

Q299

Online infringement and territoriality considerations / issues of geoblocking

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Respondent

5

Anonymous

46:47

Time to complete

Contact details

Kindly submit your and your groups contact details below. Please also include the authors of the reports.

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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.

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

☐ Yes

☒ No

6. **1) (continued)** If YES, please specify and briefly describe these provisions.

No answer provided.

7. **Competent court / conflict-of-jurisdiction rules**

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?

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

☒ Yes

☐ No

8. 2) a. (continued) Please explain

The Brussels I. Regulation 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", and in cases where the Brussels I Regulation does not apply, under Act XXVIII of 2017 on private international Law (hereafter Hu IPL Act) § 94 (1) that provides, that Hungarian courts may also proceed in legal disputes concerning non-contractual obligations if the legal fact giving rise to the obligation or its effect occurred or could occur in Hungary. This provision shall apply accordingly to claims arising from violation of rights relating to personality.

9. 2) a. (continued) 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:

☐ 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.

10. 2) a. Please explain, if needed

Please explain: It is accepted as an obvious rule, that Hungarian courts do not have extraterritorial jurisdiction. It follows from the Act on the Judiciary, Act CLXI. of 2011, the territorial scope of which is limited to Hungary. It can be learned from the Act on Legislation, Act CXXX of 2010, that

- lists all categories of legal sources (legal regulations), among others the acts, and
- provides in § 6. (1): "The territorial scope of legal sources shall be Hungary (let alone local legal sources)".

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

☒ Yes

☐ No

12. 2) b. (continued) Please explain, if needed

This is the universal connecting factor for determining jurisdiction, both under Article 4(1) of the Brussels I Regulation, and under § 92 of the Hu IPL Act.

13. 2) b. If YES, please specify:

☒ Domicile of the Website Publisher, i.e. the principal/main infringer

☒ Domicile of the Website Hosting Provider

☒ Domicile of the Domain Name Hosting Provider

☒ Other

14. **2) b. (continued)** Please explain, if needed

The Website Hosting Provider enjoys a safe harbour under Article 6 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (hereafter: DSA). If the preconditions of the safe harbour are missing, also the Domicile of the Website Hosting Provider may be a connecting factor for determining jurisdiction to impose injunction and provision of data on the hosting provider.

It is viable (there is no such case law) to sue the Domain Name Hosting Provider if the preconditions of the limited liability of intermediaries are given under § 94 (4)–(6) of Act LXXVI of 1999 on Copyright (Hu CA Act). Under these provisions the author (rightholder) may seek injunction against and provision of data from a person who provided services for the infringing activities on a commercial scale or was named by such a person as being involved in the provision of the services. A commercial scale can be established if the nature and quantity of the services involved obviously indicate that they are used for direct or indirect commercial or other economic advantage.

It is also viable (there is no such case law) to sue the any person other than the infringer if the preconditions of the limited liability of intermediaries (those who contribute to the infringement) are given under § 94 (4)–(6) of the Hu CA Act). Under these provisions the author (rightholder) may seek injunction against and provision of data from a person who provided services for the infringing activities on a commercial scale or was named by such a person as being involved in the provision of the services. A commercial scale can be established if the nature and quantity of the services involved obviously indicate that they are used for direct or indirect commercial or other economic advantage. As an example, the person/entity acting as vicarious agent i.e. compiling input data for the AI service provider (AI system) to use for the training of the system can be mentioned here.

15. **2) b. (continued)** 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

16. **2) b. (continued)** Please explain, if needed

Please see our answer to Q 2.a.

17. **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) (**specify a,b,c**)
- ☒ **a.** Nationality of the Website Publisher, i.e. the principal/main infringer
- ☒ **b.** Nationality of the Website Hosting Provider
- ☒ **c.** Other

18. **3) (continued)** Please explain , if needed

Under Hu IPL Act the domicile of a legal entity shall be defined under the statutory seat of the legal entity. As a result, if the rightholder or any categories of the infringers are legal entities the nationality is an indirect connecting factor for jurisdiction.

19. **3) (continued)** 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.

20. **3) (continued)** Please explain, if needed

Please see our answer to Q 2.a.

21. **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?

4) a. Place of Infringement

- ☒ **4) a.** Yes, please specify
- ☐ **4) a.** No
- ☐ **a.** Place where the infringing content is uploaded on the Publisher Website (Country A / place of the principal act of copyright infringement)
- ☐ **b.** Place where the Website/infringing contents are hosted/stored (Country B)
- ☐ **c.** Place where the Domain Name is hosted (Country C)
- ☐ **d.** Other

22. **4) (continued)** Please explain , if needed

Place of Infringement, specified: 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:

If the infringing content is uploaded in the territory of Hungary, then the principle of place of prejudice, applicable under 7 (2) of Brussels I. Regulation and in cases where the Brussels I Regulation does not apply, under § 94 (1) of the Hu IPL Act may apply. The Website Hosting Provider enjoys a safe harbour under Article 6 of the DSA). If the preconditions of the safe harbour are missing, also the place where the infringing act (reproduction) was committed by the Website Hosting Provider may be a connecting factor for determining jurisdiction to impose injunction and provision of data on the hosting provider.

