

智慧財產法院 函



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速別：

密等及解密條件或保密期限：

附件：

主旨：本院審理107年度民著抗字第1號侵害著作權有關財產權爭議等事件，認本件所涉與網路及智慧財產權有關之國際（裁判）管轄權之法律問題具有原則上重要性，為使裁判論理周延，前請貴單位廣為公告周知，並歡迎貴單位或貴單位所屬人員於107年7月15日前表示法庭之友意見，現因關心者眾，茲將期限延長至107年8月31日前，敬請貴單位廣為公告周知並惠賜寶貴意見。

說明：

- 一、本件法庭之友公告及意見說明書（含中、英文版）已刊登於本院外網，另本件當事人及其他個人、團體等所提供之法律意見，亦已刊登於本院外網，敬請查閱。
- 二、請貴單位或貴單位所屬人員惠賜意見，並將意見傳送至本院松股ipc_amicus@judicial.gov.tw。

正本：國際私法研究會、中華民國律師公會全國聯合會、台北律師公會

副本：

院長 陳國成
庭長 李維心 決行

智慧財產法院徵求法庭之友意見書

107 年度民著抗字第1 號

本院審理107 年度民著抗字第1 號侵害著作權有關財產權爭議事件，認該件所涉與網路有關之國際（裁判）管轄權之法律問題具有原則上重要性，為求裁判論理周延，有廣徵法庭之友意見之必要，爰提出本說明書。

壹、問題說明

- 一、本院自民國（下同）97年7 月1 日成立以來，為臺灣唯一審理智慧財產權第二審民事訴訟的高等法院。由於智慧財產權已為國際貿易的核心，故涉外民事事件在本院受理之案件中一直佔有極高的比例，且因部分民事訴訟類型之請求金額不高，無法上訴至第三審，特別是有關侵害著作權之民事事件，則本院之第二審即為該類型事件之終審法院。此外，網際網路早已成為日常生活不可或缺之社會領域，網路平台亦已成為市場交易的主流，則傳統以有體財產權及領土地域為基礎所為之內國管轄權或國際（裁判）管轄權之判斷原則，是否須因應無體財產權之特性而有所改變，或是否亦適用於網路上所產生之涉外民事事件，為此次本院認應廣徵法庭之友意見的主要原因。
- 二、關於管轄權之認定，最高法院著有多則判例及判解函釋（最高法院所選擇之判解函釋，雖非判例，但係經庭長會議挑選有參考價值之裁判後，於司法院法學資料檢索系統上公開，並於每一則裁判字號的右上角以紅字標明為「判解函釋」）對內國管轄權之影響甚鉅，且因類推適用而影響國際（裁判）管轄權之判斷，其中與本次法律問題較有關係者，有以下3 則：

1.97年度台抗字第185 號（判解函釋）：

(1)判解意旨：

外國人關於由侵權行為而生之債涉訟者之國際管轄權，我國涉外民事法律適用法並未規定，即應類推適用民事訴訟法第1 條第1 項、第15條第1 項、第22條規定，認被告住所地、侵權行為地之法院，俱有管轄權。

(2)本則係經最高法院選取認涉外民事事件之管轄係採類推適用內國民事訴訟法相關管轄規定之判解函釋。而以「國際管轄權」或「國際裁判管轄權」為檢索語詞，可以發現最高法院關於涉外民事事件管轄權之認定上是併用「國際管轄權」及「國際裁判管轄權」；且除最高法院104 年度台抗字第589 號民事裁定意旨認：「法院於認定有無國際民事裁判管轄權時，除應斟酌個案原因事實及訴訟標的之法律關係外，尚應就該個案所涉及國際民事訴訟利益與關連性等為綜合考量，並參酌內國民事訴訟管轄規定及國際民事裁判管轄規則之法理，基於當事人間之實質公平、程序之迅速經濟等概念，為判斷之依據。」，即採所謂「利益衡量」說外，於涉外民事事件關於管轄權之認定上，最高法院多採「類推適用」內國民事訴訟法關於管轄之規定。

2.56年台抗字第369 號判例：

(1)判例意旨：

因侵權行為涉訟者，得由行為地之法院管轄，為民事訴訟法第15條第1 項所明定。所謂行為地，凡為一部實行行為或其一部行為結果發生之地皆屬之。

(2)涉外民事事件多為侵權事件，最高法院依據上開「類推適用」的結果，均會適用臺灣民事訴訟法第15條第1 項之規定。

而所謂「行為地」，就字義觀之，應係指實行侵權行為之地，或可包括一部實行侵權行為之地，然本則判例為何要將「行為地」解釋為包括「一部行為結果發生之地」？是否係受刑法第4條規定：「犯罪之行為或結果，有一在中華民國境內者，為在中華民國領域內犯罪。」之影響？其理論基礎何在？

