



Conflict of Laws (Private International Law) and Remedies

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Conflict of Laws and Remedies

- 1. Territorial Discrepancy between Infringement Claims and Remedies**
- 2. Problems of Extraterritorial Remedies**
- 3. Delineation of the Territorial Scope of Remedies on the Internet**

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Territorial Discrepancy

- Copyright owners seek remedies as territorially broad as possible
- But they face limitations on the territorial scope of the claims that they can raise
- The result can be a **territorial discrepancy** between the territorial scopes of the claims raised and remedies issued

Territorial Discrepancy

Limitations of a legal and practical nature:

- **Existence of rights**
 - Ownership
 - Rights
 - Exceptions and limitations to rights
- **Personal jurisdiction**
 - General jurisdiction, specific jurisdiction
- **Justiciability**
 - “Mosaic” approach
 - Draft Hague “Judgments Convention” (May 2018)

Territorial Discrepancy

- **Choice of applicable law**
 - Raising/pleading/proving foreign law
 - Foreign law expertise
- **Evidentiary issues**
 - Proof of infringement
 - Proof of damages
- **Strategic considerations**
 - Alienation of the court
 - Forum non conveniens
- **Costs**

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Problems with Extraterritorial Remedies

- “Exportation” of rights from one jurisdiction to another
- Direct conflicts with obligations under the laws/court decisions/agency decisions/contracts in other countries
- Disruption of the calibration of rights and remedies under a particular national law
- Potential of overlapping remedies
- Reputational effects

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Delineation of Remedies on the Internet

Means of defining and delineating the territorial scope of online conduct

- “Direction” of conduct
 - Language, currency, toll-free number, top-level domain
 - Sale /delivery policies, availability of service, insurance coverage, technical standards
- Passive geolocation / self-determination of location
- Geolocation
 - IP addresses and/or other indicators, including wifi and GPS signals
- Geoblocking

Delineation of Remedies on the Internet

Courts seem to remain skeptical of geoblocking, including its use to limit the territorial scope of remedies

- Reliability (possibility of circumvention of geoblocking)**
- Burden of implementing geoblocking**

Delineation of Remedies on the Internet

- May a defendant use geoblocking to limit the territorial scope of the remedy when the issuing court did not limit the scope?
- Necessary to determine whether the court intentionally imposed no territorial limitations on the internet remedies
- Potential conflict with the EU Portability Regulation, the EU GDPR, EU competition law



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