

## Q299-SGL-C-2026-Online infringement and territoriality considerations

### Questions

Please note that if you check a box, it means your answer is YES.

If you do not check a box, it means your answer is NO.

#### 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.

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

Please answer YES or NO.

No.

If YES, please specify and briefly describe these provisions.

#### Competent court / conflict-of-jurisdiction rules

The aim of this section is to identify the relevant criteria for determining the competent court in cases of online copyright infringement, as well as the territorial scope covered by the court's jurisdiction.

- 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?
- a. **No.** Claimant's Domicile, i.e. Domicile of the author/copyright holder (usually also the Place of Prejudice) Please explain

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.
- Other (please specify)

Please explain

**b. YES Defendant's Domicile, i.e. Domicile(s) of the copyright infringer(s)**

According to Regulation (EU) No 1215/2012 (Brussels I bis), persons domiciled in a Member State shall, whatever their nationality, shall be sued in the courts of that Member State. Domicile of the defendant is general.

Only in exceptional cases another court can have a jurisdiction. One of the exceptions is that matters relating to tort, delict or quasi-delict fulfil the criteria which empowers courts of the place where the harmful event occurred or may occur to hear the case.

The Finnish court can decide about remuneration and damages resulting from the infringement that has happened in Finland also when the damages are not occurring in Finland.

Even outside Brussels I bis, the Lugano II agreement extends similar rules to EEA countries and further, the Finnish domicile remains decisive as under Finnish procedural law. The domicile provides general jurisdiction (unless the decision to be issued by the Finnish court in the matter would, in practice, not have any legal significance for the parties).

If YES, please specify:

- ✓ Domicile of the Website Operator, i.e. the principal/direct/main infringer
- ✓ Domicile of the Website Hosting Provider
- Domicile of the Domain Name Hosting Provider
- Other (please specify)

Please explain

For domicile of the Website Operator, i.e. the principal infringer, see above. In relation to the Website Hosting Provider, the Finnish courts are competent based on domicile provided that the Website Hosting Provider is the defendant in the case (though acting as intermediary to the infringement).

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 (please specify)

Please explain

Under Brussels I Recast Art. 4(1), if the infringer is domiciled in Finland, Finnish courts have full jurisdictions for all worldwide acts (as the court of the defendant's domicile).

When general jurisdiction exists by domicile of the Website Hosting Provider, Finnish courts may hear claims such as orders to remove or disable access to infringing content or to disclose user identity data. No jurisdiction over the principal infringer is given based on this. To be able to claim damages for the infringement from the Website Hosting Provider typically requires active role or knowledge of the infringement (with regard to platforms, see, e.g., the CJEU decision in joint cases C 682/18 & C 683/18 YouTube & Cyando), as Regulation (EU) 2022/2065, also known as the Digital Services Act, grants hosting providers a conditional liability exemption when certain requirements have been met

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)

Please specify:

- ✓ Nationality of the Website Operator, i.e. the principal/direct/main infringer
- ✓ Nationality of the Website Hosting Provider
  - Nationality of the Domain Name Hosting Provider
- ✓ Other (please specify) counter claim, negative confirmation
- Country of First Publication of the copyrighted work
- ✓ Other (please specify) Closest connection in specific cases.

Please explain

Nationality in the defined meaning as the place of registration/statutory seat for a legal person is the same as domicile of a legal person. We refer to explanations to question 2) above to this regard. As such, the nationality in the meaning of the citizenship of a natural person does not determine the Finnish courts' jurisdiction, only the domicile of the natural person does.

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.
- Other (please specify)

Please explain

Please see the explanations to question 2) regarding Domicile-related connecting factors above.

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?

**a. YES - Place of Infringement**

Please specify:

- ✓ Place where the infringing content is uploaded on the Operator Website (Country A / place of the principal act of copyright infringement)

- Place where the Domain Name is hosted (Country C)
- Other (please specify)

Please explain

When the defendant is domiciled in an EU Member State, jurisdiction is governed by the Brussels I bis Regulation, and when the defendant is domiciled outside the EU, Finnish national procedural rules apply.

Finnish courts have special jurisdiction in the court of the place where the harmful event occurred or may occur. This covers both the place of the causal event and the place where the damage occurred. In online copyright infringement, the place of the causal event is typically where the infringer uploads or initiates the infringing act (Country A). The server location (Country B) may also qualify, particularly where content is stored and made available from that server.

