

Kono and Jurcys on International Jurisdiction over the Cloud

Toshiyuki Kono and Paulius Jurcys (Kyushu University) have posted International Jurisdiction over Copyright Infringements in the Cloud on SSRN.

The emergence of the Internet, and more recently cloud computing, has tremendous technological, economic, social as well as cultural effects. Such technological development certainly affects legal framework and calls for careful assessment whether, and, if so how, the existing legal principles and doctrines should be adjusted. Despite the fact that cloud-based technologies have swiftly coated almost every aspect of communication, the discussion regarding its legal implications has been very fragmentary.

This paper focuses on a rather specific aspect concerning the intersection of private international law and intellectual property rights in the cloud environment. Although the Internet is one of the most economically rewarding markets for the exploitation of the intellectual property, the ubiquity of the world wide web is also associated with a number of risks. One of the risks which should be considered by right holders and intermediaries operating in the digital environment concerns potential litigation over the exploitation of intellectual property rights before a court of a foreign state. In private international law terms, this risk is known as international jurisdiction: in disputes between the parties from different states or disputes involving foreign subject matter, which court should adjudicate the case? Under what conditions should a national court of one state exercise its jurisdiction and decide a multi-state dispute? National laws usually contain certain rules or principles which guide the courts in deciding whether the jurisdiction should be asserted or not (e.g., defendant's residence or commitment tortious acts in the forum state).

The exercise of jurisdiction in multi-state intellectual property disputes has been subject to great controversies. Even the most distinguished courts in various countries stumbled when dealing with intricate quandaries involving cross-border exploitation of intellectual property rights. The exercise of jurisdiction over multi-state disputes involving territorially limited intellectual property rights has become even more complex with the advancement of digital

communication technologies. Some of the underlying difficulties are discussed in this chapter which starts with a short illustration how cloud computing affects the exploitation of intellectual property assets. This discussion is followed by a closer analysis of the main principles which are employed by the courts across the Atlantic in deciding when to assert jurisdiction over multi-state intellectual property disputes. The fourth section poses a more general question of whether the existing legal framework is apt for the disputes involving cloud-related controversies. Finally, the activities which have been conducted by a special Committee under the auspices of the International Law Association are discussed.