Part 1: General Provisions

Art. 1 Scope
(1) These principles are intended to propose set of principles on jurisdiction, applicable law and recognition and enforcement of foreign judgments in transnational intellectual property disputes.
(2) “Transnational intellectual property dispute” means a dispute in civil or commercial matters that:
   (a) raises a claim or defense under the intellectual property rights of a country or region other than the forum country; or
   (b) raises a claim arising out of activities that implicate intellectual property rights and occur, at least in part, outside the forum country.
(3) The term “Intellectual property dispute,” as used in these principles, includes disputes about existence, validity, infringement of such rights and contract concerned with those rights.

Art. 2 Definitions
(1) The term “Country,” as used in these principles, includes a “Region” and “State” that has an independent legislature and judiciary, even if it is not recognized as a state in terms of international law.
(2) An “Intellectual property right” means any exclusive right that is given to property which is produced by intellectual activities of mankind such as patent right, utility model right, right to grow new varieties of plants, design right, copyright and trademark right.
(3) A “Protecting country” means the country for which protection is sought. For an intellectual property right which requires registration etc. for validity (hereinafter called “registered intellectual property right”), it is the country where the right has been registered or is deemed to have been registered under the terms of international Convention which that country signed and other domestic laws. For other rights, it is the country for which protection is sought.
(4) A “Country of registration” means the country where a necessary registration or bailment for the existence of the intellectual property right is made.
(5) A “Standard form agreement” means a contract which is prepared by one party for repeated use and proposed to the other party without sufficient opportunity to negotiate.
(6) An “Exploitation etc.” includes a use of trademark and work, other than an exploitation of patent
right, utility model right and design right.

Art. 3 Choice of law and jurisdiction
(1) The forum country having jurisdiction under these principles may not apply the forum country's substantive law against the choice of law rules in these principles.
(2) A court of the forum country having jurisdiction under these principles shall not dismiss or suspend proceedings merely because the dispute is caused by questions of foreign law.

Part 2: Jurisdiction
Chapter 1: Basic jurisdiction

Art. 4 Principle
In disputes concerned with an intellectual property right which requires registration, the courts of the country where the intellectual property right is registered or shall be registered shall have jurisdiction.

Art. 5 Exclusive jurisdiction
In disputes concerned with a judgment on the registration or revocation of an intellectual property right and on the validity or invalidity of it, the courts of the country provided in Art. 4 shall have exclusive jurisdiction.

Art. 6 Defendant's Residence
(1) The courts of the country where a defendant is habitually resident also shall have jurisdiction in disputes concerned with an intellectual property right except proceedings provided in Art. 5.
(2) If a defendant is a judicial person, the courts of the country in which the defendant has principal place of business shall have jurisdiction other than the courts of the country in which the defendant registered the head office address.

Art. 7 Matters relating to a contract
Other than provided up to Art. 6, the courts of the country where the obligation of the intellectual property right is in question is or shall be performed also have jurisdiction in disputes concerned with obligations resulting from contracts for a license grant or transfer of an intellectual property right, etc.

Art. 8 Infringement
(1) Other than provided from Arts. 4 to 6, in disputes concerned with infringement of an intellectual property right which requires registration, the courts of the country where that intellectual property right has been registered or is deemed to have been registered also shall have jurisdiction.
(2) Other than provided from Arts. 4 to 6, in disputes concerned with infringement of an intellectual property right which requires no registration, the courts of the country where that intellectual property right is protected also shall have jurisdiction.
Art. 9 Agreements on choice of court
(1) Except matters provided in Art. 5, in dispute concerned with an intellectual property right, parties can agree on choice of court. That agreement must be documented in writing.
(2) [If the choices provided in paragraph (1) are made in standard form agreement, it is required that the opponent party of draftsman may understand contents of the agreement reasonably at the time of conclusion of the contract and may refer to that agreement henceforth. Such an agreement is valid in so far as it conforms to form of transaction, presence, asset, and knowledge of the opponent party.]

Chapter 2: Jurisdiction in complex cases

Art. 10 Multiple defendants
If multiple defendants are concerned with infringement of the same intellectual property right, they may be sued in partnership in the courts of the protecting country, the country in which the defendant committing the infringement directly is habitually resident, or the country in which main infringer is habitually resident.

Art. 11 Consolidation of territorial claims
If the intellectual property rights owned by the same holder in several countries or regions are simultaneously infringed through ubiquitous media such as the Internet, the plaintiff may bring an action for infringements in other countries jointly in the court of the country to which the intellectual property right mainly infringed belongs.