A distinction must be drawn depending on who is the defendant: where the website hosting provider itself is sued as intermediary, Finnish courts have jurisdiction for intermediary-specific remedies, such as orders to remove or disable access to infringing content or to disclose user identity data. However, jurisdiction over the hosting provider does not extend to the principal infringer, and damages claims against the hosting provider typically require an active role in, or knowledge of, the infringement.

For defendants domiciled outside the EU, Finnish procedural law provides jurisdiction at the place where a tortious act was committed or where the damage occurred, provided the matter has a sufficient connection to Finland.

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 (please specify)

Please explain

In EU the regulation (EU) No 1215/2012 (Brussels I bis) allows jurisdiction in the court of the place where the harmful event occurred, which means Finnish courts have jurisdiction over the act of infringement, damages and prejudices occurring within its territory.

The power extends to claims concerning damages that are caused by the event even when such damages happened outside of Finland.

Under Brussels I Recast Art. 4(1), if the infringer is domiciled in Finland, Finnish courts have full jurisdictions for all worldwide acts (as the court of the defendant's domicile). However, where jurisdiction is based specifically on the Place of Infringement under Art. 7(2), the court is in principle competent for all damage worldwide flowing from the causal event occurring in its territory (per the Handlungsort limb of Art. 7(2) as interpreted by CJEU). In practice, the Finnish court would apply foreign law to foreign-territory damage under the *lex loci protectionis* principle (Rome II, Art. 8).

## b. Place of Damage

Please explain

The Place of Damage (Erfolgsort) is a recognised connecting factor under both the Brussels I Recast Art. 7(2) and Finnish national law (OK Chapter 10, Section 8).

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 (please specify):

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 (please specify)

Use of the .fi top-level domain; delivery of goods/services to Finland; Finnish-specific content or pricing; provision of after-sales guarantees or warranties applicable in Finland; display of Finnish contact details such as a telephone number with the +358 international code, a Finnish postal address, or other local contact information; and evidence that consumers located in Finland have actually visited or transacted through the website.

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 (please specify)

Please explain

Where jurisdiction is based specifically on damages, the court is competent for those damages. This could mean that some of the damages from the same infringing event could fall within its power even if outside of Finland.

c. Place of Prejudice, i.e. usually Domicile of the author / copyright holder.

Please explain

The Place of Prejudice (i.e., the domicile of the author/copyright holder as the place where financial loss is felt) is not a recognised independent connecting factor for jurisdiction in copyright infringement cases under Finnish law or the Brussels I Recast as applied in Finland. The CJEU has not recognised the claimant's domicile as a separate basis for jurisdiction in IP infringement under Art. 7(2). Under the general rule (Brussels I Recast Art. 4), the claimant's domicile is not a basis for jurisdiction; the defendant's domicile is. Finnish national law (OK Chapter 10) likewise does not provide for claimant-side domicile as a venue in tort actions. While the claimant's domicile may coincidentally overlap with the Place of Damage (where infringing works are accessible), it is not independently recognised as a jurisdictional ground.

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 (please specify)

Please explain

### **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

YES

Please explain if needed

The Rome II Regulation governs conflict-of-laws rules for non-contractual obligations in Finland. According to Article 8 of the Rome II Regulation, the applicable law for a non-contractual obligation resulting from the infringement of an intellectual property right is the law of the country where protection is sought (lex loci protectionis).

If the infringement involves a unitary Community intellectual property right, and the

Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than place where protection is sought and where infringement took place, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question

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.

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?

Berne Convention

- (2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, *the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the **country where protection is claimed.***
- (3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.
- (4) The country of origin shall be considered to be:
  - (a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;
  - (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;
  - (c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:
    - (i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and
    - (ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

✓ Law of the Forum

✓ Law of the Place of Infringement (please specify)

- 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 of infringing act
- ✓ Law of the Place of the Damage
  - Law of the country Targeted by the website
  - Law of the country where the website is Accessible
  - Other (please specify)
- Law of the Place of the Prejudice
- ✓ Law of the Country of First Publication of the work
- ✓ Law of the country of the author's Nationality or Domicile
- ✓ Law of the country of the defendant's Nationality or Domicile
- Other (please specify)

Section 63 of the Finnish Copyright Act (404/1961) sets out the connecting factors, in accordance with the Berne Convention, under which Finnish copyright law applies. The Finnish Copyright Act applies:

- 1) to works the author of which is a Finnish national or a person having his or her habitual residence in Finland;
- 2) to works first published in Finland or published in Finland within thirty days of having first been published in another country;
- 3) to a cinematographic work the producer of which has or its headquarters or habitual residence in Finland;
- 4) to works of architecture located in Finland; and
- 5) to works of art incorporated in a building located in Finland or otherwise fixed to the ground in Finland.

