Summary Report

by Ralph NACK, Reporter General
Guillaume HENRY and Johanna FLYTHSTRÖM, Deputy Reporters General
Rafael ATAB, Klaudia BLACH-MORYSINSKA, Mamta RANI JHA, Yanfeng XIONG
Assistants to the Reporter General

2026 – Study Question

Online infringement and territoriality consideration

Introduction

This Study Question relates to the application of copyright territoriality in the digital era and aims to examine the criteria for determining competent jurisdiction and applicable law in the case of online copyright infringement, with a particular focus on geoblocking.

In cases of online infringement of copyrighted works, the fundamental difficulty lies in the fact that infringing acts are potentially committed in all countries where the infringed works are made available, and the author's loss may be worldwide. In these circumstances, the essential questions for the author are to determine (i) which court(s) have jurisdiction to order the cessation of the infringement and award compensation, and (ii) which law(s) will be applicable to the infringing acts. The lack of harmonisation of the rules concerning jurisdiction and conflict of laws makes the situation extremely complex for authors.

Furthermore, additional difficulty arises from the territorial nature of intellectual property rights. The principle of territoriality is often considered to have a compartmentalizing effect, as only a national court can rule on the validity of a national IPR and, to a lesser extent, on the qualification of acts of infringement.

Nevertheless, the principle of territoriality continues to have a significant influence on copyright and can lead to the fragmentation of the competent courts. If each jurisdiction is only competent for acts of infringement committed on its own territory, no single jurisdiction can, in case of international copyright infringement, hear the entire infringement case. This fragmentation is detrimental to authors and copyright holders.

This Study Question thus seeks to propose harmonized International Private Law Provisions in matters of online infringement, more precisely regarding both the competent jurisdiction and the applicable law in cross-border disputes. It also aims to propose a harmonized interpretation/construction of Article 5(2) of the Berne Convention on the applicable law. This Study Question also focuses on geoblocking as a potential regulatory and technical tool to reconcile the territorial nature of copyright protection with the inherently transnational character of the Internet.

The following definitions have been used in connection with this Study Question:

The term *"International Private Law Provisions"* or National Law means national/regional provisions, as well as treaties (e.g. Berne Convention), that are applicable, in a specific jurisdiction/country, in order to determine the competent jurisdiction and the applicable law.

The term *"Domicile"* means:

- for a natural person, the place of his/her/it habitual residence/permanent home;
- for a legal person, the place where it has its statutory seat, central administration, or principale place of business.

The term *"Nationality"* means the citizenship of a natural person and the place of registration/statutory seat for a legal person.

The term *"Place of Infringement"* or place of the events which give rise to and are the origin of the copyright infringement means:

- the place where the initial/principal/direct/main acts that caused the copyright infringement occurred (e.g. where the infringing content was first uploaded or where an AI system/model is trained); and
- the place where any subsequent acts took place (e.g. where the infringing content is stored on servers, etc.).

The Place of Infringement is focused on the infringer.

The term *"Place of Damage"* means the place where the damage occurred, i.e. the place where the infringing act produced its effects, e.g. places of communication of works, meaning communication to users in the targeted countries or communication in countries where the infringing works are accessible.

The Place of Damage is more focused on the public, on users.

The term *"Place of Prejudice"* means the place where the author (or copyright holder) suffers the prejudice. The prejudice is the consequence of the copyright infringement,

i.e. losses and/or missed profits for the author. The prejudice is in principle suffered at his/her/its Domicile.

The Place of Prejudice is focused on the copyright author/holder.

The term *"Law of the Forum"* means the law of the competent jurisdiction.

The term *"the laws of the country where protection is sought"* means the expression used in article 5(2), second sentence of the Berne Convention.

The term *"Accessibility"* or Accessible Country means one of the two theories used to determine the Place of Damage, referring to whether the public in the relevant country or region can access the website or app (application software).

The term *"Targeting"* or *"Targeted Country"* means one of the two theories used to determine the Place of Damage, referring to whether the website or app is directed or targeted at the public in the relevant country or region.

The term *"Website Operator"* means a natural or legal person who creates, controls, and is responsible for the content and presentation of a website, including deciding what is published and how it is accessed by the public.

The term *"Website Hosting Provider"* means a service provider that supplies the infrastructure and technical resources required to run and display a third-party website on the internet, including server space and connectivity.

The term *"Domain Name Hosting Provider"* means a service provider that registers, manages, and maintains domain names, enabling users to assign a readable address to their website. It does not include domain name regulatory institutions, such as ICANN, JPNIC, etc.

The term *"Country of First Publication"* means the notion as used in the Berne Convention, i.e. the country of the initial disclosure of the work to the public, authorized by the author.

The Reporter General has received Reports from the following Groups and Independent Members in alphabetical order: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Chinese Taipei (Independent Member), Colombia, Croatia, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Italy, Japan, Malaysia, Mexico, Netherlands, Paraguay, Philippines, Poland, Portugal, Singapore, Spain, Sweden, Switzerland, Thailand, Turkey, the United States of America (US) and Vietnam.

36 Reports were received in total. The Reporter General Team thanks the Groups and Independent Members for their helpful and informative Reports. All Reports may be found in AIPPI's library at www.aippi.org.

The Reports provide a comprehensive overview of national and regional laws, practices, and policies relating to online copyright infringement and territoriality considerations, set out in three parts:

- Part I – Current law and practice
- Part II – Policy considerations and proposals for improvements of your Group's current law
- Part III – Proposals for harmonisation.

This Summary Report does not summarise Part I of the Reports received. Part I of any Report is the definitive source for an accurate description of the current state of the law in the jurisdiction in question.

This Summary Report has been prepared on the basis of a detailed review of all Reports (including Part I) but focuses on Parts II and III, given AIPPI's objective of proposing improvements to, and promoting the harmonisation of existing laws. As it is a summary, if any question arises as to the exact position of a particular Group in relation to Parts II or III, please refer to the relevant Report directly.

In this Summary Report:

- references to Reports of or responses by one or more "Groups" may include references to Independent Members;
- where percentages of responses are given, they are rounded to the nearest 5%; and
- in Part IV below, some conclusions have been drawn in order to provide guidance to the Study Committee for this Study Question.

I. Current law and practice

For the replies to Questions 1) – 10) set out in the Study Guidelines for this Study Question, reference is made to the full Reports. The Study Guidelines may be accessed in AIPPI's library at www.aippi.org

II. Policy considerations and proposals for improvements of your Group's current law

11) Could your Group's current law or practice relating to online copyright infringement be improved? If YES, please explain.

30 Groups (85%) indicate that their current legislation relating to online copyright infringement could be improved. The reasons cited are diverse but generally focus on (i) the lack of specific provisions adapted to the digital and cross-border environment, (ii) the need for greater legal certainty, and (iii) the challenges raised by emerging technologies, particularly artificial intelligence (AI).

Several Groups emphasize that the strict application of the territoriality principle generates fragmentation when applied to ubiquitous online infringement.

The German Group explains that "the consistent application of the territoriality principle leads to a fragmentation of enforcement in cases of ubiquitous online infringement. Right holders are often required to pursue parallel proceedings in multiple jurisdictions, which increases costs and complexity. (...) Overall, targeted legislative clarification and further harmonisation at EU level could enhance legal certainty, efficiency and proportionality in online copyright enforcement without abandoning the territorial structure of copyright law."

The Spanish Group focuses on institutional and cooperation improvements, noting that "the principle of territoriality limits the scope of Spanish judgments to the national territory. One proposed improvement would be to enhance judicial and administrative cooperation mechanisms beyond the EU framework. (...) it would be useful to develop broader bilateral or multilateral agreements to facilitate the recognition and enforcement of decisions in third countries where many of the infringing services are hosted or where public communications take place."

The Brazilian Group points out that "although the Brazilian Copyright Act (Lei de Direitos Autorais – LDA) provides the essential substantive concepts of infringing acts, such as reproduction and communication to the public, it does not establish specific procedural mechanisms tailored to the online environment."

The Austrian Group also calls for clarification, observing that "it would be desirable to clarify whether the mere accessibility of the website without any further connecting factor is sufficient for both the examination of international jurisdiction and the examination of material infringement, and would thus be equivalent. The CJEU is expected to clarify this in the case of C-788/24 – Anne Frank Fonds."