3. 最高法院104年度台抗字第1004號（判解函釋）：

(1) 判解意旨：

按關於涉外事件之國際管轄權誰屬，涉外民事法律適用法固未明文規定，惟受訴法院尚非不得就具體情事，類推適用國內法之相關規定，以定其訴訟之管轄。……。故在我國法院提起涉外民事訴訟，請求確認被告本於侵權行為對於原告請求排除侵害之權利不存在者，應類推適用我國民事訴訟法第1條、第2條、第15條第1項及第21條規定，認被告住所地或法人主事務所、主營業所所在地及侵權行為地（包括實施行為地及結果發生地）之法院，俱有管轄權。

(2) 本則係晚近最高法院選取認涉外民事事件之管轄係採類推適用內國民事訴訟法有關管轄之規定，以及就涉外民事侵權事件，係類推適用臺灣民事訴訟法第15條第1項規定之判解函釋。最高法院於此則判解函釋再次重申97年度台抗字第185號之意旨，認關於涉外民事事件管轄權之認定上，係採「類推適用」說，且亦重申56年台抗字第369號判例意旨，認侵權行為之實施行為地及結果發生地法院均有涉外民事侵權事件之管轄權。

貳、法律問題：

基於以上說明，本件擬廣徵法庭之友之法律問題如下：

1. 最高法院於定涉外民事事件之管轄上，併用「國際管轄權」及「國際裁判管轄權」，其內涵有無不同？又與網路及智慧財產權有關之涉外民事事件，究應採取何種原則定管轄？
2. 適用56年判例之結果，是否會使智慧財產權所有人之國籍或住居所所在地之法院均可能因係結果發生地而取得管轄權？又與網路或智慧財產權有關之涉外民事事件，被控侵權物之收貨地所在地法院，是否因此而取得管轄權？
3. 與網路及智慧財產權有關之涉外民事事件，往往涉及多數法領域之法院均有管轄權，則法庭地之國民感情、市場交易秩序，以及在國際間智慧財產訴訟司法競爭之情形下，作為臺灣唯一審理智慧財產權第二審民事訴訟的高等法院應如何就與網路及智慧財產權有關之涉外民事事件定國際（裁判）管轄權？

Taiwan Intellectual Property Court

Instructions for Amicus Briefs of the Court

In adjudicating 2018 Min-Zhu-Kang-Zi No. 1, of the Court on the dispute involving infringement of related property rights of copyright, the Court considers the issue of jurisdiction in international matters involving the internet and intellectual property rights of principle importance. To provide a forum for full deliberation, the Court considers necessary to invite amicus briefs.

Introduction

1. Since its establishment on July 1, 2008, the Court has been the only court of second instance over matters of civil dispute based on intellectual property rights. As intellectual property rights have become an essential part of international trade, civil matters involving foreign elements account for a high proportion of the cases tried by the Court. Moreover, since small claims matters, especially the matters relating to copyright infringement, cannot be appealed to the Supreme Court, the Court, as the court of second instance, would effectively be the court of final adjudication for many civil disputes. In addition, the internet has long become an indispensable societal sector of our daily life, and the internet has become mainstream platforms for market transactions. This raises the question of whether traditional principles for determining the issue of jurisdiction in respect of domestic cases or of international cases (subject matter jurisdiction) based on tangible property rights and territorial domain, should be changed in response to the unique characteristics of intangible property rights or whether such principles remain applicable to civil litigation involving foreign elements that arise from internet transactions. This is the main reason why this Court is seeking amicus curiae briefs for this case.
2. With regard to the determination of jurisdiction, the Supreme Court has handed down multiple judgment precedents and interpretations, including "ruling interpretation" which are selected by the meeting of the presiding justices of the Supreme Court as those of reference value and published on the Law and Regulations Retrieving System of the Judicial Yuan, with a red color remark "Judgment/Ruling Interpretation" on the top right corner of their reference number. Those precedents and ruling interpretations have a

significant bearing on the issue of domestic jurisdiction, with *mutatis mutandis* impact on international (subject matter) jurisdiction. The following three cases below are found to be most pertinent to the legal issues of this *amicus curiae*.

