18) Within the European Union, the territorial nature of copyright intersects with rules on jurisdiction and the recognition of judgments.

According to Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters:

- Article 4(1) provides that "Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State."
- Article 7 provides that "A person domiciled in a Member State may be sued in another Member State: (...) (2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur".

The CJEU ruled that "in the event of an allegation of infringement of copyright and rights related to copyright guaranteed by the Member State of the court seized, that court has jurisdiction, on the basis of the place where the damage occurred, to hear an action for damages in respect of an infringement of those rights resulting from the placing of protected photographs online on a website accessible in its territorial jurisdiction. That court has jurisdiction only to rule on the damage caused in the Member State within which the court is situated"<sup>5</sup>.

19) That said, the CJEU may treat the question of infringement of copyright differently. Mere accessibility may not be sufficient. In Pinckney/Mediatech, the CJEU held that copyright was subject to the principle of territoriality. Copyrights thus enjoy protection in every EU Member State separately.

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<sup>5</sup> CJEU, January 22, 2015, Pez Hejduk v EnergieAgentur.NRW GmbH, C-441/13



Further, the issue as to whether the conditions under which a right protected in the respective EU Member State, if it has been infringed and whether that infringement may be attributed to the defendant falls within the scope of the examination of the substance of the action by the court having jurisdiction<sup>6</sup>. For the *sui generis* right of data bases according to the EU Directive 96/9, the CJEU held that the mere fact that the website containing the data in question is accessible in a particular national territory is not a sufficient basis for concluding that the operator of the website is performing an act of re-utilisation caught by the national law applicable in that territory concerning protection by this *sui generis* right. "If the mere fact of being accessible were sufficient for it to be concluded that there was an act of re-utilisation, websites and data which, although obviously targeted at persons outside the territory of the Member State concerned, were nevertheless technically accessible in that State would wrongly be subject to the application of the relevant law of that State".<sup>7</sup>

20) The case *Anne Frank Fonds v. Anne Frank Stichting, KNAW and VOOHT*, currently pending before the CJEU, raises significant legal issues concerning the territorial scope of copyright in the digital age. The central issue concerns whether the making available of a work online, when accompanied by geo-blocking measures designed to restrict access from certain Member States, constitutes an act of "communication to the public" within the meaning of Article 3(1) of Directive 2001/29/EC (the "InfoSoc Directive") in such Member States.

Because Anne Frank's works have fallen into the public domain in Belgium, but remain protected in the Netherlands until 2037, the online publication of these works on a Belgian website raises the issue of whether such availability can nonetheless be regarded as a communication to the Dutch public, despite the existence of territorial access barriers. The CJEU has been asked to clarify several points, including:

- Should Article 3(1) of the Copyright Directive be interpreted in such a way that a publication of a work on the internet can only be regarded as a communication to the public in a particular country, if the publication is aimed at the public in that country? If so, which factors should be taken into account when assessing this?

<sup>6</sup> CJEU, October 3, 2013, Pinckney/Mediatech, C-170/12, para 39 et seq.

<sup>7</sup> CJEU, October 18, 2012, Football Dataco/Sportradar, C-173/11, para. 37.



- Can there be a communication to the public in a certain country if (state of the art) geo-blocking has been used to ensure that the website on which the work is published can only be reached by the public in that country by bypassing the blocking measure, for example by using a VPN or a similar service? Is it relevant to what extent the public in the blocked country is willing and able to access the website in question via such a service? Would the answer to this question be different if, in addition to the geo-blocking measure, other measures have been taken to ensure that access to the website by the public in the blocked country is prevented or discouraged?
- If the possibility to circumvent the blocking measure entails that the work published on the internet is communicated to the public in the blocked country within the meaning of Art. 3(1) Copyright Directive, is that communication then done by the person who published the work on the internet, despite the fact that the intervention of the provider of the relevant VPN or similar service is required in order to access that communication?

This pending case illustrates the ongoing tension between the territoriality of copyright protection and the transnational, borderless nature of the internet. It highlights the practical and legal complexities raised by geoblocking as a technical and regulatory tool, as well as the need for further guidance on how traditional copyright principles can be reconciled with global digital dissemination.

