

Looking up substance and procedure via alternative DNS providers: the tale of injunctions to enforce copyright

By Prof. Dr. Paul L.C. Torremans

INTRODUCTION

The request to contribute to an issue to celebrate the work of Marianne Levin brought back plenty of nice memories. I had the pleasure of knowing Marianne for many years and I remember with pleasure those sessions I taught in Stockholm with Marianne and her dog in the back of the room. And when they took place on a Saturday her father would come along too and on a couple of occasions we ended up lunching on pizza at Pic-Nic on campus. Later on, we did our EU funded project on human embryonic stem cells and on one occasion Marianne chaired a meeting from campus whilst I was stuck on a plane that had diverted to Gothenburg because the radar at Arlanda Airport had gone down. With the doors of the plane open I could join the meeting via mobile and when I finally hurried in by taxi from Bromma Airport the draft we had been discussing was all ready and merely needed proofreading.

Leaving those memories to one side I asked myself what kind of topic I should pick for a contribution. In the end I decided not to risk a topic in an area where Marianne is the real expert and I decided to stick to my own hunting ground of private international law and intellectual property. Injunctions are a necessary tool when it comes to the enforcement of intellectual property rights on the internet, but the question arises, not just which judge has jurisdiction to award them, but in the context of preliminary injunctions when speed is of the essence the question of applicable law is crucial. Which law will a judge apply when issuing a preliminary injunction that covers several jurisdictions? I want to explore in particular the distinction between substantial and procedural law in this area. And I will do so against the background of the use of alternative DNS servers and providers. That is after all a typical scenario where rightholders in the music and movie industry feel they really need cross border injunctions when they try to enforce their copyright.

ALTERNATIVE DNS SERVICE PROVIDERS AND ALTERNATIVE DNS SERVERS

Your internet service provider will provide you with a DNS server, or more precisely with the use of a DNS server. This is an essential tool if you want to access the internet and find domains and information on it, as computers, or

for that purpose any other device one connects to the internet with, know nothing about domain names. They are therefore not able to follow up on your search request and they cannot connect to a domain or search for it. On the other hand, the internet works on the basis of IP addresses, and that's what your computer or browser connects to when you point it somewhere. The essential element that is needed in this constellation is a link between IP addresses and domain names. And this is where the DNS server comes in. The DNS server will link domain names to IP addresses. In short, when you type any domain into your browser's address bar, the browser first goes to a DNS server. The server tells your browser the IP address that is associated with the requested domain name. Then it uses that IP address to connect you.¹

The DNS server plays the role of the yellow pages on the internet. Names and domain names are important, but in the interests of communication you need the IP address associated with them. It is that link that your system looks up in the DNS server. All this is relatively uncontroversial. But there are plenty of offers to use an alternative DNS server around and these seem to upset copyright owners in the movie and music industries.

What do we mean when we refer to an alternative DNS server? What use is there in changing the DNS server you use and depart from the one offered to you by your internet service provider? The straightforward answer is that some yellow pages are better than others. Alternative DNS servers may allow you to find and use more pages and domains on the internet. An alternative DNS server may provide you with a better service. Some alternative DNS server also provide much higher speeds than the ones provided by internet service providers. That may be particularly attractive to the users in the gaming sector, where speed and volume of data are crucial factors.² In essence, all of these are perfectly good reasons to opt for the services of an alternative DNS service provider, with negligible risks in terms of potential copyright infringement.

A different DNS server can, however, also help you unblock geo-restricted content. Access to geo-restricted content becomes an option if you use a DNS server in the territory to which access is restricted or if the DNS server misleads the target domain into thinking you come from the authorised territory by interposing itself between your computer or device and the domain and its hosting server. Here we touch upon another important reason for

which people use alternative DNS servers. Alternative DNS servers are indeed also very good tools to protect the internet user's privacy. By interposing an alternative DNS server it becomes possible to keep one's own IP address private, or at least that is a service option that is offered by many alternative DNS servers and providers. And the user's own internet service provider cannot monitor his or her activities on the internet closely as in order to do so they need the data from their own DNS server, which you do not use. And they have no access to the data, nor do they exercise any control over the alternative DNS service provider. Alternative DNS providers that cherish privacy also often adopt a policy to delete logs of a user's activity very frequently.³