Section 64a (satellite transmission) and Section 64b (cross-border ancillary online services) adopt a country-of-origin approach (place of uplink/establishment of the broadcaster)

The Copyright Council has applied a targeting test to determine "the country where a protection is sought" in its opinion ([2013/11](#)). The opinion notes that the following concrete indicators are considered in the assessment:

- The address of the website containing the photograph ended in .fi and the text on the page was in Finnish.
- The text on the page discussed research on the effect of vitamin D on the prevention of depression and referred to the vitamin D deficiency among Finnish schoolchildren.
- The website containing the photograph was accessible to the Finnish public and, based on the content of the text on the page, the site was clearly aimed specifically at Finland and Finns.

What is decisive is not the country where the content has been uploaded to the server or where the server is located, nor the country of origin of the infringer – but rather the country and the audience at which the website is directed.

- Law of the Forum
- Law of the Place of Infringement (please specify)
- 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 (please specify)

- Law of the Place of the Damage (please specify)
- Law of the country Targeted by the website
- Law of the country where the website is Accessible
- Other (please specify)
- Law of the Place of the Prejudice
- Law of the claimant's Domicile
- Law of the defendant's Domicile
- Law of the Website Operator's Domicile
- Law of the Website Hosting Provider's Domicile
- Law of the Domain Name Hosting Provider's Domicile
- Other (please specify)
- 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 (please specify)

Please explain

### **Geoblocking**

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

Please answer YES or NO

YES

Please explain

Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market ("Geo-blocking regulation") does not prohibit geo-blocking when it is necessary for the protection of copyright.

Geo-blocking and other technical and contractual means and measures that impede or discourage the public in Finland to access copyright protected content unlawfully, are not

However, the right to lawful acts under exceptions and limitations, exhaustion or lapsing of the right cannot be diluted or restricted through use of technology.

Blocking access to specific illegal content has been appropriate and proportionate when required from a third-party intermediary as a remedy in specific infringement matters. Court ordering that a third party internet service provider is to block access to a page that has been found containing illegal content, is in line with fundamental rights, appropriate and proportionate (Case C-314/12 UPC Telekabel Wien) while ordering ISP to block all transmission of files containing certain works, is too general and broad and therefore not compliant with fundamental rights and proportionality (Case C-70/10 Scarlet Extended).

Geo-blocking is available for copyright holders to use when it targets illegal use, but it should not prevent lawful use. Geo-blocking is not a requirement or compulsory measure to avoid liability. Currently only online content sharing service providers, digital service providers and communication service providers have blocking obligations to preserve their neutrality and liability exceptions, while users might not have such means available to same extent.

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

Please answer YES or NO

No.

Please explain

Blocking an access to a work, where bypassable, cannot entirely prevent infringement from happening, but it can prevent liability for infringement in Finland when the defence can show that the block is there to direct the content to public outside of Finland. While geo-blocking is a way to restrict access to internet resources in a given area, it is not a measure that could neutralize, undo or eliminate other acts that may constitute an infringement. Bypassing or instructing how to bypass geo-blocking through use of, for example, VPN, proxy server, Tor network and DNS changers can be a part of an act of communication to the public; offering the work for sale, rental, or lending or otherwise distributing the work to the public, the acts of which infringe copyright. Bypassing geo-blocking can also be a part of user's unauthorized reproduction of the work that may constitute an infringement.

The court makes an overall assessment about targeting or addressing the work to the public in Finland and the criteria is open. Several factors can be taken into consideration. It should also be noted that only unlawful use should be blocked. Bypassing geo-blocking or any other kind of technical restriction for enabling lawful use of works under exceptions and limitations is not prohibited and the lawful use cannot be restricted by the copyright owner through use of technical means. Blocking should not be overreaching or too extensive to prevent lawful use under license or under statutory exceptions and limitations.