### **United Kingdom**

- 21) The principle of territoriality remains a foundational principle of the United Kingdom's copyright system. The UK Court of Appeal ruled that "the internet is global and users in the UK can, in the absence of geo-restriction, access websites hosted, and content posted on or streamed from such websites, from anywhere in the world. Intellectual property rights, however, are territorial. At least in the case of copyright and similar rights and trade marks, the CJEU has held that accessibility of a website from a Member State is not



sufficient to give rise to an infringement of rights conferred by the law of that State, and that the relevant act must be targeted at that State [...]"<sup>8</sup>.

The judge summarised the applicable principles in a passage which both parties accepted as correctly stating the law as follows:

"16. The legal principles are:

- i) the mere existence of a website and its accessibility by local consumers is never enough to establish a territorial link, see Kitchin LJ in Merck v Merck [168] and L'Oréal v eBay [64];
- ii) the issue of targeting is to be considered from the perspective of the public in the relevant state (i.e. the UK), see Merck v Merck [169] and L'Oréal v eBay [65]. The trade mark cases refer to consumers or average consumers because that is the relevant person in trade mark law. For cases about communication to the public, the question focusses on the public, see EMI v BSkyB and my decision in Omnibill (Pty) Ltd v Egpsxxx Ltd [2014] EWHC 3762 (IPEC), [2015] ECDR 1;
- iii) the test is objective in the sense that a party's subjective intention cannot turn a website or page which is objectively not targeted at the UK into one which is (Argos v Argos [51]). However, that does not mean evidence of intention is irrelevant. On the contrary such evidence is relevant and possibly determinative in an appropriate case (Merck v Merck [169]–[170] and Argos v Argos [51]);
- iv) the court must carry out an evaluation of all the relevant circumstances, see Merck v Merck [169] and L'Oréal v eBay [65]; and
- v) it may be appropriate to treat a website as a whole, but in another case it may be appropriate to conduct a more fine grained analysis. Depending on how a website is organised, not all pages are necessarily targeted at the same place(s), and OmniBill [15]."

### **United States of America**

22) In the US, the New York Southern District Court ruled, in 2020<sup>9</sup>, that "the adoption of a rule that would give rise to a copyright claim against a foreign actor solely on the basis of the fact that a U.S. copyrighted image was posted

<sup>8</sup> Court of Appeal, United Kingdom, 26 March 2021, Tuneln Inc v Warner Music UK Ltd [2021] EWCA Civ 441, at [60]–[61].

<sup>9</sup> State Street Global Advisors Trust Company v. Visbal S.D.N.Y. \_1-19-cv-01719\_20200103\_192 (New York Southern District Court 2020)



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on the internet—and was therefore “accessible” within the United States would undermine the extraterritorial limitations on U.S. copyright law.

The Court is aware of only one case which appears to have found that U.S. copyright laws apply to images posted abroad solely because they were accessible on the internet—United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc., 216 F. Supp. 2d 198, 225 (S.D.N.Y. 2002) (Lynch, J.) (...)

Decisions by other courts considering the publication of images copyrighted in the United States on the internet abroad have required some additional link between the foreign publication on the internet and the United States—some “plus” factor beyond the mere accessibility of the copyrighted property on the internet. Those “plus” factors have included

- (1) the direction of copyrighted material into the United States, *Spanski Enters. v. Telewizja Polska, S.A.*, 883 F.3d 904, 916 (D.C. Cir. 2018) (holding that “a foreign broadcaster that (...) directs infringing performances into the United States from abroad commits a domestic violation of the Copyright Act”),
- (2) when foreign “acts are intended to, and do, have an effect within the United States,” *GB Marketing USA Inc. v. Gerolsteiner Brunnen GmbH & Co.*, 782 F. Supp. 763, 773 (W.D.N.Y. 1991), and
- (3) the uploading of copyrighted materials to servers located in the United States, *Shropshire v. Canning*, 809 F. Supp. 2d 1139, 1146 (N.D. Cal. 2011)”.

### **China**

23) China is one of few countries that permits the parties to choose the applicable law governing cross-border infringement of intellectual property disputes. Article 50 of the Chinese Law Applicable to Foreign-Related Civil Relations (Conflicts Act), provides that “Liability for infringing intellectual property rights is governed by the law of the place where protection is sought. The parties may also choose to apply the law of the forum after the infringement occurs.” Copyright Law of the People’s Republic of China (Promulgated by the Standing Committee of the National Congress on February 26th, 2010).

