

Abstract

Applying the Rome II Regulation to International Copyright Infringement Disputes

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The Korea-EU Free Trade Agreement(FTA) entered into force on July 1, 2011 and opened a new chapter in international business transactions between the EU and Korea. This new generation of trade agreement boosts social, economic, and cultural exchanges lifting trade barriers. Following these interactions, the laws and policies of the EU also receive attention from Korean business and academia. Most of all, as intellectual property-based businesses and entrepreneurs drive more economic growth in the trade, intellectual property disputes are increasing sharply. In these circumstances, studies on intellectual property laws and policies of the EU will enable Korean business players to participate actively and safely in global business transactions without any intellectual property claims.

This research focuses on the EC Regulation 864/2007 on the Law Applicable to Non-contractual Obligations(the Rome II Regulation) and the choice of law principles for international copyright disputes. The Rome II Regulation Article 8 provides rules on the law applicable to non-contractual obligations arising from intellectual property infringements. More specifically, it prescribes that the law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed. This principle reflects the *lex loci protectionis* principle in intellectual property rights and is firmly based on territoriality. According to the Rome II Regulation Article 8, the law of the country for which protection is claimed shall be the governing law of international copyright disputes.

In modern international business transactions, transnational and ubiquitous copyright disputes are spurred by remarkable progress in the Internet technology and telecommunications. The problem is that the Rome Regulation Article 8

cannot afford adequate and sufficient rules for those kinds of disputes. The ALI Principles and the CLIP Principles thus present special rules for these distinctive disputes. In addition, private international law principles still play important roles for multinational and ubiquitous copyright disputes.

The adoption of the Rome II Regulation marks a major advance in the harmonization and articulation of private international law in copyrights and other intellectual property rights at both European Union and international level. However, new types of international copyright disputes require constant efforts of scholars in this field to find adequate choice of law rules for them and to refine the existing rules in the Rome II Regulation.

Keywords

International Copyright Infringements, The Rome II Regulation Article 8, Territoriality, Lex Loci Protectionis, Lex Originis, Intellectual Property Rights, The Applicable Law, Private International Law Principles

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