That is, of course, where the problem comes in for copyright enforcement on the internet. This privacy option makes the use of alternative DNS providers a very attractive option for any person who wants to share or stream music and film on the internet without obtaining copyright permission. Music, record and movie companies and rightholders find it very difficult to enforce their rights. They primarily want to target the primary infringers who share or stream the files containing the protected copyright material, but they find it impossible to ascertain their identity if they use alternative DNS servers. One can detect the fact that these files are circulating, but the trail towards the identity of the internet user who is responsible for this infringing activity ends in the dead end of the privacy policies of the alternative DNS providers. And the internet service providers do not have access to the data either, as their DNS servers are not used by those involved. That means that an injunction against the internet service provider obliging that company to block access to a certain website from which the illegal files originate becomes useless, as the internet service provider is not used to gain such access and they have therefore no trace of the illegal activity. So, they cannot take action to stop or hinder the infringement.

Hence the need for the rightholders to seek injunctive relief against the alternative DNS providers. They have the data of the traffic and can track any activity to and from sites that facilitate copyright infringement by hosting or streaming infringing copies of copyright protected

materials. They know the identity of their clients. In short, they are able to stop the infringing activity and they can be asked to identify their clients who allegedly infringe copyright in the works involved. Alternative DNS providers typically deploy their activities at a global level though. That makes national injunctions less useful. We will nevertheless look at the option of national injunctive relief against alternative DNS providers. However, the really useful tool would be a single injunction against alternative DNS providers, but then an injunction with a global scope of application. That will be the final target that we examine in this article. We will look at these questions from a European perspective.

JURISDICTION: A PRIMER

I do not have the intention to go into any detail concerning jurisdiction. Suffice it here to say that in terms of jurisdiction one needs a single anchor for an injunction case to be able to be brought successfully. Article 4 and Article 7(2) Brussels I Regulation⁴ can provide that, but the latter only in the courts of the place where the act leading to the damage takes place. The Brussels I Regulation is however restricted to defendants that are domiciled in the jurisdiction. For defendants domiciled in a third country reliance will have to be placed on the national private international law rules on jurisdiction of the member state where the claimant wishes to bring the case. For our current circumstances the article 4 judge of the domicile of the defendant will have jurisdiction over the whole case that is brought against the defendant, irrespective of the various jurisdictions in which the infringing activities take place. That jurisdiction brings also with it the issue of a preliminary injunction, at the very least for each jurisdiction whose substantive intellectual property law the judge will apply.⁵ In a territorial system that means that the judge has accepted his or her jurisdiction over the activities of the defendant in that territory and hence the option not merely to determine whether or not an infringement took place under the local applicable law, but also the option to award a remedy, here an interim or preliminary injunction.⁶ Article 7(2), first limb, offers a similar kind of jurisdiction to the judge of the place of the

¹ https://en.wikipedia.org/wiki/Alternative_DNS_root.

² See e.g., https://www.cloudflare.com/en-gb/dns/?&_bt=526973815365&_bk=cloudflare%20dns&_bm=e&_bn=g&_bg=128351482488&_placement=&_target=&_loc=9056328&_dv=c&awsearchcp-c=1&gclid=EAlalQobChMI7aXdga_f9wIVlQU-GAB0wng0LEAAyAIAAEgLZd_D_BwE&gclid=aw.ds.

³ <https://privacysavvy.com/security/business/best-free-public-dns-servers/>.

⁴ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L 351/1.

⁵ Article 2:604 Principles for Conflict of Laws in Intellectual Property, European Max

Planck Group on *Conflict of Laws in Intellectual Property, Conflict of Laws in Intellectual Property: The CLIP Principles and Commentary*, Oxford University Press [2013] and the commentary at pp. 180-185.