The active measures and steps taken in making the work accessible and in gaining an access to the work are likely decisive when assessing if infringement has taken place and who has infringed the exclusive rights of the copyright holder.

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?

Please answer YES or NO

Please explain

The liability to block infringing content is with third party intermediaries.

According to the Directive (EU) 2019/790 of the European Parliament and of Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (“DSM Directive”) an online content sharing service provider is liable for communication of the works to the public unless it fulfils the conditions of limitation of liability, that require maintaining best efforts to obtain authorisation and, where not possible, taking down infringing content to avoid liability. Article 13 of the DSM Directive also holds that there must be a negotiation body to address licensing related issues.

Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services (“Digital Services Act”) holds that court can order that infringing content is removed from the platform and requires that there are notice and take down mechanisms and even notice and stay down mechanisms in place.

Technical measures can be used to protect works, and the circumvention of protective technical measure is expressly prohibited (unless done for allowing lawful use). These measures must be efficient to qualify as technical protection, but they need not be perfect. It is generally sufficient to discourage unauthorized reproduction and making available of a work. Unlawful access to a website may also be in practice prevented with contractual measures, such as use restrictions under service agreements, as well as utilizing information on the user’s location, contained, for example, in user’s payment details.

I **Policy considerations and proposals for improvements of your Group's current law**

11) Could your Group’s current law or practice relating to online copyright infringement be improved?

Please answer YES or NO

Yes.

If YES, please explain.

Commercial use of works could be encouraged when the rules are as simple as possible and when one court has sufficient jurisdiction to decide all claims between the same parties in respect of infringements of same works. The claimant should always have the possibility to bring an action in the place of defendant’s domicile. However, there should also be an alternative or alternatives which can be the place where infringing acts took place and where damages arise and sometimes there are substantial and important connections that can affect the choice of court.

Once the forum has been decided, the court should be able to decide the entire matter and all claims between same parties concerning same rights and without the need to litigate in multiple jurisdictions.

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

Please answer YES or NO

Yes

If YES, please explain.

The Finnish Group considers that current law and practice relating to the determination of competent courts in online copyright infringement could be improved in several respects:

1. Fragmentation of jurisdiction is problematic. Where jurisdiction is not based on the defendant's domicile but on the place where the harmful event occurred, the copyright holder whose work is infringed globally online must potentially litigate in multiple jurisdictions, each of which can only address damage within its own territory. This is costly, inefficient and often practically unworkable for individual authors and smaller rights holders. While defendant's domicile provides non-fragmented jurisdiction, in practice the infringer is often domiciled abroad, leaving the copyright holder dependent on the place-of-damage basis under which the Market Court can only award compensation for damage occurring within Finland. A consolidated jurisdictional basis beyond the defendant's domicile would be desirable.

2. Lack of copyright-specific private international law rules means that national court must rely on the general tort provisions. There are no copyright-specific jurisdiction rules addressing the unique challenges of online infringement, such as multi-territorial communication to the public, server location in a third country, or the role of geoblocking. A sector-specific instrument could enhance legal certainty.

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

Please answer YES or NO

**YES**

If YES, please explain.

The applicable law framework rests on the Berne Convention Article 5(2) and the Rome II Regulation, neither of which was designed with the specificities of online, cross-border copyright infringement in mind. This leaves significant interpretive uncertainty as to how the *lex loci protectionis* principle should be applied in practice – for example, in multi-territorial online infringement cases where a single act of uploading content produces harm simultaneously in many jurisdictions. The fragmentation of jurisdiction leads to fragmentation of applicable law in multi-territorial online infringement which is a structural weakness. Strict application of *lex loci protectionis* requires a country-by-country analysis, potentially subjecting a single dispute to numerous national copyright laws.

Please refer to Q20 below for our improvement proposal.

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.

Geo-blocking is a technical measure that is neither required nor prohibited in copyright law. It should be treated like other technical measures involved in reproduction or communication to the public of a work. The current praxis under national law strives to

The copyright owner has an exclusive right to decide about reproduction and making available of a work. This right can only be infringed through active measures of copying or communication to the public for example. Leaving geo-blocking or other measures undone and other kind of passivity is very difficult to see as an act that constitutes infringement. Passivity can be a reason to remove liability exception in certain cases from an intermediary that enables infringement, but it is difficult to require such actions from lawful users of works.

