

Abstract

Jurisdiction and governing law related to international copyright dispute

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Where the litigation related to the dispute involving foreign factors is commenced, a court must decide whether the subject court has the jurisdiction to decide the subject foreign factors first, and then confirm the applicable governing law. Currently, because the international civil procedure law deciding the international jurisdiction does not independently exist, where the international litigation is commenced, a court shall judge whether it has the international jurisdiction on the matter involving foreign factors in the light of jurisdictional provisions of domestic laws. In this respect, Article 2(1) of the Korean Private International Law prescribes a doctrine of substantive relations and Article 2(2) of the Act states a consideration of the jurisdictional provisions of domestic laws. The foresaid “jurisdictional provisions of domestic laws” can be understood as suggesting the provisions related to venue in the Civil Procedure Act, and there is a conflict of theory in detailed context. Next, in deciding the governing law, the following steps of confirming the characterization of legal relationship in issue and connecting factor, exception to the application of foreign laws based on public order and good morals and acceptance of renvoi, are considered. Among these, confirming the characterization of legal relationship and connecting factors are considered as of paramount importance. In deciding the governing law for international copyright dispute, Article 5(2) of the Berne Convention and Article 24 and 32 of the Korean Private International Law need to be also considered. In a copyright infringement case which is a typical copyright related International dispute, seeking an injunction against infringement and damages can be considered as remedies available to protect the copyright. Seeking damage is deemed to have the characterization of tort. In relation to tort, the application of Article 32(1) of the Private International Law,

which states that a tort shall be governed by the law of the place where it occurred, may become an issue. In fact, a substantial number of copyright infringement litigations take a form of combining seeking an injunction against infringement and damage. In this respect, a number of private International legal issues including which principle should be applied among the above provisions are likely to be occurred. This paper reviews the theory and precedents related to the foresaid issues and draws the conclusion.

Keywords : Jurisdiction, Governing law, International copyright dispute, Characterization of legal relationship, Connecting factor, Article 5(2) of Berne Convention, Article 24 of Korean Private International Law