The Indonesian Group similarly observes that "although Law No. 28 of 2014 on Copyright and Law No. 19 of 2016 on Electronic Information and Transactions (ITE Law) provide a general regulatory basis, they do not yet fully accommodate issues arising from online copyright infringement, particularly in cases involving cross-border elements. (…) Establishing clear statutory rules on online copyright infringement, including enforcement procedures, would significantly strengthen copyright holders' ability to protect and enforce their rights."

The Dutch Group considers that, while the existing framework is broadly adequate, "clarification and harmonisation of the applicable conflict-of-laws rules would (…) constitute a material improvement to Dutch law and practice in this area. More broadly, harmonisation at the European level would be welcomed. Such harmonisation could be achieved through the establishment of a unitary copyright regime by way of regulation, which would carry the additional benefit of vesting final

jurisdiction over questions of interpretation in a single court, thereby promoting legal certainty and uniformity across the Member States."

1 Group (5%) considers that no improvement is necessary.

The Swiss Group states that "the current legal regime provides sufficient mechanisms to effectively address online copyright infringements."

4 Groups (10%) (Australia, Canada, Singapore, Sweden) adopt a nuanced position.

For instance, the Singapore Group states that it is "not suggesting any improvements to the law per se. However, more local case law interpreting the relevant statutes in this area of law would be useful to provide clarity and guidance. (...) It would be useful to have clearer judicial guidance on what factors the Singapore Court will consider in deciding whether to exercise jurisdiction over an online copyright infringement dispute."

12) Could your Group's current law or practice relating to the determination of competent courts in online copyright infringement be improved? If YES, please explain.

25 Groups (75%) consider that their current law or practice relating to the determination of competent courts in online copyright infringement could be IMPROVED.

The Finnish Group provides an argued analysis of fragmentation (called "mosaic approach"): "Fragmentation of jurisdiction is problematic. Where jurisdiction is not based on the defendant's domicile but on the place where the harmful event occurred, the copyright holder whose work is infringed globally online must potentially litigate in multiple jurisdictions, each of which can only address damage within its own territory.

This is costly, inefficient and often practically unworkable for individual authors and smaller rights holders. (…) A consolidated jurisdictional basis beyond the defendant's domicile would be desirable. Lack of copyright-specific private international law rules means that national court must rely on the general tort provisions. There are no copyright-specific jurisdiction rules addressing the unique challenges of online infringement, such as multi-territorial communication to the public, server location in a third country, or the role of geo-blocking. A sector-specific instrument could enhance legal certainty."

Several Groups specifically highlight the need to refine the test of mere accessibility and the need for specific rules in this domain.

The Argentinian Group considers that "Argentina has jurisdiction when the defendant is domiciled in Argentina, or when the site/service is objectively directed to Argentina and causes direct harm in Argentina. Mere accessibility should not suffice."

The Belgian Group observes that "the Accessibility criterion as a basis for jurisdiction may be overly broad and could unduly encourage forum shopping, particularly in cases where only an image of a copyright-protected work is accessible without actual access to the copyright-protected work itself (…). A more refined 'targeting' criterion could enhance predictability in such cases."

The Brazilian Group considers that "the online environment calls for more operational criteria to identify the 'center of gravity' of the infringement, such as the existence of substantial effects in Brazil, evidence of targeting the Brazilian market, and the capacity of defendants or intermediaries with a local presence to comply with judicial orders. (…) Such an approach should avoid both overly expansive jurisdiction based

solely on global accessibility and excessive fragmentation resulting from a rigid application of territoriality principles."

The Mexican Group notes that "Mexican rules on jurisdiction derive from general procedural law and do not specifically address online infringement. Improvements could include: Recognition of targeting as a relevant connecting factor; Clarification on the territorial scope of jurisdiction (domestic vs. cross-border harm); Development of criteria for handling multi-territorial infringement cases."

Several groups consider that specific provisions should be adopted to determine the competent court in online copyright infringement.

The Paraguayan Group similarly observes that "Paraguayan law relies on traditional jurisdictional criteria, particularly: Domicile of the defendant; and Place where the damage occurs. However, these criteria are insufficiently adapted to the digital environment, where infringing acts and their effects are inherently transnational."

The Philippine Group observes that "Philippine copyright law may be improved to contain specific provisions on how Philippine courts can effectively make and enforce judgments concerning online copyright infringement cases (e.g. cross-border enforcement mechanisms through reciprocal agreements with other countries)."

The Egyptian Group similarly observes that "Egyptian law does not contain a detailed jurisdictional framework specifically addressing international online copyright disputes. Greater clarity would be beneficial regarding the circumstances in which Egyptian courts may exercise jurisdiction in cases involving foreign website operators, foreign hosting infrastructure, or online acts occurring partly outside Egypt. Clarifying these issues would enhance legal certainty and predictability."

The Indonesian Group considers that "Indonesia does not yet have specific and detailed rules governing jurisdiction in cross-border digital infringement cases. This creates a degree of legal uncertainty, especially in situations where different elements of the infringement are spread across multiple jurisdictions (…). Addressing Foreign Entities: Clearer 'long-arm jurisdiction' rules are needed to effectively bring foreign-based platforms or infringers targeting the Indonesian market under the authority of Indonesian Commercial Courts."

The Dutch Group, while considering the existing rules adequate, would welcome more guidance on the territorial scope of the relief available depending on the type of jurisdictional basis: "our Group's current law and practice relating to the determination of competent courts is adequate, but we would appreciate more clarity from the ECJ on the territorial scope of the relief available depending on the type of jurisdictional basis. More specifically, we believe our system would benefit from more clarity on the possibility for cross-border injunctions (e.g., in which circumstances and on the basis of which competence rules does a national court have the authority to order a cross-border injunction; to what territories can this apply (e.g., only EU countries or also third-party countries) etc.)."

10 Groups (25%), e.g. France, Italy, Spain, Chinese Taipei (Independent Members), consider that the current law on competent courts is satisfactory and does not require amendment.

The French Group, considering the field of AI specifically, states that "as things stand, the French group considers that the current wording of the legislation is satisfactory and requires no amendment; it already contains the necessary tools for determining

the competent court in the event of a copyright infringement by an AI model on the internet, based on relevant criteria that can be adapted to the specific case."

The Italian Group similarly considers that "our legislation offers solutions that are, on the whole, reasonable, given the inherent and insurmountable difficulties posed by the borderless nature of the internet."

13) Could your Group's current law or practice relating to the determination of applicable law in online copyright infringement be improved? If YES, please explain.

25 Groups (70%) consider that their current law on the determination of applicable law in online copyright infringement could be IMPROVED.

The most frequently mentioned issues concern are:

(i) the operationalization of the rule of *lex loci protectionis* (Article 5(2) of the Berne Convention) in the digital environment

(ii) the lack of clear criteria for determining the place where protection is claimed, and

(iii) the absence of copyright-specific conflict-of-laws rules adapted to multi-territorial online activities

The Brazilian Group provides a representative analysis: "Although the Berne Convention establishes the fundamental rule of lex protectionis, the contemporary challenge lies in operationalizing 'where protection is claimed' in scenarios characterized by global accessibility, the use of VPNs, and multi-territorial targeting. A more stable interpretative guideline, anchored in substantial effects and/or evidence

of targeting, would enhance legal predictability and reduce enforcement costs, without undermining the territorial nature of copyright protection."

The Mexican Group similarly considers that "clarification would be beneficial regarding: The interpretation of 'the place where protection is sought'; The role of targeting in determining applicable law; The treatment of multi-territorial infringements involving several applicable laws. Furthermore, Mexican law lacks a specific conflict of laws rule for online copyright infringement. The general rules on non-contractual civil liability applicable to damages claims were not designed for the digital environment."

The Vietnamese Group observes that "although the Civil Code of Vietnam reflects the principle set out in Article 5(2) of the Berne Convention, namely the application of the law of the country where protection is sought, it does not provide detailed guidance on how to determine the applicable law in the context of online copyright infringement."