Please see our answer to 2.b)

23. **4) (continued)** 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

24. **4) (continued)** Please explain, if needed

Please see our answer to Q 2.a.

25. **4) b.** Place of Damage

- ☒ Yes
- ☐ No

26. **4) b. (continued)** Please explain, if needed

The principle of prejudice, as we cited Brussels I and Hu IPL Act in our answer to Q 2 includes the place of damage caused or damage that may occur. Therefore, we had to answer yes.

27. **4) b.** 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

28. **4) b.** 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

29. **4) b.** 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

30. **4) b) (continued)** Please explain, if needed

It would apply the interpretation given in the preliminary decisions *Pez Hejduk*, 441/13 CJEU, and *Pinckney*, C-170/12. and as a guidance, *Hotel Alpenhof*, C-144/09 providing, „(...) The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States.”

As for Place of Damage: Please see our answer to Q 2.a.

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

- ☒ Yes
- ☐ No

32. **4) c) (continued)** Please explain, if needed

Please see our explanations under b) above.

33. **4) c.** 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

34. **4) c) (continued)** Please explain if needed

Please see our explanation under b) above.

35. **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. 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.

- ☐ Yes
- ☒ No

36. **5) (continued)** Please explain if needed.

The Rome II (Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations enjoys preference over Berne Convention.
In cases, where Rome II would not be applicable, Hu IPL Act applies. Under § 60 Non-contractual obligations shall be governed by the law of the state in the territory of which the effect of the legal fact giving rise to the obligation emerged.

37. **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?

No answer provided.

38. **6) (continued)** Please explain, if needed

No answer provided.

39. **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 a,b,c,d)
 - ☒ **a.** Place where the infringing content is uploaded on the Publisher Website (Country A / place of the principal act of copyright infringement)
 - ☒ **b.** Place where the Website/infringing contents are hosted/stored (Country B)
 - ☐ **c.** Place where the Domain Name is hosted (Country C)
 - ☐ **d.** Other
- ☒ Law of the Place of the Damage (please specify a,b,c)
 - ☒ **a.** Law of the country Targeted by the website
 - ☐ **b.** Law of the country where the website is Accessible
 - ☐ **c.** Other
- ☒ Law of the Place of the Prejudice
 - ☐ Law of the claimant's Domicile
 - ☐ Law of the defendant's Domicile (specify a,b,c,d)
 - ☐ **a.** Law of the Website Publisher's Domicile
 - ☐ **b.** Law of the Website Hosting Provider's Domicile
 - ☐ **c.** Law of the Domain Name Hosting Provider's Domicile
 - ☐ **d.** Other
 - ☐ 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

40. **7)(continued)** Please explain, if needed

As for the Law of the Place of Infringement: The law of the country for which protection is claimed (Art 8 of Rome II). Or if Hu IPL Act applies the law of the state in the territory of which the effect of the legal fact giving rise to the obligation emerged. Please see our answer to Q 2. b) and 4.a). As for the Law of the Place of the Damage: the law of the country for which protection is claimed. Article 2 (3) of Rome II: Any reference in this Regulation to an event giving rise to damage shall include damage that are likely to occur, or if Hu IPL Act applies the law of the state in the territory of which the effect of the legal fact giving rise to the obligation emerged. As for the Law of the Place of the Prejudice: the law of the country for which protection is claimed. Article 2 (3) of Rome II: Any reference to an event giving rise to damage includes damage that is likely to occur, or if Hu IPL Act applies the law of the state in the territory of which the effect of the legal fact giving rise to the obligation emerged.

41. Geoblocking

8) According to your National Law, is geoblocking an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment?

☒ Yes

☐ No

42. 8)(continued) Please explain

Regulation (EU) 2018/302 ... (the Geoblocking Regulation) applies directly. Under Article 1 (5): This Regulation shall not affect the rules applicable in the field of copyright and neighbouring rights, notably the rules provided for in the Infosoc Directive. As a result, any effective technology protection measures in line with Article 6 of the Infosoc Directive can be applied by the author /rightholder. Under Article 4 (1) b) a geoblocking is lawful with regards to receipt of electronically supplied services from the trader (this is the service provider in this case), the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter, including the selling of copyright protected works or protected subject matter in an intangible form.