Art. 12 Coordination of proceedings
(1) Double suits
Alternative: (a) Like ordinary double suits, the former suit precedes later one.
Alternative: (b) In disputes concerned with the “scope” of an intellectual property right, the country which grants that intellectual property right has preferential jurisdiction regardless of time factor.
(2) Invalidity and infringement
When an action has been brought for registration, invalidity and/or revocation of an intellectual property right, courts shall stop any proceedings which presuppose these issues until the conclusion of proceeding in the country which grants that intellectual property right.

Part 3: Applicable law
Chapter 1: Principles

Art. 13 Lex protectionis
(1) The law of the protecting country shall apply to matters concerning the right as such (existence, scope and duration of protection, validity and extinguishment of an intellectual property right, etc.) unless otherwise provided in this principle.
(2) In paragraph (1), for an intellectual property right arising out of registration, the protecting country means in principle the country where the intellectual property right is or shall be registered (country of registration) or is deemed to have been registered under the terms of an international Convention or domestic law, and for others, the country for which the effect of the intellectual property right is sought.

Art. 14 Choice of law by parties
(1) Parties may at any time agree to choose and change the applicable law except matters provided in Art. 13 (1).
(2) The agreement according to paragraph (1) may not set up against a third-party if it influences that person.
(3) Without prejudice to paragraph (4), the validity of the consent as to the choice of the applicable law shall be determined by the law which is appointed as the applicable law.
(4) [If the agreement according to paragraph (1) is made in standard form agreement, it is required that the opponent party of draftsman may understand contents of the agreement reasonably at that time when the contract was made and he may refer to that agreement henceforth, and that agreement is valid in so far as it conforms to form of transaction, presence, asset, and knowledge of the opponent party.]

Art. 15 Application of lex fori
In these principles, the law applicable to procedural matters is the law of the forum

Chapter 2: Infringement of intellectual property rights

Art. 16 Infringement and remedies
(1) The law of protecting country shall apply to the infringement and remedies of the intellectual property right.
(2) In paragraph (1), the protecting country means the country for which remedies against the infringement is sought.
(3) These provisions of this Article shall also apply to the existence and effect of the claims based on unjust enrichment and negotiorum gestio on the intellectual property right.
(4) The law applicable to non-contractual obligations arising out of an act of unfair competition is the law of the country where the direct and substantial loss occurs or may occur by that act.

Art. 17 Qualification on findings for infringement
(1) If a court applies the law of the protecting country to find for infringement, the court may find for infringement when a direct infringement is acted in the protecting country unless provided in Art. 18.
(2) For activities which instigate or assist direct infringing activity identified by a claim, a court applying the law of the protecting country will find for infringement in so far as that activity is turned toward the protecting country and causes immediate and substantial damage in that country, even if it was committed, at least in part, outside the protecting country.
(3) Notwithstanding paragraphs (1) and (2), a court may find for infringement exceptionally when the court substantially finds it to correspond to former two paragraphs from the concrete context of the
Art. 18 Exceptions for applicable law of infringement of intellectual property rights in indefinite and multiple countries by means of the Internet or other similar methods

(1) If the infringement occurs or may occur in indefinite and multiple countries, a court will apply the law of the country with which the infringement is most closely connected as a whole.

(2) In determining which country is most closely connected with, a court must take account of:

(a) the infringer's habitual residence or its principal place of business. However, where the activities giving rise to the infringement occur in the course of operation of a subsidiary, a branch or other establishment of a legal entity, that place of business shall take the place of habitual residence or principal place of business;
(b) the place where the main result of the infringement occurred; and
(c) the principal place of the main interest of the right holder.

(3) If it is not possible to determine the applicable law on the basis of paragraph (2), the court shall apply the law of the country where the infringer has its habitual residence or its principal place of business as defined in paragraph (2) (a).

(4) Notwithstanding the law applicable pursuant to paragraphs (2) and (3), any party may prove that the other country is more closely connected with the infringement. In such case, a court will take that into account in qualifying the remedy.

Chapter 3: Contracts on an intellectual property

Art. 19 Choice of law by parties on transfer and admission of exploitation etc. of an intellectual property right

(1) The law applicable to the contract on transfer and license of intellectual property rights is the law of the country which parties chose, at least in part, expressly or impliedly at the time of conclusion of the contract or at a later date.

(2) The applicable law provided in paragraph (1) does not apply to existence, validity, scope and duration of protection, transferability and forms of transfer or license of an intellectual property right. These matters will be governed by the law of the protecting country provided in Art. 13.

(3) Without prejudice to paragraph (4), the validity of the consent as to the applicable law provided in paragraph (1) shall be determined by the law which is appointed.

(4) [If the choices provided in paragraph (1) are made in standard form agreement, it is required that the opponent party of draftsman may understand contents of the agreement reasonably at the time of conclusion of the contract and may refer to that agreement henceforth. Such an agreement is valid in so far as it conforms to form of transaction, presence, asset, and knowledge of the opponent party.]