The Turkish Group adds: "Although Turkish courts conceptually rely on targeting to assess the applicable law in online copyright infringement, current practice lacks clear, consistent jurisprudence identifying which specific targeting criteria are legally decisive. As a result, it remains difficult to predict in advance whether elements such as language, currency, market focus or other indicators will be sufficient to establish when a website 'targets' Türkiye."

The Egyptian Group considers that "although Article 5(2) of the Berne Convention provides the basic rule for determining applicable law, Egyptian legislation does not contain detailed provisions addressing conflicts of law in multi-state online copyright

disputes. Further clarification could assist courts in assessing factors such as: location of uploading or hosting of infringing content; accessibility of the website in Egypt; targeting of the Egyptian public; and territorial scope of remedies."

Finally, the Dutch Group highlights uncertainty surrounding preliminary questions of authorship and ownership: "considerable uncertainty persists as to which law governs questions falling outside the scope of the infringement analysis, in particular preliminary questions relating to the subject of protection (i.e., the identity of the right holder)."

11 Groups (30%) consider that the current rules are satisfactory or do not require improvement. But some Groups emphasize the need for further harmonisation at the international or regional level rather than a domestic reform. For instance, the Italian Group considers that "our legislation is already highly harmonized, both in terms of the criteria for determining the applicable law and in terms of the substantive law applied. The improvements that are needed relate primarily to the completion of harmonisation and, looking ahead, to the unification of copyright protection at EU level."

14) Could you explain, in your jurisdiction, the reasons that justify or reject geoblocking as an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment?

27 Groups (75%) view geoblocking as an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment, while emphasizing its inherent limitations (in particular, circumvention through VPNs).

Among the Groups that endorse geoblocking, several emphasize its alignment with the territorial structure of copyright.

The Portuguese Group considers that "geoblocking is consistent with the principle of territoriality, insofar as it enables the creation of a digital equivalent of physical territorial borders, upon which the media, audiovisual and digital content industries fundamentally rely. It is, furthermore, the most widely recognized technical solution for imposing territorial limitations on online distribution."

The Belgian Group emphasizes that: "geoblocking may constitute a proportionate mechanism where it is directly linked to territorially structured exploitation models and the financing logic of copyright-intensive sectors. (…) Belgian courts, notably the Belgian Supreme Court, have expressly accepted access-blocking measures that prevent public access without removing content at source. Proportionality is ensured where measures are targeted, technically feasible, and adaptable."

The Japanese Group considers that "geoblocking by IP address is likely to be justified as an appropriate and reasonable measure for maintaining territoriality of copyright in the digital environment. This is because, while geoblocking by IP address has a problem of easy circumvention by VPN or proxy server, there has been no alternative measure established so far, that can manage access at a lower cost and more comprehensive manner than those of geo-blocking."

The Dutch Group adopts a similar view: "Dutch courts consider geoblocking an appropriate and proportionate measure because it is currently the most effective and realistic tool for maintaining territorial copyright online. Dutch courts accept that no technical measure is entirely watertight, and geo-blocking is sufficient where it

amounts to having done what is reasonably possible to block – or at least sufficiently hinder and discourage – access."

The Spanish Group considers that "geo-blocking is legally appropriate and proportionate for preserving the territorial nature of copyright in the digital environment, even though in practice it does not completely prevent circumvention."

The US Group observes that "geo-blocking measures can significantly reduce online infringement if the infringement consists of accessing content from a restricted territory. However, users can use VPNs and other means to circumvent geoblocking, thus reducing its effectiveness. Nevertheless, courts have viewed geoblocking measures as sufficient means of territorial limitations on access."

The Polish Group adopts a more nuanced approach: "Geo-blocking is a moderately effective tool for ensuring compliance with copyright within the territory of Poland. It helps to curb large-scale infringements and is relatively straightforward to implement. (...) It should be reserved for clear and substantial infringements, and not used in minor cases, especially where the infringement concerns only part of a work."

The Brazilian Group articulates conditional support: "Geo-blocking may be justified as a proportionate measure where it prevents overly broad remedies (such as global removal) and allows injunctive relief to be territorially calibrated to the jurisdiction in which protection is claimed, in line with the principle of territoriality underlying the Berne Convention. However, geo-blocking presents technical limitations, as it can be circumvented through the use of VPNs and similar tools, and it may also result in overblocking."

The Canadian Group considers that "currently, geo-blocking appears to be an appropriate measure in Canada to preserve the territoriality of copyright in the digital environment. (…) It is of note, however, that geo-blocking may have unintended consequences, such as improperly or unfairly limiting access to content that end users would have otherwise been able to access under exemptions to copyright infringement, such as fair dealing."

5 Groups (15%) indicate that geoblocking is neither expressly accepted nor rejected in their jurisdictions, often because no specific case law or statutory framework has yet developed.

3 Groups (10%) raise express concerns about geoblocking, in particular due to freedom of expression considerations or its perceived ineffectiveness.

The Chinese Taipei Independent Members recall that "it was debated in about 2013 for instituting geoblocking but it was not realized mainly due to concerns in freedom of speech."

The Indian Group, while supportive in principle, points to a key limitation: "the Delhi High Court in Swami Ramdev & Anr. v. Facebook, Inc. & Ors. expressly held that geoblocking alone was an inadequate remedy because users in India could circumvent it through the use of Virtual Private Networks (VPNs) and by accessing international versions of the relevant platforms."

15) Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question? If YES, please explain.

18 Groups (50%) provide additional policy proposals or considerations falling within the scope of this Study Question. The proposals cluster around several themes: AI training and copyright, intermediary liability, notice-and-takedown procedures, dynamic injunctions, and regional or international cooperation.

Several Groups highlight the urgency of addressing AI-related challenges:

The Croatian Group considers that "harmonized international rules are needed regarding the use of copyrighted works for AI training, as well as the liability for AI-generated content that infringes copyright, including clear rules on jurisdiction and applicable law for cross-border AI-related infringements."

Several Groups address intermediary liability and structured online piracy:

The Brazilian Group considers that "in addressing illicit ecosystems (structured piracy operations), it is advisable to adopt measures that target not only the infringing content itself but also the underlying infrastructure and economic incentives sustaining the unlawful activity. Accordingly, enforcement strategies should go beyond isolated takedowns and include measures capable of disrupting the broader operational structure of the infringement."

The Chinese Group proposes to "improve platform liability rules by refining the applicable conditions for 'necessary measures' and enhance available remedies. For example, rights holders currently lack substantive remedies against piracy websites that operate anonymously and maliciously circumvent legal supervision through geoblocking. (…) Strengthen international cooperation and improve the rules on cross-border judicial coordination, evidence preservation and data assistance from platforms in cross-border cases."

Several Groups raise concerns about geoblocking and complementary measures:

The Canadian Group notes that "statute and/or judicial decisions should clarify whether geo-blocking by a content provider is sufficient to avoid liability in cases where the geo-block is bypassed. Moreover, there should be clarification as to whether geo-blocking and similar measures would fall within the definition of TPMs in the Copyright Act and, if so, whether use of VPNs would be considered 'circumventing' under the Act."

The Indian Group also calls for a "recognition of automated content identification tools: Legislative or policy recognition of AI-based content identification technologies as part of the enforcement infrastructure would reduce the burden on courts and rights holders of filing individual infringement actions and would enable proactive, pre-infringement prevention at scale."

III. Proposals for harmonisation

16) Do you believe that there should be harmonisation of International Private Law Provisions and geo-blocking in the context of copyright online infringement?

26 Groups (80%) consider that harmonisation of International Private Law Provisions and geo-blocking in the context of copyright online infringement is desirable.

Most Groups emphasize that the cross-border nature of online infringement makes harmonisation a logical necessity in order to avoid forum shopping, fragmentation, and divergent enforcement outcomes.

6 Groups (20%) express reservations about harmonisation, considering that harmonisation may be premature in the absence of more substantive harmonisation

of copyright itself, or that the diversity of national legal traditions makes harmonisation impractical.

The Singapore Group expressly opposes harmonisation in this area: "The harmonisation of International Private Law Provisions and geo-blocking would likely not be practical. Different jurisdictions have differing economic and cultural considerations and would have different levels of comfort in applying other jurisdictions' law."

1. Competent court / Conflict-of-jurisdiction rules

The aim of this section is to determine the criteria that should be relevant to determine the competent court in the case of online copyright infringement.