43. 9) Are geoblocking measures sufficient to prevent online copyright infringement, even though such measures can be bypassed through the use of VPNs?

☐ Yes

☒ No

44. 9) (continued) Please explain

A final answer depends on a decision of the European Court of Justice.

Please explain: Under Article 6 of the Infosoc Directive a technological measure shall be deemed "effective" where the use of a protected work or other subject-matter is controlled by the rightholders through application of an access control or protection process (...). VPN is an access control. Whether it is able and/or sufficient to effectively control the access, shall be decided by the CJEU in the case Anne Frank Fonds v. Anne Frank Stichting(...) which is currently pending, as it is indicated in paragraph 20 of Q299-SGL-2026.

Under the opinion of the Advocate General issued in C-788/24 https://infocuria.curia.europa.eu/tabs/affair?lang=en&sort=AFF_NUM-DESC&searchTerm=%22C-788%2F24%22&publishedId=C-788%2F24

- "Targeting is not a requirement any longer

- VPN is sufficient if it is an effective technology protection measure".

45. 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?

☒ Yes

☐ No

46. 10)(continued) Please explain

Under the detailed provisions of § 13 of the Hu E-Commerce Act (Act CVIII of 2001) holders of copyright may seek a notice and takedown measure from the information society service provider. In addition – this is an educated guess only, there is no corroborating court practice – the provisional measures to be ordered by the courts that adjudicate copyright cases based on the specific rules of the Hu CA Act and the general Code of Civil Procedure (Act CXXX of 2016) can also be regarded as such measures.

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

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

☒ Yes

☐ No

48. **11) (continued)** If yes, please explain

Not only the infringing act and targeting, but also the mere accessibility of the protected content or a derivative output based on the protected content should be sufficient to be a decisive connecting factor. An accessibility should be acknowledged as a place, where the harmful event may occur, and an event giving rise to damage that are likely to occur.

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

☒ Yes

☐ No

50. **12) (continued)** If yes, please explain

Please see our answer to Q 11.

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

☒ Yes

☐ No

52. **13)(continued)** If yes, please explain

Please see our answer to Q 11.

53. **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.

We agree with the arguments of the Advocate General in the case C-788/24, as we cited in our answer to Q9.

54. **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?

☐ Yes

☒ No

55. **15 (continued)** If yes, please explain

No answer provided.

III. Proposals for harmonisation

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

56. **16)** Do you believe that there should be harmonisation of International Private Law Provisions and geo-blocking in the context of copyright online infringement?

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.

☐ Yes

☒ No

57. **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?

17) a. Claimant's Domicile, i.e. Domicile of the author/copyright holder (usually also Place of Prejudice) **17) a.** 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:

☒ **17) a.** Yes. Please explain

☐ **17) a.** No. Please explain

☐ 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

58. **17) a.** Please explain, if needed

That is optimal way to enforce copyright infringement claim, if the Claimant affected by the infringement can enforce his/her claim before a court at the claimants' domicile.

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

We do not think that an extraterritorial effect of a local courts' decision could be achieved by any international instrument.

59. **17) b) Defendant's Domicile**, i.e. Domicile of the copyright infringer. Please explain.

☒ Yes

☐ No

☐ If Yes, please specify

☒ Domicile of the Website Publisher, i.e. the principal/main infringer

☒ Domicile of the Website Hosting Provider

☒ Domicile of the Domain Name Hosting Provider

☒ Other

60. **17) b) (continued)** Please explain, if needed

It exists as the more general connecting factor. Any narrowing of the scope of the rule would be detrimental.
We gave the explanation under 2.b. This approach should be universally applicable.

61. **17) b)** 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 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

62. **17) b. (continued)** Please explain, if needed

No answer provided.

63. **17) c)** Other. Please explain

No answer provided.

64. **1.2. Nationality-related connecting factors**

18) a. 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?

No answer provided.

65. **18) b.** If Nationality-related connecting factors should be applicable, please indicate the territorial scope of the competence of the court: **(specify a,b,c)**

No answer provided.

66. **18) (continued)** Please explain, if needed

No answer provided.

67. **18) (continued)** Please explain and **if** Other, please specify

No answer provided.

68. **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?

19) a. Place of Infringement, Yes or No. Please specify: **a,b,c,d**

☒ **19) a.** Yes

☐ **19) a.** No

☒ **a.** Place where the infringing content is uploaded on the Publisher Website (Country A / place of the principal act of copyright infringement)

☒ **b.** Place where the Website/infringing contents are hosted/stored (Country B)

☒ **c.** Place where the Domain Name is hosted (Country C)

☒ **d.** Other

69. **19) a. (continued)** Please explain, if needed

We gave the explanation in our answer to Q 4.