2.1 2008 Tai-Kang-Zi No. 185 (Ruling Interpretation)

2.1.1 Holding of the Ruling:

Since the issue of international jurisdiction pertaining to foreigners whose debt arises from tortious acts is not addressed in the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements, Paragraph 1 of Article 1, Paragraph 1 of Article 15, and Article 22 of the Code of Civil Procedure should apply *mutatis mutandis*, and the court for the place of the defendant's domicile or the place where the tortious act took place shall have jurisdiction.

2.1.2 Questions of the Ruling:

When using the search term “international jurisdiction” (國際管轄權) and “international subject matter jurisdiction” (國際裁判管轄權) on the Law and Regulations Retrieving System of the Judicial Yuan, it was found the Supreme Court adopted both terms in the determination of jurisdiction in international matters. In addition to 2015 Tai-Kang-Zi No. 589 of the Supreme Court applying the Doctrine of Interest Balances, most civil matters related to foreign elements of the Supreme Court applied the Doctrine of *Mutatis Mutandis*, introducing the domestic rule of civil litigation to decide the jurisdiction.

2.2. 1967 Tai-Kang-Zi No. 369 (Supreme Court Precedent):

2.2.1 Content of the Precedent

In matters relating to torts, an action may be initiated in the court of the place where the tort act occurred. The above is explicitly stated in Paragraph 1 of Article 15 of the Code of Civil Procedure. The places where the act occurred include locations where part of the act of perpetration was performed or part of the results of the act took place.

2.2.2 Questions of the Precedent:

Most civil matters relating to foreign elements involve tort acts. According to the aforementioned, the Supreme Court in the past mainly adopted the Doctrine of Mutatis Mutandis to determine jurisdiction in civil matters involving foreign elements. However, the "place where the act occurred" literally refers to the location where the tort act took place, and it may include certain locations where part of the act of perpetration took place. Therefore, why did the 1967 Precedent interpret the "place where the act occurred" as containing "place where the part of the results of the act took place"? Is it affected by Article 4 of the Criminal Code, which states: "Where either the conduct or the result of an offense took place within the territory of the Republic of China, the offense shall be considered as committed within the territory of the Republic of China"? What is the basis of its reasoning?

2.3 2015 Tai-Kang-Zi No. 1004 (Ruling Interpretation)

2.3.1 Holding of the Ruling

The issue of international jurisdiction in a case involving foreign elements is not expressly addressed in the conflict of laws rules; nevertheless, it does not mean the court before which the litigation is pending may not, based on the facts of the case, apply the relevant domestic laws mutatis mutandis, in determining the issue of jurisdiction..... In civil litigation involving foreign elements in a domestic court, where the plaintiff requests to confirm the preclusion of the defendant's claiming right derived from infringement in this case, Article 1, Article 2, and Paragraph 1 of Article 15, and Article 21 of the Code of Civil Procedure of the R.O.C. shall be applied mutatis mutandis to the case and the court for the place of the defendant's domicile or the main office or main place of business of a legal person and the place where the tort act took place (including the place where the act was perpetrated and where the results occurred) shall have jurisdiction.

2.3.2 Questions of the Ruling:

This ruling was the most recent case selected by the Supreme Court as "the ruling interpretation" to illustrate applying the Doctrine of Mutatis Mutandis in deciding the jurisdiction of civil matters related to foreign elements, and thereof applying Article 15 of the Code of Civil Procedure of the R.O.C.

Legal issues

Based on the above description, the Court considers it necessary to invite amicus briefs on the following issues:

1. The Supreme Court refers to both "international jurisdiction" and "international subject matter jurisdiction" in civil matters involving foreign elements. Is there any difference between the two terms? Also, which principle the Court should adopt to determine jurisdiction for the civil matters involving foreign elements related to the internet and intellectual property rights?
2. In applying 1967 precedent, will the nationality or domicile of the intellectual property right owner can be decided as the jurisdiction because of "place where the part of the results of the act took place"? Also, for the civil matters involving foreign elements related to the internet and intellectual property rights, can receiving place of the accused product be decided as the jurisdiction?
3. Civil cases involving foreign elements related to the Internet and intellectual property rights could often be dealt with by multiple jurisdictions in different countries. With competing interests between the sentiments of citizens, domestic market order, and international judicial competitiveness of the intellectual property litigations, as the only higher court that adjudicates second instance of civil litigation on intellectual property rights in Taiwan, what is the best rule for the Taiwan Intellectual Property Court to determine jurisdiction involving foreign elements related to the Internet and intellectual property rights?