

The right as such and absence of choice

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Article 3:102 CLIP

- Lex protectionis
- The law applicable to existence, validity, registration, scope and duration of an intellectual property right and all other matters concerning the right as such is the law of the State for which protection is sought.

Article 3:201 CLIP

- Initial ownership
- (1) Initial ownership including in particular authorship of a copyrighted work and entitlement to intellectual property rights arising out of registration is governed by the law of the State for which protection is sought.
- (2) If the situation has a close connection with another State that has a work made for hire provision or deems a transfer or exclusive licence of all economic rights in the work to have taken place by virtue of the parties' contractual relationship, effect may be given to such rules by constructing the parties' relationship under the law applicable according to paragraph 1 as involving a transfer or exclusive licence of all economic rights in the work.
- (3) In the framework of a contractual relationship, in particular an employment contract or a research and development contract, the law applicable to the right to claim a registered right is determined in accordance with Section 5.

Article 3:301 CLIP

- Transferability
- The transferability of intellectual property rights and the question whether the transfer or licence can be invoked against third parties shall be determined by the law of each State for which protection is sought.

Article 3:401 CLIP

- Initial co-ownership and transferability of shares
- (1) The law applicable to initial co-ownership shall be determined in accordance with Article 3:201.
- (2) Transferability of the shares of each co-owner shall be governed by the law of the State for which protection is sought.

Article 3:402 CLIP

- Relations between the co-owners
- Relations between the co-owners, in particular the licensing, waiver, consent and any other form of exploitation, the division of revenues, the authority to enforce the intellectual property rights and to bring suits, shall be governed by the law applicable to the parties' relationship such as contract, corporate agreements, succession or marriage. Otherwise the law with the closest connection shall apply.

Article 3:501 CLIP

- Freedom of choice for contracts: (1) Transfer, licence agreements and other contracts relating to an intellectual property right shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the parties' conduct in the circumstances of the case. If the parties have agreed to confer jurisdiction on a court of a State to hear and determine disputes that have arisen or may arise out of the contract, they shall be presumed to have chosen the law of that State. By their choice the parties can select the law applicable to the whole or a part only of the contract.
- (2) The parties may at any time agree to subject the contract to a law other than the law that previously governed it, whether as a result of an earlier choice under this Article or of other provisions of these Principles. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity or adversely affect the rights of third parties.
- (3) Where all other elements relevant to the situation at the time of the choice are located in a State other than the State whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other State which cannot be derogated from by agreement.
- (4) The existence and validity of the consent of the parties as to the choice of law shall be determined in accordance with Articles 3:504 and 3:505.

Article 3:502 CLIP

- Applicable law in the absence of choice
- (1) In the absence of a contractual choice of law in accordance with Article 3:501, the contract shall be governed by the law of the State with which the contract is most closely connected.
- (2) In contracts having as their main object the creation of protectable subject matter or the transfer or licence of intellectual property rights, the court shall take into consideration in determining the State with the closest connection: ... (next slide)
- (3) If no clear decision can be made under paragraph 2 and the transfer or licence concerns intellectual property rights for only one State, it shall be presumed that the contract is most closely connected with that State. If the transfer or licence concerns intellectual property rights for multiple States, it shall be presumed that the State with which the contract is most closely connected shall be the State in which the creator, transferor or licensor has her/his habitual residence at the time of conclusion of the contract.

The Factors (licensee)

- (a) as factors tending to the law of the State in which the transferee or licensee has her/his habitual residence at the time of conclusion of the contract:
 - – the transfer or licence concerns intellectual property rights granted for the State of the transferee's or licensee's habitual residence or place of business;
 - – the transferee or licensee has the explicit or implicit duty to exploit the right;
 - – the royalties or other form of money consideration is expressed as a percentage of the sales price;
 - – the licensee or transferee has a duty to report about her/his efforts to exploit the rights;

The Factors (licensor)

- (b) as factors tending to the law of the State in which the creator, transferor or licensor has her/his habitual residence at the time of conclusion of the contract:
 - – the transfer or licence concerns intellectual property rights granted for the State of the transferor's or licensor's habitual residence or place of business;
 - – the transferee or licensee has no other explicit or implicit duty but to pay a flat sum as money consideration;
 - – the licence is for a single use;
 - – the creator of the protectable subject matter has the duty to create that matter.