70. **19) a.** 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 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)

71. **19) a. (continued)** Please explain, if needed

No answer provided.

72. **19) b.** Place of Damage

- ☒ Yes
- ☐ No

73. **19) b.** 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

74. **19) b. (continued)** Please explain, if needed

No answer provided.

75. **19) b.** If Targeting factor is applicable, how should national courts determine whether the public is targeted?

No answer provided.

76. **19) b. (continued)** Please explain, if needed

No answer provided.

77. **19) b.** 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 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

78. **19) b. (continued)** Please explain, if needed

Please see our answer to Q 17.a).

79. **19) c. Place of Prejudice**, i.e. usually Domicile of the author / copyright holder. Please explain if Yes or NO. If Place of the Prejudice should be applicable, please indicate the territorial scope of the competence of the national court:

☒ Yes

☐ No

☐ 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

80. **19) c. (continued)** Please explain, if needed

We gave an explanation in our answer to 2.a.

Please see our answer to Q 17.a).

81. **19) d. Other. Please explain**

No answer provided.

82. **2.Applicable law / conflicts-of-laws rules**

This section has two different and independent aims. The first is to determine, in general, the relevant and desirable criteria to determine the applicable law (question 20). 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 the national courts are competent.

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

- ☐ Law of the Forum
- ☒ Law of the country of the Place of Infringement (please specify a - d)
 - ☒ a. Place where the infringing content is uploaded on the Publisher Website (Country A / place of the principal act of copyright infringement)
 - ☒ b. Place where the Website/infringing contents are hosted/stored (Country B)
 - ☐ c. Place where the Domain Name is hosted (Country)
 - ☒ d. Other
- ☒ Law of the country of the Place of the Damage (please specify a - b)
 - ☒ a. Law of the country where the website is Accessible
 - ☐ b. Law of the country Targeted by the website, If YES, how should national courts determine whether the public is targeted?
 - ☐ 1. Whether the copyrighted work is Accessible online in a country
 - ☐ 2. Whether the server of the website or app with the copyrighted work is located in a country
 - ☐ 3. Whether the website or app with the copyrighted work uses a local language of a country
 - ☐ 4. Whether the website or app with the copyrighted work allows to pay in the local currency of a country
 - ☐ 5. Whether there is any business facility of the user of the copyrighted work in a country
 - ☐ 6. Whether there are any promotional activities Targeting public in a country or region by the user of copyrighted work
 - ☐ 7. Other
- ☐ 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 Publisher'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

83. **20)** Other. Please explain if needed.

We gave our explanation in our answer to Q7.

84. **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 a - d)

☒ a. Law of the country where the infringing content is uploaded on the Publisher Website (Country A / place of the principal act of copyright infringement)

☒ b. Law of the country where the Website/infringing contents are hosted/stored (Country B)

☐ c. Law of the country where the Domain Name is hosted (Country C)

☒ d. Other

☒ Law of the country of the Place of the Damage (please specify a - b)

☒ a. Law of the country where the website is Accessible

☐ b. Law of the country Targeted by the website. If YES, how should national courts determine whether the public is targeted? **(please specify 1 - 7)**

☐ 1. Whether the copyrighted work is Accessible online in a country

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

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

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

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

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

☐ 7. Other

☐ 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

85. **21) g. (continued)** Other, please specify

We gave our explanation in our answer to Q 7.

86. **21) (continued)** Please explain if needed.

No answer provided.

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

☐ Yes

☒ No

88. **22)** 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.

Article 5(2) of the Berne Convention: This is the most general and therefore the optimal drafting. In addition, all attempts to amend the Berne Convention – in particular for the benefit of rightholders – would fail under the current geopolitical circumstances.

89. **Geoblocking**

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

☒ Yes

☐ No

90. **23) (continued)** Please explain, if needed

We gave our explanation in our answer to Q 8., 9. and 14.

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

☒ Yes

☐ No

92. **24) (continued)** Please explain, if needed

We gave our explanation in our answer to Q 8., 9. and 14.

93. **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?

☒ Yes

☐ No

94. **25)(continued)** Please explain

VPN is an existing technology protection measure, but the legal provisions in WCT, WPPT and Infosoc Directive do not include a closed list of possible measures. Therefore, any measure that meets the requirements of the applicable provisions on technology protection measures should be acknowledged as effective.

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

No comment.

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

The members of the Group are mainly attorneys at law practicing in copyright enforcement matters. One member of the group is engaged in copyright enforcement cases initiated by collective management organisations, that frequently involve international elements. One member of the Group is in-house lawyer at a company that manages IP rights, domain names, web security, and brand protection globally. One member of the group is patent attorney who also has a law degree.