1.1 Domicile-related connecting factors

17) Which criteria based on Domicile-related connecting factors should be relevant to determine the jurisdiction/competence of a national court to hear online international copyright infringement?

a) Claimant's Domicile, i.e. Domicile of the author/copyright holder (usually also Place of Prejudice)

26 Groups (75%) consider that the claimant's Domicile should NOT, as a matter of principle, constitute a standalone connecting factor for jurisdiction.

The Japanese Group explains that "if the hearing and examining in the trial were conducted at the courts of the claimant's Domicile, it would prejudice the equity between the parties and hinder the realization of fair and swift trial proceeding."

The Swiss Group adds that "general admittance of this criteria (purely claimant domicile) would be a significant departure from current private international law mechanisms. It would risk triggering a "race to the forum" / "forum shopping" reflex, which is not desirable."

The Belgian Group considers that "the claimant's Domicile should not be introduced as an autonomous ground of jurisdiction. This would risk transforming EU courts into universal copyright enforcement venues, enabling unrestricted forum shopping by rights holders who could elect any country of their Domicile."

9 Groups (25%) consider that the claimant's Domicile may be a relevant connecting factor, but generally only on a subsidiary basis or insofar as it coincides with the Place of Damage.

The French Group adopts a representative position: "The claimant's domicile should be admissible as an alternative criterion, but only on a subsidiary basis if neither the defendant's location nor the place of damage has sufficiently strong material links to the facts giving rise to the claim. This criterion should only be admissible as a last resort. The competent court should only be able to award damages for the territory within its jurisdiction, in accordance with the principle of territoriality of copyright, in order to avoid an excessive extension of jurisdiction and to maintain a predictable framework for redress." Where it is admitted, the *territorial scope* of competence is generally limited to acts within the national court's territory.

b) Defendant's Domicile, i.e. Domicile of the copyright infringer

24 Groups (90%) consider that the Defendant's Domicile should remain the primary connecting factor for determining the competence of a national court. There is also

broad consensus that, when jurisdiction is based on the Defendant's Domicile, the national court should have full territorial competence (i.e. for acts of infringement, damages and prejudices occurring worldwide).

The French Group considers that "the criterion of the defendant's domicile for determining the competent court should be the preferred one, and any derogation should be applied strictly to avoid legal uncertainty or abusive forum shopping. This serves both the objective of predictability in the rules of jurisdiction and the protection of the rights of the defense. Furthermore, the French group considers that the rules on jurisdiction must be interpreted in such a way as to designate the court best placed to hear the dispute, which generally corresponds to that of the defendant."

In the same vaine, the Egyptian Group explains that: "The defendant's domicile should remain the main jurisdictional anchor. This is consistent with fundamental principles of procedural fairness and reasonable expectation and is widely recognized in comparative systems. It ensures that the defendant can reasonably anticipate being sued in that forum, concentration of proceedings in a specific jurisdiction and procedural efficiency in evidence gathering and enforcement."

The Belgian Group explains that "the defendant's Domicile should remain the main ground of jurisdiction. It provides maximum legal certainty for all parties and enables consolidation of multi-defendant online copyright disputes before a single forum."

The Chinese Group supports the same position: "Based on the principle of general jurisdiction, the Defendant's Domicile is one of the most stable and predictable connecting factors in international civil litigation (…) The Website Operator typically exercises decisive control over the uploading, display, dissemination and commercial

exploitation of infringing content, therefore, its domicile has the closest connection to the organization, management and ongoing commission of the infringing acts."

The Japanese Group adopts the same position: "Regardless of the nature of the case, in principle, jurisdiction should be determined according to the defendant's Domicile. Even in the case where the defendant's Domicile was not the place of damaging act or infringing act but jurisdiction is recognized at the defendant's Domicile which was chosen by the defendant, this will not prejudice equity between the parties."

The Dutch Group emphasizes foreseeability for the defendant: "Connecting jurisdiction to the Domicile of the alleged infringer or the place of the infringing act (…), provides for foreseeability and legal certainty for the defendant. (…) Moreover, maintaining Domicile or the Place of Damage (…) as connecting factors is more likely to align the place of litigation with the place where the alleged infringer undertakes economic activity, which also has practical advantages for the claimant seeking to enforce a judgment."

Within the category of "defendants", Groups generally agree that the Website Operator (as the principal/direct/main infringer – 100%) and the Website Hosting Provider (65%) should be relevant connecting factors.

The German Group explains that: "The defendant's domicile is the most appropriate and predictable jurisdictional connecting factor, as it ensures legal certainty and maintains a fair balance between the parties' procedural interests. In online copyright infringement, the website operator typically:

- decides whether content is made available,

- controls hosting, architecture, and monetisation,
- can implement geo-blocking, takedowns, or licensing.

This aligns the operator's domicile with the "centre of gravity" of the infringement. Allowing jurisdiction at the operator's domicile:

- enables single-forum litigation against the main infringer,
- improves enforceability of injunctions and damages.

Finally, from the defendant's perspective, domicile-based jurisdiction:

- is foreseeable and stable,
- aligns with general principles of private international law,
- avoids quasi-universal jurisdiction based solely on accessibility."

Most Groups (70%), however, exclude the Domain Name Hosting Provider as a relevant factor, since it performs a purely technical service without exercising any control over the content disseminated through the domain name.

Where the competence of a national court is based on defendant's domicile, the most majority of groups consider that the national court should be competent for all acts of infringement damages and prejudice occurring worldwide (70%).

The Chinese Group justifies such scope: "A court at the defendant's domicile exercises General Jurisdiction. (…) Requiring rights holders to bring separate proceedings in every infringed jurisdiction would impose an undue burden on them."

The Italian Group adds that "the attribution of general jurisdiction to the court of the defendant reflects a long-standing and well-established rule, the underlying rationale for which – relating primarily to the protection of the party against whom legal proceedings are brought and to the natural proximity of the dispute to the court seized – remains valid to this day."

The French Group justifies as follows "the defendant's domicile constitutes the most predictable connecting factor for the parties, as the predictability of jurisdiction is an essential principle. By allowing a single court to hear the entire dispute, it promotes the proper administration of justice, avoiding conflicting decisions, excessive procedural costs and the excessive fragmentation of litigation."

On the contrary, the German Group considers that "a national court can only adjudicate infringements of the copyright that exists under its own national law, i.e. infringements occurring within the territory for which that law grants protection. A court deciding on foreign territorial infringements would, in substance, be ruling on the scope, content and violation of foreign copyrights, which contradicts the structural logic of territorial IP rights."

2 Groups (10%) consider that the defendant's Domicile alone is not an adequate basis for determining jurisdiction in online environments, in particular where the infringer is anonymous or operates through offshore intermediaries.

1.2 Nationality-related connecting factors

18) Which criteria based on Nationality-related connecting factors should be relevant to determine the jurisdiction/competence of a national court to hear online international copyright infringement?

28 Groups (80%) consider that Nationality-related connecting factors (whether of the claimant, the defendant, or any intermediary) should NOT be relevant to determine the jurisdiction of national courts to hear online copyright infringement.

Most Groups consider that Nationality is a personal status criterion with no structural relationship to the place where an online infringement occurs or has effects.

The German Group explains that "nationality based connecting factors are incompatible with the territorial nature of copyright protection. Also the Berne Convention does not attribute jurisdiction or applicable law to the nationality of the parties."

The Chinese Group adds that "1.Nationality has a tenuous nexus with the commission of the infringing act, the control of dissemination, the gathering of evidence, and the enforcement of judgments, and is therefore incapable of providing a stable and predictable basis for jurisdiction. 2.Nationality is primarily employed to determine substantive issues, such as eligibility for protection and national treatment; it is inappropriate to elevate it into a procedural criterion for establishing jurisdiction. 3.Relying on Nationality as a basis for jurisdiction is liable to exacerbate jurisdictional conflicts. If multiple States assert jurisdiction based on the respective nationalities of different parties, it will lead to jurisdictional overlap and undermine the parties' reasonable expectations as to the forum."

The Country of First Publication of the copyright-protected work is similarly considered irrelevant to determine jurisdiction (only 2 groups support this connecting factor), since it has no necessary relationship to the place where an infringing act occurs or where harm materializes.