⁶ J.J. Fawcett and P. Torremans, *Intellectual Property and Private International Law*, Oxford University Press [2nd ed, 2011], Ch. 5.

allegedly infringing act leading to the damage took place. Once again that leads to jurisdiction to issue a preliminary or interim injunction.⁷

If we apply that to the providers of alternative DNS servers the judge of their domicile or place of the establishment in the European Union will have jurisdiction, as will the judge of the place from where the allegedly infringing service is provided, i.e., the place of the servers whose operation enables the clients to access, stream or download the infringing material. This is in essence a reference to the relevant data centre for this activity deployed by the provider of the alternative DNS server.

CHOICE OF LAW

On the assumption that a court of competent jurisdiction has been identified and that the case is pending before that court one moves on to choice of law and one needs to determine the applicable law. It may be slightly misleading to rely here too much on the recent cases in relation to harmful statements/defamation⁸ and personal data⁹, as these areas of law are rather different from intellectual property in general and copyright in particular. Case C-18/18¹⁰ also does not contain any discussion of the choice of law problem. The case seems to assume that the statements will be harmful anywhere in the world, but this is due to the mechanism of references to the Court of Justice of the European Union. The referring court had already made a finding that the statements amount to defamation or were 'illegally harmful' one way or another under the applicable law (or laws). The Court of Justice of the European Union was asked to take that as a given and merely explain Directive 2000/31/EC and the potential for an injunction with a global scope. Be that as it may, the applicable law issue is crucial for the question whether a

worldwide or EU-wide injunction can be granted. As AG Szpunar notes at paragraph 86 of his opinion in case C-18/18 *Eva Glawischnig-Piesczek v. Facebook Ireland Limited*¹¹, a court may be prevented from granting or authorising to grant a worldwide injunction not because of its jurisdiction (which under articles 4 and 7(2) place of the act is by definition global in scope), but because of a matter of substance and therefore of applicable law.

Territoriality is and remains the guiding principle when it comes to copyright choice of law. This means that the choice of law rule will lead to the application on a country by country basis of the local copyright law. Or to the application of the *lex loci protectionis* or the law of the country for which protection is sought. This means that French law will be applicable to any copyright claim concerning France, German law to any copyright claim concerning Germany, etc. This rule applies even if copyright protection is claimed in a number of countries and leads to the application of a patchwork of national laws in a single case even if the copyright and the alleged infringement are virtually identical. In an infringement context this rule is also laid down in article 8 of the Rome II Regulation.¹²

As a competent court (in the European Union) will necessarily apply its own choice of law rules as part of the law of the forum that applies to procedural issues, such a court will apply the *lex loci protectionis* choice of law rule to the whole case in front of it, including the alleged infringement in third countries.

An injunction is one way or another a remedy that is linked to a finding of infringement, even if the injunction is issued against an intermediary. And as copyright is, just as any other intellectual property right, essentially a negative right to stop other parties from doing certain things without authorisation (reproducing the work, communi-

⁷ Case 21-76 *Handelskwekerij G.J. Bier BV v. Mines de Potasse d'Alsace SA* ECLI:EU:C:1976:166; Case C-68/93 *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd v. Presse Alliance SA* ECLI:EU:C:1995:61; Case C-228/11 *Melzer v. MF Global UK Ltd* ECLI:EU:C:2013:305; Case C-387/12 *Hi Hotel HCF SARL v. Uwe Spoering* ECLI:EU:C:2014:215; Case C-360/12 *Coty Germany GmbH, formerly Coty Prestige Lancaster Group GmbH v. First Note Perfumes NV* ECLI:EU:C:2014:1318; Case C-170/12 *Peter Pinckney v. KDG Mediatech AG* ECLI:EU:C:2013:635 and Case C-441/13 *Hejduk v. EnergieAgentur* ECLI:EU:C:2015:28.
⁸ Case C-18/18 *Eva Glawischnig-Piesczek v. Facebook Ireland Limited* ECLI:EU:C:2019:821.
⁹ Case C-507/17 *Google LLC, successor in law to Google Inc. v. Commission nationale de l'information et des libertés (CNIL)* ECLI:EU:C:2019:772.
¹⁰ Case C-18/18 *Eva Glawischnig-Piesczek v.*

