

PREFACE

INTRODUCTION TO THIS EDITION OF CROSS-BORDER COPYRIGHT LICENSING, LAW AND PRACTICE

Contract law and competition law are key legal building blocks for any type of licensing of intellectual property, and copyright-protected content is no exception. In some countries and regarding certain domains or special subjects, there are additional areas of the law that need to be taken into account, but all laws covered in this guide share the necessity of bringing the above key building blocks to bear on any copyright licensing contract.

What further complicates the task of a scholar, member of the judiciary, practitioner of the law or legal adviser is that all three of the indicated legal domains have their own approach to dealing with the spatial dimension of the law, and thus with any cross-border element of a given legal situation. While copyright law tends to vary from state to state and be firmly rooted in any given domestic law, the law of the territory where protection is sought will govern any question of copyright law.

In contrast, the law of contracts is frequently transnational and capable of legal emigration, subject to public policy/*ordre public* or *loi d'application immédiate*: parties tend to be free to select the law that will govern their contractual obligations.

Competition law tends to be mainly territorial but frequently its reach is extended beyond a strictly domestic setting and applies to transactions that influence any given domestic market.

Copyright practitioners should be critically aware of such differences in territorial reach of these three inter-dependent areas of the law: copyright, contract and competition law.

'Copyright' represents the 'object' of any cross-border licence and copyright exceptions represent contours or in-roads limiting the object of any trade. A license agreement is the contract that conveys interests in the object that is under copyright from one party to another in time and space. Finally, competition law acts as a 'break' and safeguards against abuses either by way of process or outcome of otherwise all too powerful market participants.

Studies of comparative private law suggest that in general, different legal systems allow for similar or consistent outcomes provided that the interests at play are the same. They posit the Francis Fukuyama theory of convergence in favour of identical outcomes, if not identical rules. As a practitioner, I am able to agree with this general hypothesis only as a useful working proposition, but one that must be tempered by the observation that this claim holds true only as a trajectory, and then only if the

evaluation of 'sameness' holds across social, cultural and historically evolved idiosyncrasies. Differences, in other words, may persist indefinitely, and sometimes a desire for convergence must yield to useful adaptation.

This guide aims to offer theorists, scholars, practitioners, arbitrators, judges, advisers and litigants the vantage of an initial entry point in order to precisely judge in regards to any given question under the above parameters whether the trajectory of 'sameness' may be assumed to hold, or is better investigated in detail.

Finally, I want to acknowledge each and every author and co-author of this work for their contribution to a unique enterprise: the effort to evaluate as nearly as possible the various national laws of copyright, contract and competition according to a common framework, a prism through which the interests of parties of an intellectual property transaction look at the law. All of these contributing authors, who are scholars of stature, academics of high regard and seasoned practitioners in their own right, have worked towards a common project that I hope we will be able to develop over time, either by adding jurisdictions or refining further concepts and problem statements.

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