**You are invited to submit a Report addressing the questions below.**





## Questions

Please note that if you check a box, it means your answer is YES.

If you do not check a box, it means your answer is NO.

### I. Current law and practice

Please answer all questions in Part I on the basis of your Group's National Law and practice.

Please take into consideration the Definitions in your answers.

Please note that they are NOT mutually exclusive.

- 1) Does your current law / case law / practice contain International Private Law Provisions and geo-blocking provisions, specifically relating to online copyright infringement?

Please answer YES or NO.

If YES, please specify and briefly describe these provisions.

### Competent court / conflict-of-jurisdiction rules

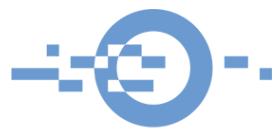
The aim of this section is to identify the relevant criteria for determining the competent court in cases of online copyright infringement, as well as the territorial scope covered by the court's jurisdiction.

- 2) Which criteria based on Domicile-related connecting factors are applicable under your National Law to determine the jurisdiction/competence of your national courts to hear online international copyright infringement?

- a.  Claimant's Domicile, i.e. Domicile of the author/copyright holder (usually also the Place of Prejudice)

Please explain

If the claimant's Domicile is a relevant connecting factor for determining jurisdiction, please indicate the territorial scope of the competence of your national court:



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- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that your national court is competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of your national court, according to the principle of territoriality.
- Other (please specify)

Please explain

**b.  Defendant's Domicile, i.e. Domicile(s) of the copyright infringer(s)**

Please explain

If YES, please specify:

- Domicile of the Website Operator, i.e. the principal/direct/main infringer
- Domicile of the Website Hosting Provider
- Domicile of the Domain Name Hosting Provider
- Other (please specify)

Please explain

If the defendant's Domicile is a relevant connecting factor for determining jurisdiction, please indicate the territorial scope of the competence of your national court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that your national court is competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of your national court, according to the principle of territoriality.
- Other (please specify)

Please explain

3) Which criteria based on Nationality-related connecting factors are applicable under your National Law to determine the jurisdiction/competence of your national courts to hear online international copyright infringement?



- Nationality of the claimant, i.e. Nationality of the author/copyright holder
- Nationality of the defendant, i.e. Nationality of the copyright infringer(s)

Please specify:

- Nationality of the Website Operator, i.e. the principal/direct/main infringer

- Nationality of the Website Hosting Provider

- Nationality of the Domain Name Hosting Provider

- Other (please specify)

- Country of First Publication of the copyrighted work

- Other (please specify)

Please explain

If Nationality-related connecting factors are applicable, please indicate the territorial scope of the competence of the court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that your national court is competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.

- Only acts of infringement, damages and prejudices occurring within the territory of your national court, according to the principle of territoriality.

- Other (please specify)

Please explain

4) Which criteria based on Infringing acts-related connecting factors are applicable under your National Law to determine the jurisdiction/competence of your national courts to hear online international copyright infringement?

**a.  Place of Infringement**

Please specify:

- Place where the infringing content is uploaded on the Operator Website (Country A / place of the principal act of copyright infringement)

- Place where the Website/infringing contents are hosted/stored (Country B)

- Place where the Domain Name is hosted (Country C)

- Other (please specify)



Please explain

If Place of the Infringement is applicable, please indicate the territorial scope of the competence of your national court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that your national court is competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of your national court, according to the principle of territoriality.
- Other (please specify)

Please explain

**b.  Place of Damage**

Please explain

If YES, how would your national courts determine the Place of Damage

- Accessibility (i.e. whether the public in your country can access the website or app)
- Targeting (i.e. whether the website or app is directed or targeted at the public in your country or region)
- Other (please specify):

If Targeting factor is applicable, how would your national courts determine whether the relevant public is targeted?