If there is a copyright limitation or authorisation that allows use of the work in one jurisdiction, the user should not be liable for unintentional infringement in other jurisdictions merely because the use happens on the internet and someone can access the work from a country that has different criteria for lawful use. The lawful users of works must have a possibility, resources and knowledge to control and remove externalities that can lead to liability for an infringement. The lawful user must be able to use the work for lawful purposes and could have a contractual obligation to take active blocking measures or other means that discourage use of the work outside of its area, and in such case, it should be considered sufficient to avoid liability for unintentional infringements in other jurisdictions unless there are some important reasons to the contrary.

A user who knowingly reproduces the work by bypassing protective measures is responsible for the unauthorized reproduction and use of the work and should therefore be liable for the infringement instead of the party who lawfully makes the work available to the public but fails to exhaustively prevent others from infringing. However, if the lawful user provides the means and instructions specifically intended to enable bypassing protective technical measures or encourages others to make reproduction or use of work illegally, this can constitute an infringement.

Users' rights and obligations should be aligned. The clearest example of law in favor of users is Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market, which requires that subscribers can access services available to them in their own home country, when temporarily present in another Member State, so geo-blocking against such subscribers would not be allowed but at the same time the user should be liable for bypassing geo-blocking that exceeds the exception above.

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?

Please answer YES or NO

No

If YES, please explain.

I                      Proposals for harmonisation

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

16) Do you believe that there should be harmonisation of International Private Law Provisions and geo-blocking in the context of copyright online infringement? Please answer YES or NO.

Yes.

**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.

**1. 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?

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

Please explain

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:

- All acts of infringement, damages and prejudices occurring worldwide/regionally (in the process of copyright infringement). It means that a national court should be 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 a competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

**b. Defendant's Domicile, i.e. Domicile of the copyright infringer.**

Please explain

Harmonization is desirable, as it enhances legal certainty. Anchoring jurisdiction in the defendant's domicile aligns copyright jurisdiction with the general architecture of private international law rather than treating copyright as an exceptional field requiring expansive special rules. As the concept of domicile is already well established in most legal systems, it is particularly well suited for harmonization at the global level.

If YES, please specify:

- ✓ Domicile of the Website Operator, i.e. the principal/direct/main infringer
- ✓ Domicile of the Website Hosting Provider
- Domicile of the Domain Name Hosting Provider
- Other (please specify)

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 a national court should be 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 the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

Where the defendant's domicile serves as a relevant connecting factor for jurisdiction, preferably the court would have a general competence to adjudicate damages and injunctions with extraterritorial effect.

**c.  Other**

Please explain

**1.2. Nationality-related connecting factors**

18) 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?

- Nationality of the claimant, i.e. Nationality of the author/copyright holder
- **Nationality of the defendant, i.e. Nationality of the copyright infringer**
- **Please specify:**
  - **Nationality of the Website Operator, i.e. the principal/direct/main infringer**
  - **Nationality of the Website Hosting Provider**
  - Nationality of the Domain Name Hosting Provider
  - Other (please specify)
- Country of First Publication of the copyrighted work
- Other (please specify)

Please explain

Nationality, when defined as the place of registration or statutory seat of a legal person, corresponds to the domicile of that legal person. We refer to explanations to question 17) above to this regard. By contrast, nationality in the sense of the citizenship of a natural person should not be a relevant connecting factor for jurisdiction; instead, jurisdiction should be determined solely on the basis of the natural person's domicile.

If Nationality-related connecting factors should be 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 a national court should be 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 the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

We refer to the explanations to question 17) above to this regard.

### 1.3. 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?

#### a. v Place of Infringement

Please specify:

- ✓ Place where the infringing content is uploaded on the Operator Website (Country A/ place of the principal/direct/main 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 (please specify)

Please explain

A harmonised rule centred on the place of infringement provides a clear and objective connecting factor: the court of the country where the infringing act occurred would have competence, regardless of the nationality or domicile of the parties. This could be a possibility especially when commercial use, marketing and advertising takes place in the country. Concentrating jurisdiction at the place of infringement could also reduce evidentiary burdens and increase the efficiency and accuracy of judicial fact-finding, as typically also evidence and witnesses are located in the territory where the infringement occurred. Thus, it would be easier to enforce rights. However, unintentional infringement by a private person should not be decided in a jurisdiction other than defendant's domicile and an exception relating to non-commercial use may be needed.