Art. 20 Applicable law in the absence of choice

(1) In absence of a choice of law in accordance with Art. 19, the law of the country with which the contract is most closely connected at the time of conclusion of the contract shall apply to matters relating to the existence and effect of the contract provided in Art. 19.
(2) In contracts relating to intellectual property rights, it is presumed that the law of the country where the transferor or licensor has its habitual residence is the law of the country with which the contract is most closely connected considering him as a characteristic performer. If the transferor or licensor is a juridical person and has its places of work in several countries having different laws, it is presumed that the law of the country where he has its principal place of work is the law of the country with which the contract is most closely connected.

(3) A court will apply the other law when it finds that law has more close connection considering:

(a) the obligations for use of intellectual property rights on which the parties expressly or impliedly take;
(b) the relationship between the place of use of the intellectual property right and the party’s habitual residence or place of business;
(c) the nature of whether the license is appropriate.

Art. 21 Application of mandatory rules

A court shall give effect to the mandatory rules of any country with which the situation has a close connection in application of these principles if, under the law, those rules must be applied whatever the law applicable to contract, considering the nature, purpose and result of application of those rules.

Chapter 4: Initial ownership

Art. 22 Initial ownership

(1) Initial ownership is governed by the law of the protecting country. But where the subject matter arises out of a contractual or other preexisting relationship, initial ownership is decided by the law that governs the relationship.

(2) Notwithstanding the law applicable pursuant to paragraph (1), authorship of a copyrighted work is governed by:

(a) for a copyrighted work, the law where that work is originally published;
(b) the law of the country where the creator is habitually resident at the time of creation if the country provided in (a) is nothing or not clear;
(c) in (b), for copyrighted work of multiple creators, the law of the country where the creator appointed by the contract between those creators is habitually resident, or the law of countries where multiple creators are habitually resident when there is no contract; or
(d) notwithstanding the law applicable pursuant to (a) and (c), the law which governs the contractual or other preexisting relationships if the subject matter arises out of such relationships.

Chapter 5: Security interests and compulsory licenses

Art. 23 Law applicable to security interests in intellectual property rights

The law applicable to security interests in intellectual property rights is the law of the protecting country of the intellectual property right. But the law does not affect the obligation to provide security and the obligation to be secured.
Art. 24 Compulsory licenses
(1) The law applicable to transfers by operation of law is the law of the protecting country of the intellectual property right which is intended for the transfer.
(2) The law applicable to compulsory licenses is the law of the protecting country of the intellectual property.

Chapter 6: Additional/Supplementary provisions on the applicable law

Art. 25 Exclusion of renvoi
The law of any country declared applicable by these principles, does not include its choice of law rules.

Art. 26 Proof of foreign law
(1) A court may order the party to prove the contents of the foreign law declared applicable by these principles. But this does not mean that the court is under no obligation to inquire and apply the contents of that law on its own motion, unless the parties are required to prove the contents of foreign law under the law of the forum.
(2) Notwithstanding paragraph (1), when the law of the forum lays burden of proof to the party, the court shall do so.
(3) If it is not possible to prove the contents of foreign law, the court in principle seeks and applies an approximation of that foreign law.

Art. 27 Public policy (ordre public)
The application of particular rules of foreign law is excluded if such application leads to a result in the forum country that is manifestly contrary to public policy in that country.

Art. 28 Recognition of foreign judgments
(1) A foreign judgment shall not be recognized:
1. if the state of the rendering court has no jurisdiction according to these principles;
2. if the defendant was not served with the summons or the orders which instituted the proceedings (except for the services by publication of notice or any other equivalent means) in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant appeared in the rendering court’s proceedings;
3. if its recognition is contrary to the public policy in the state in which recognition is sought;
4. if the rendering court chose a law in a manner which is inconsistent with these principles and entails different results; or
5. if reciprocity is not assured.
(2) Without prejudice to paragraph (1) 4, a foreign judgment may not be reviewed in recognition procedure as to its substance.
(3) A court may recognize or enforce only a severable part of the foreign judgment.
Art. 29 Punitive damages, foreign judgment which is irreconcilable with judgments of the rendering state
(1) A foreign judgment awarding punitive damages which surpass compensatory damages shall not be recognized or enforced.
(2) A foreign judgment which is irreconcilable with an earlier judgment given for the same cause of action in the recognizing state shall not be recognized or enforced.

Art. 30 Stay of the proceedings
A court of the recognizing state may stay the proceedings, if an ordinary appeal against the judgment has been lodged or the provisional order may be reversed in a procedure on the merit in the rendering state.