- Whether the copyrighted work is Accessible online in your country
- Whether the server of the website or app with the copyrighted work is located in your country
- Whether the website or app with the copyrighted work uses a local language of your country
- Whether the website or app with the copyrighted work allows to pay in the local currency of your country
- Whether there is any business facility of the user of the copyrighted work in your country
- Whether there are any promotional activities Targeting public in your country or region by the user of copyrighted work
- Other (please specify)



If Place of the Damage is applicable, please indicate the territorial scope of the competence of your national court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that your national court is competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of your national court, according to the principle of territoriality.
- Other (please specify)

Please explain

**c.  Place of Prejudice**, i.e. usually Domicile of the author / copyright holder.

Please explain

If Place of the Prejudice is applicable, please indicate the territorial scope of the competence of your national court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that your national court is competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of your national court, according to the principle of territoriality.
- Other (please specify)

Please explain

### **Applicable law / conflicts-of-laws rules**

When answering the following question, please assume that your national courts have jurisdiction.

- 5) Is applicable law determined in accordance with Article 5(2) of the Berne Convention?

Please answer YES or NO

Please explain if needed



If YES, i.e. the Berne Convention applies to determine the applicable law, please answer to question 6.

If NO, i.e. the Berne Convention does not apply, and other rules of private international law are applicable, please answer to question 7.

6) Regarding "the law of the place where protection is sought" (Article 5(2) of the Berne Convention), how is this place determined in practice?

- Law of the Forum
- Law of the Place of Infringement (please specify)
  - Place where the infringing content is uploaded on the Operator Website (Country A / place of the principal act of copyright infringement)
  - Place where the Website/infringing contents are hosted/stored (Country B)
  - Place where the Domain Name is hosted (Country C)
  - Other (please specify)
- Law of the Place of the Damage
  - Law of the country Targeted by the website
  - Law of the country where the website is Accessible
  - Other (please specify)
- Law of the Place of the Prejudice
- Law of the Country of First Publication of the work
- Law of the country of the author's Nationality or Domicile
- Law of the country of the defendant's Nationality or Domicile
- Other (please specify)

7) Which criteria are decisive for determining applicable law in online infringement cases?

- Law of the Forum
- Law of the Place of Infringement (please specify)
  - Place where the infringing content is uploaded on the Operator Website (Country A / place of the principal act of copyright infringement)
  - Place where the Website/infringing contents are hosted/stored (Country B)
  - Place where the Domain Name is hosted (Country C)
  - Other (please specify)



- Law of the Place of the Damage (please specify)
  - Law of the country Targeted by the website
  - Law of the country where the website is Accessible
  - Other (please specify)
  
- Law of the Place of the Prejudice
  
- Law of the claimant's Domicile
- Law of the defendant's Domicile
  - Law of the Website Operator's Domicile
  - Law of the Website Hosting Provider's Domicile
  - Law of the Domain Name Hosting Provider's Domicile
  - Other (please specify)
  
- Law of the claimant's Nationality
- Law of the defendant's Nationality
  
- Law of the Country of First Publication of the copyrighted work
- Law of the place where protection is sought
- Other (please specify)

Please explain

### **Geoblocking**

- 8) According to your National Law, is geoblocking an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment?  
Please answer YES or NO  
Please explain
  
- 9) Are geoblocking measures sufficient to prevent online copyright infringement, even though such measures can be bypassed through the use of VPNs?  
Please answer YES or NO  
Please explain
  
- 10) Are there other measures in your current law / case law / practice, in addition to the geo-blocking measure, to ensure that access to the website by the public in the blocked country is prevented or discouraged?



Please answer YES or NO

Please explain

## **II. Policy considerations and proposals for improvements of your Group's current law**

11) Could your Group's current law or practice relating to online copyright infringement be improved?

Please answer YES or NO

If YES, please explain.

12) Could your Group's current law or practice relating to the determination of competent courts in online copyright infringement be improved?

Please answer YES or NO

If YES, please explain.

13) Could your Group's current law or practice relating to the determination of applicable law in online copyright infringement be improved?

Please answer YES or NO

If YES, please explain.

14) Could you explain, in your jurisdiction, the reasons that justify or reject geoblocking as an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment?

Please explain.

15) Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

Please answer YES or NO

If YES, please explain.

## **III. Proposals for harmonisation**

Please consult with relevant in-house / industry members of your Group in responding to Part III.