7 Groups (20%) consider that Nationality-related connecting factors may have a residual or subsidiary role to play in determining jurisdiction, particularly where the claimant is a national of the forum country and where international cooperation mechanisms support such jurisdiction.

For instance, Japanese Group considers that "nationality of natural person is determined, regardless of his/her will, and irrespective of the place of Domicile or acts. Therefore, it is not reasonable to consider Nationality when determining jurisdiction. In contrast, Nationality of legal person is determined by the legal person itself, in many cases. For example, Nationality of legal person is determined by: (i) the place where the legal person conducts the principal business activities; or (ii) the place where the legal person determined by considering, at the time of establishment of corporation, the benefits of conducting business activities. Therefore, in the case of legal person, the Nationality can be taken into account when choosing jurisdiction."

1.3 Infringing acts-related connecting factors

19) Which criteria based on Infringing acts-related connecting factors should be relevant to determine the jurisdiction/competence of a national court to hear online international copyright infringement?

a) Place of Infringement

30 Groups (85%) consider that the Place of Infringement should be a relevant connecting factor for determining jurisdiction.

Within this category, most Groups consider that the place where the infringing content is uploaded on the Operator Website (28 Groups) is the most relevant connecting factor, often complemented by the place where the infringing content is

hosted/stored (19 Groups). The place where the Domain Name is hosted is generally rejected as a relevant factor (only 7 Groups support this factor).

The US Group considers that "the location where uploading occurred should matter if the alleged act(s) of infringement concern the uploading, e.g., the uploading involving the act of infringing reproduction."

The Chinese Group explains that "the place where infringing content is uploaded typically constitutes the primary, direct and principal place of commission of the infringing act, and has the closest factual connection to the occurrence of the infringement."

The Japanese Group justifies as follows: "Jurisdiction should be recognized in the courts of Place of Infringement. This is because, in many cases, some of key evidence may exist in the Place of Infringement (i.e. the place of harmful act). It will be easy for the claimant to produce evidence before the courts of Place of Infringement."

As to the territorial scope of competence when jurisdiction is based on the Place of Infringement, only 9 Groups consider that the court should be competent for all acts of infringement worldwide.

The majority of the Groups (20 Groups) consider that the scope of competent should be limited to acts of infringement, damages and prejudices occurring within the territory of the competent court, according to the principle of territoriality.

5 Groups (15%) consider that the Place of Infringement should not be a determinative criterion, or that it should be applied only with strong qualifications, for instance where the location of upload or hosting cannot be reliably identified.

For instance, the French Group considers that "the place of infringement would lead to the place where the website is hosted or stored being taken into account, which does not appear relevant due to its uncertain location".

b) Place of Damage

30 Groups (100%) consider that the Place of Damage should be a relevant connecting factor for jurisdiction.

However, the Groups are divided as to which theory should be used to determine the Place of Damage: the Accessibility theory or the Targeting theory.

23 Groups (75%) consider that the Targeting theory should be the primary criterion, with Accessibility serving only as a starting point or complementary indicator.

The Dutch Group explains that: "especially in an online context, we favour the targeting criterion over mere accessibility. Accessibility alone is too broad a basis for jurisdiction, as it would expose defendants to suits in every country where the internet is accessible, undermining legal certainty and foreseeability. Targeting, by contrast, focuses on whether the website or application is genuinely directed at the public in a specific country."

Where the Targeting theory is applied, the criteria most frequently cited as decisive are:

- the language of the website (20 Groups),
- the currency of payment (20 Groups),
- the existence of business facilities of the user in the country (13 Groups),

- promotional activities targeting the public in the country (19 Groups).

The German Group adds that "another potential criterion, particularly in view of technological developments and the advancement of AI could be technical linkages as a so-called targeting factor. Such technical linkages may include backend data connections, automated content personalization, algorithmic targeting or geo specific content delivery mechanisms. Due to the virtual context, visible evidence might well lose significance in the future and, instead, digital proof that is not immediately apparent or visible will become relevant."

The Japanese Group indicates that "when assessing Targeting, various factors should be weighted together from the perspective of potential use of copyrighted works by users in the country in question."

The Chinese Group adds that "Targeting" should not be construed as a purely subjective inquiry into intent. If the sole inquiry is whether the actor intentionally targeted the public of a particular jurisdiction, the analysis may fail to capture online infringement that, despite lacking explicit targeting, has resulted in substantial dissemination and market impact within that territory. Therefore, a more appropriate approach is to adopt "Targeting" as the overarching framework, substantiating it through objective market-connection factors, and focusing on the objective economic impact of the infringing act on the legitimate licensing market within the specific jurisdiction. Where the content provided by a foreign streaming platform constitutes a partial or substantial substitution for the rights holder's licensing market in the forum, (…), jurisdiction should be recognized in the forum court."

28 Groups (70%) consider that Accessibility should be applicable.

But it emerges from the Group reports that the mere accessibility of the work is generally accepted only as a threshold consideration, supplemented by Targeting.

The Belgian Group adopts a layered approach: "Accessibility, (…), as the primary criterion. Targeting, (…), as an additional criterion in some cases. (…) The Accessibility criterion should be the basis for jurisdiction based on the Place of Infringement. However, it may be overly broad and could unduly encourage forum shopping (…). A more refined 'targeting' criterion could enhance predictability in such cases."

As to the territorial scope of competence when jurisdiction is based on the Place of Damage, a clear majority of Groups (23 Groups – 70%) consider that the competence of the national court should be limited to acts of infringement, damages and prejudices occurring within its territory (i.e. mosaic approach).

For instance, the Belgian Group indicates that "if the jurisdiction is based on the Place of Damage (e.g. website is accessible there), it is advisable that those courts should have limited jurisdiction, i.e. only for the damage and prejudice in that country for both moral and economic rights."

c) Place of Prejudice

22 Groups (65%) consider that the Place of Prejudice should NOT constitute a standalone connecting factor for determining jurisdiction.

The Indonesian Group articulates the majority view: "While the place of prejudice may indicate where the right holder suffers economic loss, it does not on its own create a sufficiently close link between the dispute and the forum. Relying on it alone could allow courts to take jurisdiction even where the underlying activity has little real

connection to that territory, leading to overly broad claims of jurisdiction. The place of prejudice can still play a supporting role, especially where it aligns with other factors, such as the location of the damage or evidence that the activity was directed at the forum."

The French Group similarly considers that "this criterion does not guarantee that the court seized has a sufficiently close connection with the dispute, particularly regarding the evidence or the conduct giving rise to the damage."

12 Groups (35%) consider that the Place of Prejudice may be a relevant connecting factor.

For instance, the Turkish Group considers that "Place of prejudice should be a relevant connecting factor for jurisdiction because allowing the author or right holder to bring proceedings before the courts of their domicile ensures effective access to justice, procedural efficiency and the practical enforceability of rights in cross-border online infringement disputes."

But generally, Groups that support this factor consider that Place of Prejudice should be a relevance factor only insofar as it coincides with the Place of Damage (e.g. Indian Group considers that "the place of the prejudice should function only as a supporting or confirmatory factor").

2. Applicable law / Conflicts-of-laws rules

This section has two different and independent aims:

- The first is to determine, in general, the relevant and desirable criteria to determine the applicable law (Question 20).

- The second is to propose a harmonised interpretation of Article 5(2) of the Berne Convention (Questions 21 and 22).

2.1 Criteria to determine applicable law

20) Which criteria should be relevant for determining applicable law (or applicable laws) in online infringement cases?

28 Groups (80%) consider that the law of the country where protection is sought (lex loci protectionis), as enshrined in Article 5(2) of the Berne Convention, should remain the central criterion for determining the applicable law in online copyright infringement cases.

For instance, the Portuguese Group considers that "this rule ensures that the existence, scope and infringement of copyright are assessed under the law of the territory where protection is effectively claimed, which is consistent with the principle of territoriality underlying copyright protection."

Most Groups also support that this criterion should be operationalized through the Place of Infringement, the Place of Damage (interpreted under the Targeting theory), or a combination of these, with the aim to determine the law with the closest connection with the copyright infringement.

