

Abstract

Applicability of Criminal Law and Territoriality of Copyright Law in International Criminal Copyright Infringement

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In a civil case of international copyright infringement, choice of law is determined by provisions on conflict of laws. However, in a criminal case of international copyright infringement in which only domestic criminal law applies on the premise that criminal jurisdiction exists, a criminal court has only to apply criminal provisions of domestic copyright law; it does not need to consider the applicability of criminal provisions of foreign copyright laws. Such a territorial scope of criminal law, however, can be affected by the territoriality principle of copyright law. Two German cases, “Copied Phonograms Export” case and “Italienische Bauhausmöbel” case, illustrate that due to the territorial nature of copyright law, a criminal court can, in principle, apply criminal provisions in domestic copyright law only based on the provision in the criminal act, which prescribes that the act applies to offences committed within the territory. This conclusion is also supported by the *lex loci protectionis* principle—a conflict of laws principle derived from the territoriality principle. In the same vein, the “Satellite Television Decoder” case of South Korea determined the applicable law based on Article 5(2) of the Berne Convention, which is often regarded as a choice of law rule.

International sales of goods infringing copyright or related rights, the emergence of new media such as satellite broadcasting and internet, making available rights governing the online transmission of copyrighted works and objects of related rights, and author’s moral rights that have universal traits all suggest that copyright law may pass the traditional limit of the territoriality principle. Notable examples are the “Italienische Bauhausmöbel” case in which the place of distribution was at issue in international sales of goods infringing

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copyright and the “Satellite Television Decoder” case in which the circumvention of technological measures to prevent piracy of foreign satellite broadcasting came into question. Because such changes in copyright law will likely affect criminal liability of violation of copyright law, not only civil aspects but also criminal aspects of such changes will require further discussion.

Keywords

International Criminal Copyright Infringement, Territorial Scope of Criminal Law, Private International Law, Lex Loci Protectionis Principle, Territoriality Principle of Copyright Law, ‘Copied Phonograms Export’ Case, ‘Italienische Bauhausmöbel’ case, ‘Satellite Television Decoder’ Case.