

Editorial

by **Toshiyuki Kono, Axel Metzger and Pedro de Miguel Asensio**

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- 1 It is with great pleasure that we can present with this Special Issue of JIPITEC the “Kyoto Guidelines on Intellectual Property and Private International Law” of the International Law Association (ILA) with extended comments. The Kyoto Guidelines are the outcome of an international cooperation of a group of 35 scholars from 20 jurisdictions lasting for ten years under the auspices of ILA. The Kyoto Guidelines have been approved by the plenary of the ILA 79th Biennial Conference, held (online) in Kyoto on December 13, 2020. The Kyoto Guidelines provide soft-law principles on the private international law aspects of intellectual property, which may guide the interpretation and reform of national legislation and international instruments, and may be useful as source of inspiration for courts, arbitrators and further research in the field.
- 2 The ILA Committee on “Intellectual Property and Private International Law” was created in November 2010. Its aim was to examine the legal framework concerning civil and commercial matters involving intellectual property rights that are connected to more than one State and to address the issues that had emerged after the adoption of several legislative proposals in this field in different regions of the world. The work of the Committee was built upon the earlier projects conducted by the Hague Conference of Private International Law as well as several academic initiatives intended to develop common standards on jurisdiction, choice of law and recognition and enforcement of judgments in intellectual property matters.
- 3 In the initial stages of the activities of the Committee it was agreed that its overall objective should be to draft a set of model provisions to promote a more efficient resolution of cross-border intellectual property disputes and provide a blueprint for national and international legislative initiatives in the field. Therefore, the focus of its activities has been the drafting of a set of guidelines with a view to provide a valuable instrument of progress concerning private international law aspects raised by intellectual property. Furthermore, the Committee conducted a number of comparative studies and monitored the developments in different jurisdictions around the world. The Committee also worked in collaboration with several international organizations, particularly the World Intellectual Property Organization and the Hague Conference on Private International Law.
- 4 Acting in accordance with its mandate, the members of the Committee gathered on more than ten occasions. In addition, committee members and officers organized a number of seminars, workshops and meetings. The Committee’s activities conducted within this decade can be grouped into five main stages. First, preparing comparative studies of the pre-existing projects and starting discussions in subcommittees about the content of the ILA Guidelines (2010-2012). Second, drafting of the first proposals to be included in the Guidelines, mainly on non-controversial issues related to jurisdiction, choice of law, and, recognition and enforcement of judgments (2013-2014). Third, finalizing the draft guidelines on non-controversial issues as well as laying down directions for continuing the discussions on controversial issues (2015-2016). Fourth, finalizing the text of the guidelines concerning the remaining points, including some novel issues identified at a later stage, such as those concerning collective rights management (2017-2018). Fifth, drafting of two sets of explanatory comments to the Guidelines in order to make explicit the underlying considerations behind the different provisions and to facilitate their uniform interpretation (2019-2020).
- 5 The final text of the Guidelines consists of 35 provisions, which are divided in four sections: General Provisions (Guidelines 1-2), Jurisdiction (3-18), Applicable Law (19-31) and Recognition and Enforcement of Judgments (Guidelines 32-35). As suggested by the term “Guidelines”, this instrument contains a set of provisions intended to guide the

application or reform of private international laws in this field. The Guidelines restate certain well-established foundational principles such as the *lex loci protectionis* rule and aspire to provide concrete solutions for pressing contemporary problems, in areas such as multi-state infringements and cross-border collective copyright management. In order to make explicit the influence of the previous projects in the field and to facilitate the comparison with them, the short comments are preceded by the reference to the similar provisions adopted previously in the ALI Principles¹, CLIP Principles², Transparency Proposal³ and Joint Korean-Japanese Principles⁴. As an additional instrument to facilitate the uniform interpretation of the Guidelines, the Committee has prepared a set of extended comments to all the provisions.

- 6 The Guidelines are published here together with extended comments written by members of the ILA Committee which explain the background and application of the Guidelines. We as the Chair and Co-Rapporteurs of the ILA Committee would like to thank all members who contributed to the successful completion of the project, specifically to those who have written the extended comments published here in JIPITEC. We would also like to thank ILA Director of Studies and Headquarter staff members for their enduring support as well the editors of JIPITEC for accepting our work as a special issue of the journal.

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- 1 American Law Institute, *Intellectual Property: Principles Governing Jurisdiction, Choice of Law and Judgments in Transnational Disputes*, ALI Publishers, 2008.
- 2 European Max Planck Group on Conflict of Laws in Intellectual Property, *Conflict of Laws in Intellectual Property (Text and Commentary)*, OUP, 2013.
- 3 Japanese Transparency Proposal on Jurisdiction, Choice of Law, Recognition and Enforcement of Foreign Judgments in Intellectual Property, see the English text in J. Basedow, T. Kono and A. Metzger (eds.), *Intellectual Property in the Global Arena - Jurisdiction, Applicable Law, and the Recognition of Judgments in Europe, Japan and the US*, Mohr Siebeck, 2010, pp. 394-402.
- 4 Joint Proposal by Members of the Private International Law Association of Korea and Japan, see *The Quarterly Review of Corporation Law and Society*, 2011, pp. 112-163.

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