The Singapore Group considers that the question of whether an act amounts to copyright infringement is "best determined by the law of the place of infringement", since copyright is territorial in nature. The Indian Group indicates that "it recommends the following hierarchy of applicable law for online copyright infringement: First, apply the law of the country targeted by the infringing website or service. This follows the

principle of lex loci protectionis, operationalised through a targeting test that examines whether the infringing activity was directed at the public in that country. Second, if targeting cannot be clearly established or the infringement occurs across multiple jurisdictions, apply the law of the country where the principal infringing act occurred, such as the place where the content was uploaded or where the infringement originated. Third, in AI-related cases such as ANI v. OpenAI, the jurisdictional question is closely linked to where the training data was reproduced."

Several Groups express concerns about the fragmentation of applicable laws (mosaic approach) in the context of online infringement. To avoid such fragmentation, some Groups propose to apply one single law, i.e. the law of the country with which the infringement has the *closest connection*. Factors proposed to implement the closest connection approach are diverse: Place of Damage (Target countries), Place of Infringement (e.g. uploading of infringed works), Domiciles of parties and place of the economic harm.

The Chinese Group explains that "in foreign-related online copyright infringement cases, the "Ubiquitous Infringement" on the internet means there may be multiple countries being identified as the "place where protection is sought." To avoid the overlapping application of laws of multiple jurisdictions resulting from the borderless nature of the internet, it is recommended that a standard consisting of the "Most Closely Connected Law" supplemented by the "Retreat to Territoriality" exception be introduced. Under this approach, the law of the jurisdiction with the most significant relationship to the dispute would apply as the single applicable law in principle, with the location of the principal target market serving as the primary criteria and the

domicile of the parties, general place of infringement, and any contractual choice of law serving as supplementary factors."

The Swiss Group considers that "where the infringing act is directed to more than four jurisdictions, the purely territorial approach leads to excessive fragmentation. The cumulative application of multiple laws becomes impractical and undermines legal certainty: The applicable law should be determined on the basis of objective connecting factors reflecting the closest connection to the infringement. In particular, the following criteria should be considered: (a) Place of the infringing act, in particular the place where the content is uploaded or otherwise made available (place of input), as the primary connecting factor; (b) Domicile or place of business of the infringer or commercial exploiter, reflecting the economic centre of the activity; (c)Domicile of the copyright holder, as an indication of the place where the economic effects are primarily felt; (d) Existing legal relationships between the parties, where applicable."

The Finnish Group states that: "In multi-territorial online infringement proceedings, courts should ideally be able to apply a single – or at most a manageable number of laws – to the infringement as a whole, rather than being compelled to apply a mosaic of national laws."

The German Group proposes that "the applicable law in cases of online copyright infringement should in principle be the law of the country for which protection is claimed (lex loci protectionis), as already established by Article 5(2) of the Berne Convention. This connecting factor has proven its worth as a stable and predictable rule and should be retained as the general principle. However, the key challenge lies in how the country of protection is to be operationally determined in the online context.

The German Group considers the targeting approach - rather than the mere accessibility of a website - to be the appropriate criterion for identifying the relevant country of protection in cases involving the making available of content online. (…) In cases of ubiquitous online infringement (…) the strict application of the lex loci protectionis in combination with the "mosaic approach" generates an unmanageable multiplicity of applicable laws. The German Group therefore proposes that, for such ubiquitous infringement scenarios, a supplementary rule should be introduced allowing courts to apply the law of the country with which the infringement has the closest connection. Relevant factors for identifying that country could include the place of the primary infringing act (typically the upload location), the place of the infringer's domicile or principal establishment, and the country where the most significant share of the economic harm is sustained. The upload location is retained as a relevant, though not exclusive, connecting factor, as it represents the origin of the infringing act and is closely linked to the infringer's conduct."

The French Group, in the field of AI specifically, considers that "the law of the country to which the website relates appears to be the most relevant, and there should not be a multiplicity of applicable laws."

The majority of the Groups reject the following factors:

- Law of the Forum (supported only by 10 Groups).
- Law of the Domicile or Nationality of the parties (supported only by 8 Groups).
- Law of the location of the Website Hosting Provider (supported only by 5 Groups).

- Law of the location of the Domain Name Hosting Provider (supported only by 2 Groups).
- Law of the Country of First Publication (supported only by 5 Groups).

2.2 Interpretation/revision of Article 5(2) of the Berne Convention

21) How should the expression "the law of the place where protection is sought" in Article 5(2) of the Berne Convention be interpreted/construed, i.e. to which law should it refer?

23 Groups (65%) consider that the expression should refer primarily to the Law of the Place of Damage, in particular the Law of the country Targeted by the website (18 Groups).

The Swedish Group indicates that "Article 5(2) Berne is primarily intended to affirm sovereignty of states rather than impose a private international law/conflict of laws rule concerning applicable law. In particular that it is for the domestic law of the country "where protection is claimed" to determine the scope of protection and available means of redress (but in accordance with the minimum requirements of the Convention, and especially the principle of national treatment appearing in Article 5(1))."

15 Groups (40%) consider that the expression should refer primarily to the Law of the Place of Infringement, or that a combination of criteria should apply.

The Dutch Group also considers that "the expression should be interpreted as the law of the country for which protection is claimed (lex loci protectionis)".

Several Groups consider that a combination of criterion should apply (Place of. Damage and Place of Infringement). For instance, the Turkish Group adds that "the expression "the law of the place where protection is sought" in Article 5(2) of the Berne Convention should be interpreted broadly and flexibly in online copyright infringement cases. Digital infringements typically involve multiple connecting factors across different jurisdictions, such as the place where the infringing content is uploaded, made accessible, or where the damage occurs. For this reason, a single rigid connecting factor may not adequately reflect the reality of online infringement."

The Polish Group observes that "the expression should not be construed as referring to the law of the forum (lex fori) (…). In the context of online copyright infringement, the lex loci protectionis principle means that the law applicable to each alleged infringement is the law of the country in whose territory the copyright is protected and in which the infringing act produces its effects. This encompasses both the law of the country of the Place of Infringement where the infringing content is uploaded or hosted and the law of the country of the Place of Damage where the infringing content is Accessible and the damage materializes."

Most groups consider that Article 5(2) of the Berne Convention should NOT be interpreted to mean:

- the Law of the Forum (supported only by 9 Groups). For instance, the Chinese Taipei Independent Members consider that "the expression "the law of the place where protection is sought" in Article 5(2) of the Berne Convention should be interpreted as referring to the Law of the Forum. This approach promotes clarity and procedural efficiency, avoids uncertainty over whether multiple foreign

laws must be examined merely because online infringement has cross-border effects."

- the Law of the Country of First Publication (supported only by 3 Groups).
- the Law of the country of the parties' Nationality (supported only by 5 Groups).

22) Should Article 5(2) of the Berne Convention be revised? If YES, please propose the drafting of a provision that could be adopted during a revision of the Berne Convention, and that would establish a harmonised rule on conflicts of jurisdiction on one hand, AND conflicts of laws on the other hand.

12 Groups (35%) support a revision of Article 5(2) of the Berne Convention. The most frequently mentioned proposal is to clarify the meaning of the expression "the law of the place where protection is sought" so as to make it clearly applicable to online infringement scenarios.

Among the Groups that support revision, the Belgian Group proposes the following amended wording: "As copyright is a non-unitary and not (completely) harmonized intellectual property right, the assessment of the place where protection is sought must be made in view of the law of the jurisdiction for which the protective measure is claimed. In this regard the wording would more suitably be: 'the law of the country for which protection is claimed'."

The Egyptian Group proposes the following amended wording: "The law applicable to the existence and scope of protection shall be the law of the country where protection is claimed. In the digital environment, this country shall be identified as the territory toward which the infringing activity is specifically directed or targeted. Factors such as language, currency, and intended audience shall be paramount in determining this

location, ensuring that mere global accessibility does not result in the universal application of all national laws simultaneously."

