# PIL and IP: Special Issue 2016.4 of the Dutch Journal on Private International Law (NIPR)

The fourth issue of 2016 of the Dutch Journal on Private International Law, Nederlands Internationaal Privaatrecht, is dedicated to Private International Law and Intellectual Property. It includes papers on the law applicable to copyright infringements on the Internet, how to handle multiple defendants in intellectual property litigation, the incorporation of the Unified Patent Court into the Brussels I bis regulation,  principles of private international law and aspects of intellectual property law and the territoriality principle in intellectual property.

**Sierd J. Schaafsma, 'Editorial: Private International law and intellectual property'**, p. 685-686 (guest editor)

**Paul L.C. Torremans, 'The Law applicable to copyright infringement on the Internet'**, p. 687-695

> *This article looks at the law applicable to copyright infringement on the Internet. In order to do so we need to look first of all at the rules concerning the applicable law for copyright infringement in general. Here the starting point is the Berne Convention. Its provisions give an indication of the direction in which this debate is going, but we will see that they merely provide starting points. We then move on to the approach in Europe under the Rome II Regulation and here more details become clear. Essentially, the existing rule boils down to a lex loci protectionis approach, which is in conformity with the starting point that is found in the Berne Convention. It is however doubtful whether such a country by country approach can work well in an Internet context and suggestions are made to improve the legal framework by adding a rule for ubiquitous infringement and a de minimis rule. Finally, we also briefly look at the issues surrounding the cross-border portability of online content services and the impact that the current focus on these may have in terms of the choice of law.*

**Sierd J. Schaafsma, 'Multiple defendants in intellectual property litigation'**, p. 696-705

*One of the key provisions in international intellectual property litigation is the forum connexitatis in Article 8(1) of the Brussel I bis Regulation. This jurisdiction provision makes it possible to concentrate infringement claims against various defendants, domiciled in different EU Member States, before one court: the court of the domicile of any one of them. The criteria of Article 8(1) are, however, complicated and the case law of the Court of Justice is not always very clear. This contribution seeks to explore, evaluate and comment on the current state of affairs in respect of Article 8(1) in the context of intellectual property litigation.*

**Michael C.A. Kant, 'The Unified Patent Court and the Brussels I *bis* Regulation',** p. 706-715

*According to the Agreement on a Unified Patent Court (UPCA), the establishment of a Unified Patent Court (UPC) for the settlement of disputes relating to European patents and European patents with unitary effect also depends upon amendments to the Brussels I bis Regulation (BR) concerning its relationship with the UPCA. In light of this, the European legislator established new Articles 71a to 71d BR. Unfortunately, these provisions have effected uncertainties and schematic inconsistencies within the Brussels system. Besides, inconsistencies have been established between jurisdiction rules of the BR and competence rules of the UPCA. The most notable flaws in this respect are discussed in this contribution.*

**Michelle van Eechoud, 'Bridging the gap: Private international law principles for intellectual property law'**, p. 716-723

*This past decade has seen a veritable surge of development of 'soft law' private international instruments for intellectual property. A global network has been formed made up of academics and practitioners who work on the intersection of these domains. This article examines the synthesizing work of the International Law Association's Committee on intellectual property and private international law. Now that its draft Guidelines on jurisdiction, applicable law and enforcement are at an advanced stage, what can be said about consensus and*

*controversy about dealing with transborder intellectual property disputes in the information age? What role can principles play in a world where multilateral rulemaking on intellectual property becomes ever deeply politicized and framed as an issue of trade? Arguably, private international law retains it facilitating role and will continue to attract the attention of intellectual property law specialists as a necessary integral part of regulating transborder information flows.*

**Dario Moura Vicente, 'The territoriality principle in intellectual property revisited'**, p. 724-729

*This essay revisits territoriality as the founding principle of international IP law. Both copyright and rights in patents and trademarks were essentially conceived by the drafters of the Berne and Paris Conventions as territorial rights which should be governed by the law of the country for which their protection is claimed. This is still the starting point of the relevant provisions in several recent soft law instruments adopted, inter alia, by the American Law Institute and the European Max Planck Group on Conflict of Laws in IP. An important deviation therefrom has, however, been enshrined in conflict of jurisdictions rules that allow for the extraterritorial enforcement of IP rights. Other relevant developments in this respect concern Internet uses of protected works, with regard to which certain restrictions to territoriality have been adopted in order to promote the applicability of a single law to online infringements. The liability of Internet service providers should, in turn, be governed by the law of the country where the centre of gravity of their activities is located, not necessarily the lex protectionis. Other alternatives to the lex protectionis, such as the lex originis or the lex contractus, have gained prominence concerning the initial ownership of unregistered IP rights. And a choice of the applicable law by the parties has been allowed in respect of remedies for infringement acts, as well as of contracts providing for the creation or the transfer of securities in IP rights. A mitigated form of territoriality has thus emerged in recent IP law instruments, which allows for greater diversity and flexibility in conflict of laws solutions in this field.*