16) Do you believe that there should be harmonisation of International Private Law Provisions and geo-blocking in the context of copyright online infringement? Please answer YES or NO.



**If YES, please respond to the following questions without regard to your Group's current law or practice.**

Even if NO, please address the following questions insofar as your Group considers your Group's current law or practice could be improved.

## **1. Competent court / Conflict-of-jurisdiction rules**

The aim of this section is to determine the criteria that should be relevant to determine the competent court in the case of online copyright infringement.

### **1.1. Domicile-related connecting factors**

17) Which criteria based on Domicile-related connecting factors should be relevant to determine the jurisdiction/competence of a national court to hear online international copyright infringement?

**a.**  Claimant's Domicile, i.e. Domicile of the author/copyright holder (usually also Place of Prejudice)

Please explain

If the claimant's Domicile should be a relevant connecting factor for determining jurisdiction, please indicate the territorial scope of the competence of the national court:

All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that a national court should be competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.

Only acts of infringement, damages and prejudices occurring within the territory of a competent national court, according to the principle of territoriality.

Other (please specify)

Please explain

**b.**  Defendant's Domicile, i.e. Domicile of the copyright infringer.



Please explain

If YES, please specify:

- Domicile of the Website Operator, i.e. the principal/direct/main infringer
- Domicile of the Website Hosting Provider
- Domicile of the Domain Name Hosting Provider
- Other (please specify)

Please explain

If the defendant's Domicile should be a relevant connecting factor for determining jurisdiction, please indicate the territorial scope of the competence of the national court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that a national court should be competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

**c.**  Other

Please explain

## **1.2. Nationality-related connecting factors**

18) Which criteria based on Nationality-related connecting factors should be relevant to determine the jurisdiction/competence of a national court to hear online international copyright infringement?

- Nationality of the claimant, i.e. Nationality of the author/copyright holder
- Nationality of the defendant, i.e. Nationality of the copyright infringer

Please specify:

- Nationality of the Website Operator, i.e. the principal/direct/main infringer



- Nationality of the Website Hosting Provider
- Nationality of the Domain Name Hosting Provider
- Other (please specify)
  
- Country of First Publication of the copyrighted work
- Other (please specify)

Please explain

If Nationality-related connecting factors should be applicable, please indicate the territorial scope of the competence of the court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that a national court should be competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

### **1.3. Infringing acts-related connecting factors**

19) Which criteria based on Infringing acts-related connecting factors should be relevant to determine the jurisdiction/competence of a national court to hear online international copyright infringement?

**a. □ Place of Infringement**

Please specify:

- Place where the infringing content is uploaded on the Operator Website (Country A / place of the principal/direct/main act of copyright infringement)
- Place where the Website/infringing contents are hosted/stored (Country B)
- Place where the Domain Name is hosted (Country C)
- Other (please specify)

Please explain



**A I P P I**

If Place of the Infringement should be applicable, please indicate the territorial scope of the competence of the national court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that a national court should be competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

**b.  Place of Damage**

Please explain

If YES, how should national courts determine the Place of Damage

- Accessibility (i.e. whether the public in a specific country can access the website or app)
- Targeting (i.e. whether the website or app is directed or targeted at the public in a specific country or region)
- Other (please specify):

If Targeting factor is applicable, how should national courts determine whether the public is targeted?

- Whether the copyrighted work is Accessible online in a country
- Whether the server of the website or app with the copyrighted work is located in a country
- Whether the website or app with the copyrighted work uses a local language of a country
- Whether the website or app with the copyrighted work allows to pay in the local currency of a country
- Whether there is any business facility of the user of the copyrighted work in a country
- Whether there are any promotional activities Targeting public in a country or region by the user of copyrighted work
- Other (please specify)



If Place of the Damage should be applicable, please indicate the territorial scope of the competence of the national court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that a national court should be competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

**c.**  Place of Prejudice, i.e. usually Domicile of the author / copyright holder.  
Please explain

If Place of the Prejudice should be applicable, please indicate the territorial scope of the competence of the national court:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that a national court should be competent for acts occurring in its jurisdiction, but also acts of infringement, damages and prejudices occurring in foreign jurisdictions.
- Only acts of infringement, damages and prejudices occurring within the territory of the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

**d.**  Other

Please explain

## 2. Applicable law / conflicts-of-laws rules

This section has two different and independent aims.