The Indonesian Group proposes a comprehensive draft combining rules on jurisdiction and applicable law: "The courts of a Contracting State shall have jurisdiction where the defendant is domiciled in that State or where the alleged infringement produces substantial effects within its territory. In the context of online activities, substantial effects may be established by reference to the accessibility of the infringing content and, where relevant, whether such activity is directed or targeted at the public of that State. (…) In cases of online copyright infringement, the applicable law shall be the law of the country or countries with which the infringement has the closest connection, in particular where the infringing activity is targeted and where substantial economic effects occur."

The Polish Group writes as follows: "Proposed provision: "The extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed by the law of the country for which protection is claimed (lex loci protectionis). In cases of infringement occurring through digital networks, the applicable law shall be the law of each country in whose territory the copyright is protected and in which the infringing act produces its effects, including the country in which the infringing content is made available to the public. The court seized shall have jurisdiction to determine the applicable law in accordance with the conflict-of-laws rules of the forum, provided that such rules are consistent with the principle of lex loci protectionis. Nothing in this provision shall affect the application of mandatory

rules of the forum or of overriding mandatory provisions of the law of another country with which the situation has a close connection."

The German Group proposes to revise Article 5(2) as follows: "The extent of protection, as well as the means of remedies available to the author to protect his rights in cases of online infringement, shall be governed by the law of the country to which the infringing use is directed (the Targeted Country). In determining whether an online use is directed at the public of a specific country, all relevant circumstances shall be taken into account, including, in particular the language, currency, domain extension, and advertising focus of the website or service, as well as the existence of effective access restrictions limiting availability in that country. Where the infringing act consists of making content available simultaneously in a plurality of countries and no single Targeted Country can be identified, the applicable law shall be that of the country with which the infringing act is most closely connected, having regard, in particular, to the place where the principal infringing act originated, the domicile of the infringer, and the territory in which the most significant economic harm was suffered. The court having jurisdiction pursuant to the foregoing rules shall be competent to adjudicate the full scope of the infringement, including damages sustained in other countries where the same act constitutes an infringement, subject to the application of the substantive law of each such country."

The Indian Group writes that:

"Proposed Article 5(2) – Online Copyright Infringement"

a) Jurisdiction

Courts in the following countries should have jurisdiction:

- The country where the principal infringing act occurred (the Place of Infringement); and
- Any country whose public was targeted by the infringing act (the Targeted Country).

If the court of the Targeted Country exercises jurisdiction, it should be able to decide damages occurring within its own territory. If the court of the Place of Infringement exercises jurisdiction, it should be able to decide the full scope of damages arising from the infringement worldwide.

b) Applicable Law

The applicable law should generally be the law of the Targeted Country. If the infringing act targets multiple countries, the law of each targeted country should apply to the damages occurring in that territory."

The Columbian Group proposes the following wording: "Article 5(2) – Jurisdiction and Applicable Law:

1. The enjoyment and exercise of copyright shall not be subject to any formality and shall be independent of the existence of protection in the country of origin of the work.
2. In matters concerning the protection, enforcement, or infringement of rights recognized under this Convention, jurisdiction may be exercised by the courts of any Contracting Party in which:

(a) the defendant is domiciled or has its principal place of business; or

(b) the alleged act of exploitation or infringement occurred or produced substantial effects.

3. The law applicable to the scope, existence, transferability, duration, and enforcement of copyright shall be the law of the Contracting Party for which protection is claimed.

4. Where acts of exploitation or infringement occur simultaneously in multiple Contracting Parties through digital or transnational means, the competent court may apply the law of each affected Contracting Party, provided that such application is limited to the territory of that Contracting Party.

5. Nothing in this paragraph shall prevent Contracting Parties from applying rules of private international law that provide a closer connection to a particular jurisdiction, provided that such rules are consistent with the objectives of this Convention"

25 Groups (65%) consider that the existing wording of Article 5(2) of the Berne Convention is sufficient or that revision is impractical given the political difficulty of amending the Berne Convention. These Groups generally prefer to clarify the existing wording through case law or through complementary instruments.

For instance, the Chinese Group considers that "Article 5(2) can be adapted to the online environment through interpretation. Given the enormous difficulties and potential risks associated with amending the Convention, revising this provision is not recommended. States should instead refine their rules on the applicable law for online

copyright infringement through domestic legislation, judicial interpretations and international cooperation."

The Spanish Group similarly considers that "Article 5(2) of the Berne Convention is functional and effective (…). Its confirmation in the Rome II Regulation – whose Article 8(1) is substantially identical – further demonstrates that the lex loci protectionis principle constitutes an appropriate solution."

The Mexican Group indicates that "Article 5(2) of the Berne Convention should not be fundamentally revised (…) Rather than revising Article 5(2), Mexico should support authoritative interpretative guidance—for example, through WIPO soft law instruments, recommendations, or explanatory notes—clarifying that:

- "The place where protection is sought" refers to each territory where protection is claimed and harm is localized, not to a single global forum;
- In online cases, localization should rely on targeting and effects, not on purely technical factors (servers, upload location, domain registry);
- Multiple applicable laws may coexist under a mosaic approach, each governing the infringement and harm within its own territory. This approach preserves the integrity of Article 5(2) while promoting predictability and convergence across jurisdictions."

3. Geoblocking

23) Should geoblocking be considered as an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment?

34 Groups (100%) consider that geoblocking should be regarded as an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment. This widespread support reflects the practical recognition that geoblocking, despite its limitations, is currently the most effective and widely available technical means of enforcing the territorial structure of copyright on the internet.

The US Group states that "while not a perfect solution, geoblocking provides appropriate means for preventing unauthorized access to copyrighted works.". In the same vein, the Mexican Group considers that "geoblocking may be considered an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment, provided that it is applied in a targeted, reasonable, and non-abusive manner"

The Chinese Group points out that geoblocking is a proportionate tool: "geoblocking can delimit the scope of dissemination of a work and safeguard copyright territoriality, aligning well with cross-border regional licensing and distribution models. (...) Compared to full-site takedowns or permanent blocking, geoblocking represents a less intrusive and more targeted intervention, striking a better balance between copyright protection and the free flow of information."

Some Groups emphasize that the proportionality of geoblocking should be assessed on a case-by-case basis, taking into account the nature of the rights at stake, the technical feasibility of the measure, and its impact on legitimate uses such as fair use exceptions or scientific research.

For instance, the Polish Group considers that "Geoblocking should be considered as an appropriate and proportionate means of preserving the territoriality of copyright in

the digital environment, subject to a case-by-case assessment of proportionality. (…) Blocking access to an entire work or website in response to a minor or insignificant infringement may be considered disproportionate. Conversely, in cases involving significant or systematic infringement, geoblocking would generally be regarded as both appropriate and proportionate. Harmonised standards for assessing the proportionality of geoblocking measures would enhance legal certainty and ensure consistent application across jurisdictions." The French Group considers that "geo-blocking is considered to be an appropriate and proportionate measure for enforcing copyright, provided that it is not excessively costly for intermediaries, does not hinder legitimate trade, does not impose a general monitoring obligation, and is limited in time and scope."

24) Should geoblocking measures be sufficient to prevent online copyright infringement, even though such measures can be bypassed through the use of VPNs?

18 Groups (50%) consider that geoblocking measures alone should NOT be regarded as sufficient to prevent online copyright infringement, given that they can be readily bypassed through the use of VPNs and similar tools.

Most Groups consider that geoblocking is necessary, but must be combined with other technical or legal measures.

The Thai Group similarly observes: "geo-blocking can be easily bypassed through VPNs and other technical circumvention methods. Moreover, the nature of online infringement often creates a 'whack-a-mole' scenario for rightsholders and

authorities. (…) Furthermore, geo-blocking lacks a deterrent effect, as it is fundamentally a preventive rather than punitive measure."

The Singapore Group similarly considers that "given the difficulty of enforcing geoblocking measures, especially given the prevalence of VPNs, it would be very difficult to have such thorough geoblocking measures that it would sufficiently prevent online copyright infringement. Further measures are likely to be needed to prevent or discourage access to infringing material."

The Indonesian Group observes that "geoblocking alone should not be regarded as sufficient to prevent online copyright infringement. Although it can reduce access within a given territory, it can be readily circumvented through tools such as VPNs and therefore functions primarily as a preventive measure rather than a complete solution. Relying solely on geoblocking would not adequately address the scale and persistence of digital infringement."