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 a national court should be competent for acts occurring in its jurisdiction, but also acts of infringement, damages and

- Only acts of infringement, damages and prejudices occurring within the territory of the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

The fragmentation of international jurisdiction rules in copyright litigation creates significant inefficiencies and inequities, particularly in the digital age where infringing content can be simultaneously accessed across dozens of jurisdictions. Harmonizing jurisdictional rules would enhance predictability. It would be desirable that the court would have general jurisdiction for acts of infringement, damages and prejudices occurring in foreign jurisdictions. That would be beneficial to rights holders while their works are exploited across multiple territories simultaneously and especially when it comes to online infringements, as infringements may occur simultaneously in every territory where the content is accessible. The rights holder would not have to litigate in every country where the infringing content was accessed – that would make effective enforcement very difficult or practically impossible. Also, defendants would not face the risk of being sued in multiple forums.

#### **b. Place of Damage**

Please explain

A harmonized rule recognizing place of damage would create predictable criteria across the globe, similar to jurisdictional approaches under instruments like the Brussels I Regulation in the European Union.

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 (please specify):

If Targeting factor is applicable, how should national courts determine whether the public is targeted?

- ✓ Whether the copyrighted work is Accessible online in a country
- ✓ Whether the server of the website or app with the copyrighted work is located in a country
- ✓ Whether the website or app with the copyrighted work uses a local language of a country
- ✓ Whether the website or app with the copyrighted work allows to pay in the local currency of a country
- ✓ Whether there is any business facility of the user of the copyrighted work in a country
- ✓ Whether there are any promotional activities Targeting public in a country or region by the user of copyrighted work
- ✓ Other (please specify)

Use of the top-level domain; delivery of goods/services to a specific country; Country or language -

information; and evidence that consumers located in a certain country have actually visited or transacted through the website.

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 a national court should be 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 the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

Digital platforms make copyrighted content instantly accessible worldwide. An infringing upload in one country can cause economic harm in multiple others simultaneously. If jurisdiction rules remain purely territorial and inconsistent, rightsholders must file multiple lawsuits in different countries for the same act. Recognizing place of damage reduces the risk that no court accepts jurisdiction, ensuring accountability. For the rightsholder it would be desirable if the courts would have wider jurisdiction. It may be necessary to observe the non-commercial use and private persons.

c. Place of Prejudice, i.e. usually Domicile of the author / copyright holder.

Please explain

The place of prejudice reflects a substantive connection between the alleged infringement and the forum, as it is the place where the copyright holder actually suffers harm. Allowing jurisdiction based on the place of prejudice ensures that courts adjudicate disputes with a genuine factual and legal link to the harm at issue.

If Place of the Prejudice 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 a national court should be 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 the competent national court, according to the principle of territoriality.
- Other (please specify)

Please explain

Harmonization that recognizes the place of prejudice as a jurisdictional ground enhances effective judicial protection for right holders. In cross border copyright disputes, especially online, harm may occur in multiple states. Place of prejudice jurisdiction ensures that right holders can seek redress where protection is actually needed, improving access to justice. Without place of prejudice jurisdiction, certain infringements risk falling into enforcement gaps. Allowing courts at the place of harm to assert jurisdiction helps ensure that copyright

wider jurisdiction, the better – it would be desirable to have “one-stop-shop” in order to enforce rights.

#### d. Other

Please explain

**Applicable law / conflicts-of-laws rules** 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).

This section has two different and independent aims. When answering the following question, please assume that a national court is competent.

#### 2.1. Criteria to determine applicable law

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

- ✓ Law of the Forum (most importantly)
- ✓ Law of the country of the Place of Infringement (please specify)
  - 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 (please specify)
    - Targeting
- Law of the country of the Place of the Damage (please specify)
  - Law of the country where the website is Accessible
  - Law of the country Targeted by the website

If YES, how should national courts determine whether the public is targeted?