- o The first is to determine, in general, the relevant and desirable criteria to determine the applicable law (question 20).
- o The second is to propose a harmonised interpretation of Article 5(2) of the Berne Convention (question 21).



When answering the following question, please assume that a national court is competent.

### **2.1. Criteria to determine applicable law**

20) Which criteria should be relevant for determining applicable law (or applicable laws) in online infringement cases?

- Law of the Forum
- Law of the country of the Place of Infringement (please specify)
  - Place where the infringing content is uploaded on the Operator Website (Country A / place of the principal act of copyright infringement)
  - Place where the Website/infringing contents are hosted/stored (Country B)
  - Place where the Domain Name is hosted (Country C)
  - Other (please specify)
- Law of the country of the Place of the Damage (please specify)
  - Law of the country where the website is Accessible
  - Law of the country Targeted by the website

If YES, how should national courts determine whether the public is targeted?

- Whether the copyrighted work is Accessible online in a country
- Whether the server of the website or app with the copyrighted work is located in a country
- Whether the website or app with the copyrighted work uses a local language of a country
- Whether the website or app with the copyrighted work allows to pay in the local currency of a country
- Whether there is any business facility of the user of the copyrighted work in a country
- Whether there are any promotional activities Targeting public in a country or region by the user of copyrighted work
- Other (please specify)



Other (please specify)

- Law of the country of the Place of the Prejudice
- Law of the country of the claimant's Domicile
- Law of the country of the defendant's Domicile
- Law of the country of the Website Operator's Domicile
- Law of the country of the Website Hosting Provider's Domicile
- Law of the country of the Domain Name Hosting Provider's Domicile
  
- Law of the country of the claimant's Nationality
- Law of the country of the defendant's Nationality
  
- Law of the Country of First Publication of the copyrighted work
- Law of the country of the place where protection is sought
- Other (please specify)

Please explain

## **2.2. Interpretation/revision of Article 5(2) of the Berne Convention**

21) How should the expression "the law of the place where protection is sought" in Article 5(2) of the Berne Convention be interpreted/construed, i.e. to which law should it refer?

- Law of the Forum
  
- Law of the country of the Place of Infringement (please specify)
  - Law of the country where the infringing content is uploaded on the Operator Website (Country A / place of the principal act of copyright infringement)
  - Law of the country where the Website/infringing contents are hosted/stored (Country B)
  - Law of the country where the Domain Name is hosted (Country C)
  - Other (please specify)
  
- Law of the country of the Place of the Damage



Law of the country where the website is Accessible

Law of the country Targeted by the website

If YES, how should national courts determine whether the public is targeted?

Whether the copyrighted work is Accessible online in a country

Whether the server of the website or app with the copyrighted work is located in a country

Whether the website or app with the copyrighted work uses a local language of a country

Whether the website or app with the copyrighted work allows to pay in the local currency of a country

Whether there is any business facility of the user of the copyrighted work in a country

Whether there are any promotional activities Targeting public in a country or region by the user of copyrighted work

Other (please specify)

Other (please specify)

Law of the country of the Place of the Prejudice

Law of the Country of First Publication of the copyrighted work

Law of the country of the author's Nationality or Domicile

Law of the country of the defendant's Nationality or Domicile

Other (please specify)

Please explain

22) Should Article 5(2) of the Berne Convention be revised?

Please answer YES or NO.

Please explain.

If YES, please propose the drafting of a provision that could be adopted during a revision of the Berne Convention, and that would establish a harmonised rule on conflicts of jurisdiction on one hand, AND conflicts of laws on the other hand.

## **Geoblocking**



**A I P P I**

23) Should geoblocking be considered as an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment?

Please answer YES or NO

Please explain

24) Should geoblocking measures be sufficient to prevent online copyright infringement, even though such measures can be bypassed through the use of VPNs?

Please answer YES or NO

Please explain

25) Should there be other measures, in addition to the geo-blocking measure, to ensure that access to the website by the public in the blocked country is prevented or discouraged?

Please answer YES or NO

Please explain

**Other**

26) Please comment on any additional issues concerning any aspect of online copyright infringement you consider relevant to this Study Question.

27) Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.