16 Groups (50%) consider that geoblocking should nonetheless be considered sufficient as a matter of legal principle, even if it can be bypassed in practice, on the ground that the responsibility for circumvention should rest with the user rather than with the website operator.

The Egyptian Group invokes a reasonableness standard: "In law, 'perfection' is rarely the standard for 'compliance'; the standard is 'reasonableness'. (…) Geo-blocking should be regarded as a strong indicator of reasonable compliance with territorial obligations for providers, shifting the legal and moral responsibility for the breach to the user who employs deceptive tools to bypass established territorial boundaries."

25) Should there be other measures, in addition to the geo-blocking measure, to ensure that access to the website by the public in the blocked country is prevented or discouraged?

32 Groups (90%) consider that other measures should be implemented in addition to geoblocking to ensure that access to a website by the public in a blocked country is effectively prevented or discouraged. The proposed complementary measures cluster around three main themes: (i) contractual and informational safeguards, (ii) dynamic site-blocking injunctions and similar judicial remedies, and (iii) international cooperation.

The Spanish Group provides a particularly detailed catalogue of complementary measures, including: "Actions against intermediaries strengthening in practice the power to seek a court order requiring internet service providers (ISPs) to suspend services in order to prevent infringements; Access checks: additional safeguards (…) such as requiring users to confirm their location before accessing content; Measures against circumvention of technological measures (…); Dynamic blocking: In recent practice, injunctions have been issued against VPN (virtual private network) providers to implement dynamic blocking of IP addresses associated with infringing content (…); Inclusion of criminal measures (…)." The Spanish Group further proposes an evolution from the "notice & takedown" model towards a "notice & stay down" approach, and the establishment of a European Intellectual Property Prosecutor's Office for cross-border infringements of significant importance.

The US Group considers that "national and regional laws should provide appropriate disincentives to persons who provide technology, products or services with the intent to circumvent geoblocking."

Only 3 Groups (10%) consider that geoblocking should not be supplemented with intrusive technical measures, particularly because such measures may infringe on user rights or freedom of expression

4. Other

26) Please comment on any additional issues concerning any aspect of online copyright infringement you consider relevant to this Study Question.

24 Groups provide additional comments on issues that they consider relevant to this Study Question. The most frequently mentioned comments relate to (i) the impact of AI on copyright territoriality, (ii) the need to harmonize substantive copyright law in addition to private international law rules, and (iii) the importance of complementary enforcement mechanisms.

The Croatian Group emphasizes the AI dimension: "The increasing complexity of the digital environment, particularly with the advent of AI, presents significant challenges not fully addressed by current legal frameworks. The use of copyrighted works for AI training, the generation of AI-created content that may infringe existing copyrights, and the determination of liability in such scenarios require urgent attention."

27) Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.

The Groups that responded to this question identified a wide range of industry sectors whose views were taken into account in their answers to Part III. The most frequently mentioned sectors include:

- Audiovisual and broadcasting industries (film, television, streaming);

- Music industry (recorded music, digital distribution, performance rights);
- Publishing sector (book publishers, newspaper publishers, scientific journals);
- Software and digital services (computer software, AI providers, data licensing, IT consulting, engineering and digital transformation services);
- Sports broadcasting and rights management;
- Manufacturing industry, including luxury, cosmetic, food and beverages, household appliances;
- Energy sector;
- Legal AI industry.

IV. Conclusions / Guidance for the Study Committee

A clear majority of the responding Groups consider that harmonisation of International Private Law Provisions and geo-blocking in the context of online copyright infringement is desirable, due to the cross-border nature of the internet, the risks of forum shopping, and the fragmentation of enforcement under the strict application of the territoriality principle. The conclusions set out below are intended to provide guidance to the Study Committee for this Study Question.

Improvements to current law

The vast majority of Groups consider that their current legislation or practice relating to online copyright infringement, the determination of competent courts, and the determination of applicable law could be improved, particularly in light of the digital

and cross-border nature of online infringement and the emerging challenges raised by AI.

Competent court / Conflict-of-jurisdiction rules

As regards the criteria that should determine the competent court in cases of online copyright infringement, the conclusions emerging from the Reports are as follows:

1. Three connecting factors should be relevant to determine the competence of a national court:

- The Place of Damage should also be a primary connecting factor (vast majority), but the territorial scope of competence should be limited to acts of infringement, damages and prejudices occurring within the territory of the national court (mosaic approach) (short majority).

  As regards how the Place of Damage should be determined, a refined Targeting theory should be preferred, while Accessibility may serve as a starting point or threshold. The criteria most relevant for assessing whether a website is targeted at the public of a country are: the local language of the website, the currency of payment, the existence of business facilities in the country, and promotional activities directed at the public.

- The Place of Infringement should also be a primary connecting factor (vast majority). Within this category, the place where the infringing content is uploaded on the Operator Website and the place where the infringing content is hosted/stored should be relevant. But the place where the Domain Name is hosted should not be relevant.

As of the territorial scope of competence, a short majority of Groups consider that it should be limited to acts of infringement and damages occurring in the territory of the competent court.

- The Defendant's Domicile should also remain a primary connecting factor (vast majority), with full territorial competence (worldwide/regional). The Domicile of the Website Operator and the Domicile of the Website Hosting Provider should generally be considered as relevant, while the Domicile of the Domain Name Hosting Provider should not constitute a relevant connecting factor.

2. Three connecting factors should NOT be relevant:

- The Claimant's Domicile should not constitute a standalone connecting factor; where it is admitted, it should be subsidiary, and the territorial competence of the court should be limited to acts within its territory.
- Nationality-related connecting factors should not be relevant for determining jurisdiction in online copyright infringement cases, such as Country of First Publication.
- The Place of Prejudice should not constitute a standalone connecting factor; it should be relevant only insofar as it coincides with the Place of Damage.

Applicable law / Conflicts-of-laws rules

As regards the criteria that should determine the applicable law in cases of online copyright infringement, the conclusions emerging from the Reports are as follows:

- The law of the country where protection is sought (lex loci protectionis), as enshrined in Article 5(2) of the Berne Convention, should remain the central criterion (clear majority).

- The expression "the law of the place where protection is sought" should be interpreted as referring primarily to **(i)** the Law of the Place of Damage, in particular the Law of the country Targeted by the website (clear majority) and **(ii)** the Law of the Place of Infringement (in particular the place of upload) (also clear majority).

- Regarding the risk of fragmentation of applicable laws in the context of online infringement, the majority of the Groups consider that it is a normal consequence of the territoriality of copyright.

  Nevertheless, a substantive minority support the application of a single law, that should be the law of the country with which infringing acts have the closest connection. Groups propose diverse criterion to determine the law with the closest connection (a combination is most of the time proposed): Place of Infringement (e.g. upload of the infringed works), Place of Dame (e.g. targeted territories), domicile of the parties, place with the most economic harm, etc.

- The Law of the Forum, the Law of the Country of First Publication, and the Law of the country of the parties' Nationality should NOT be considered as primary criteria.

- The Groups are divided on whether Article 5(2) of the Berne Convention should be formally revised. A substantial minority supports revision, while a slight majority considers that the existing wording is sufficient and that harmonisation

should rather be achieved through the adoption of complementary instruments at the international or regional level.

Geoblocking

As regards geoblocking, the conclusions emerging from the Reports are as follows:

- Geoblocking should be considered as an appropriate and proportionate means of preserving the territoriality of copyright in the digital environment (vast majority).
- But Geoblocking measures alone should not be regarded as sufficient to prevent online copyright infringement, given the availability of VPNs and similar circumvention tools (vast majority).
- Geoblocking should be combined with complementary measures, including: contractual and informational safeguards (territorial terms of use, alert-and-confirm screens, redirection), and international cooperation on notice-and-takedown and on the recognition of blocking orders across jurisdictions.

Final consideration

Several Groups emphasize that the harmonisation of private international law rules for online copyright infringement is closely linked to the broader harmonisation of substantive copyright law. As copyright is a non-unitary right and the differences in protection between jurisdictions remain significant, the effectiveness of any harmonisation of jurisdiction and applicable law rules will depend on continued progress towards substantive harmonisation, in particular in areas such as AI training, intermediary liability, and the scope of online communication to the public.