- ✓ Whether the copyrighted work is Accessible online in a country
- ✓ Whether the server of the website or app with the copyrighted work is located in a country
- ✓ Whether the website or app with the copyrighted work uses a local language of a country
- ✓ Whether the website or app with the copyrighted work allows to pay in the local currency of a country
- ✓ Whether there is any business facility of the user of the copyrighted work in a country
- ✓ Whether there are any promotional activities Targeting public in a country or region by the user of copyrighted work

- Other (please specify)
- 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 Operator'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 (please specify)
- ✓ In cases of ubiquitous or multi-territorial infringement, the law of the country with the closest connection to the dispute.
- ✓ Choice of applicable law between the parties post-infringement.

Please explain

In multi-territorial online infringement proceedings, courts should ideally be able to apply a single – or at most a manageable number of laws – to the infringement as a whole, rather than being compelled to apply a mosaic of national laws.

The procedure should follow the law of the Forum. The infringement would preferably be decided on basis of the law of the forum. A local expiration, delimitation or exception to copyright could be decided on basis of local law of another jurisdiction, if necessary. The law of the forum should be applied to remedies in a manner that allows observing different levels of reasonable compensation and damages in various jurisdictions. The harmonisation should not exclude application of other law, but the questions decided on basis of other law should be limited in number and scope.

## 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)
  - Law of the country where the infringing content is uploaded on the Operator Website (Country A / place of the principal act of copyright infringement)

- Law of the country where the Domain Name is hosted (Country C)
- Other (please specify)
- Law of the country of the Place of the Damage
  - Law of the country where the website is Accessible
  - Law of the country Targeted by the website
- If YES, how should national courts determine whether the public is targeted?
  - Whether the copyrighted work is Accessible online in a country
  - ✓ Whether the server of the website or app with the copyrighted work is located in a country
  - ✓ Whether the website or app with the copyrighted work uses a local language of a country
  - ✓ Whether the website or app with the copyrighted work allows to pay in the local currency of a country
  - ✓ Whether there is any business facility of the user of the copyrighted work in a country
  - ✓ Whether there are any promotional activities Targeting public in a country or region by the user of copyrighted work
  - ✓ Other (please specify)
    - Overall assessment of targeting
  - Other (please specify)
  - 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 (please specify)

Please explain

Law of the forum in procedure and infringement. Targeting of the work to certain public should be an overall assessment where everything from language and currencies to country domains and contact information and all the circumstances are taken into consideration.

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

Please answer YES or NO.

YES

Please explain.

Article 5(2) was drafted in the pre-digital era and does not address the fundamental challenges posed by online copyright infringement. "The place where the protection is sought" is difficult to determine when the infringement occurs in multiple countries online, so the Berne Convention should include a harmonized choice of law provision such as the following (additions underlined):

*the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed **exclusively** by:*

- a) *the law of the forum, and*
- b) *the laws of the country where protection is claimed, and*
- c) ***the laws of the country with the closest connection to the dispute, if protection is claimed in multiple countries and infringement is carried out through ubiquitous media such as the Internet.***

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.

### **Geoblocking**

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

Please answer YES or NO

Yes

Please explain

Geo-blocking should be considered an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment because it is a practical technical tool for aligning online access with the intended territorial scope. Copyright owners should be able to block infringing use of their works.

Geo-blocking should remain an efficient way to avoid liability for infringement even when it does not entirely prevent access to work from the blocked area. Too extensive geo-blocking may become undesirable filtering of communication traffic and too expensive and burdensome for providers of online content and intermediaries. Geo-blocking should not prevent or discourage lawful use of works in any country and lawful communication to the public should not be restricted with fear, uncertainty and doubt relating to liability for unintentional infringement.

Geo-blocking as such is not necessarily sufficient if it is used as a general pretext for limitation of liability rather than a practical measure to limit unlawful access.

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

Please answer YES or NO

Yes.

Please explain

Geo-blocking measures should be considered sufficient to prevent liability for online copyright infringement. They should be sufficient when they either prevent unauthorized access to copyright protected content or at least make it difficult and discourage users. No

impose disproportionate obligations on those who lawfully communicate the work to the public and to internet service providers.

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?

Please answer YES or NO

Yes.

Please explain

Geo-blocking alone may not be sufficiently effective in practice, in particular, when circumvention is deemed practically effortless or encouraged. Additional targeted measures can be justified provided they remain proportionate and balance the legitimate interests of the parties.

**Other**

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

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

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