Facebook Ireland Limited ECLI:EU:C:2019:821.
¹¹ Case C-18/18 *Eva Glawischnig-Piesczek v. Facebook Ireland Limited* ECLI:EU:C:2019:821, Opinion of AG Szpunar ECLI:EU:C:2019:458.
¹² Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) [2007] OJ L 199/40.
¹³ See Article 3:601 Principles for Conflict of Laws in Intellectual Property, European Max Planck Group on Conflict of Laws in Intellectual Property, *Conflict of Laws in Intellectual Property: The CLIP Principles and Commentary*, Oxford University Press (2013).
¹⁴ Case C-18/18 *Eva Glawischnig-Piesczek v. Facebook Ireland Limited* ECLI:EU:C:2019:821, Opinion of AG Szpunar ECLI:EU:C:2019:458, at paragraph 92.
¹⁵ Case C-18/18 *Eva Glawischnig-Piesczek v. Facebook Ireland Limited* ECLI:EU:C:2019:821.

¹⁶ Article 2:604 Principles for Conflict of Laws in Intellectual Property, European Max Planck Group on Conflict of Laws in Intellectual Property, *Conflict of Laws in Intellectual Property: The CLIP Principles and Commentary*, Oxford University Press (2013) and the commentary at pp. 180-185.
¹⁷ See Alexander Peukert, 'Territoriality and Extraterritoriality in Intellectual Property Law' in Günther Handl, Joachim Zekoll & Peer Zumbansen (eds), *Beyond Territoriality: Transnational Legal Authority in an Age of Globalization*, Queen Mary Studies in International Law, Brill Academic Publishing (2012) 189 and Marketa Trimble, 'Extraterritorial Intellectual Property Enforcement in the European Union', [2011] SW J Int'l L 233.
¹⁸ See the debate in *Lucasfilm Limited and others (Appellants) v. Ainsworth and another (Respondents)* [2011] UKSC 39 [Supreme Court, United Kingdom].
¹⁹ *Playboy Enters v. Chuckleberry Publ'g Inc*, 939 F Supp 1032 (SDNY 1996), *Sterling Drug Inc v. Bayer*, 14 F 3d 733 (2d Cir 1994).

cating the work to the public, etc ...) and as copyright is a private right remedies are an essential component when it comes to enforcing the right through infringement proceedings. It is therefore logically and globally accepted that the remedies, and therefore also our injunction, are governed by the *lex loci protectionis*.¹³ It is worth reminding ourselves on this point that whilst article 8(3) of the Information Society Directive puts in place an obligation to make injunctive relief available, it leaves the details to the national laws that implement the directive. These national laws may stipulate (or limit) the territorial scope of such an injunction¹⁴, but they rarely do. In any case one will merely apply these laws to impose an injunction in a single country, on a country by country basis. And the Court of Justice has added that there is nothing in EU law that prohibits the issuing of a worldwide injunction by a court of a member state.¹⁵ In relation to third countries to court will apply to local law of those countries, which may know such an injunction and which may have a scope provision.

One is therefore left with a country by country, national law by national law, patchwork and the burden of proof that goes with it. In terms of the (territorial) scope of the injunction the CLIP group, of which this author is a member, arrived at the conclusion that an injunction issued by a court of competent jurisdiction shall only concern activities affecting intellectual property rights protected under the national law or laws applied by the court.¹⁶ Cumber- some as it may be, it also eliminates any comity of nations concerns that may arise in the context of a global injunction from a public international law point of view. This is by the way not a 'radically new' academic proposal. It is reflected in the current practice of those courts¹⁷ that have accepted that they can deal with foreign copyright.¹⁸ Courts have also refused to grant an injunction for those jurisdictions where there would not be an infringement of the intellectual property right concerned, which points towards the application of the rule set out here. A global, but perhaps more realistically and EU-wide injunction is therefore possible on this basis. The latter is also facilitated (in terms of burden of proof) by the relative level of copyright harmonisation in the European Union. But one also needs to draw a delicate distinction here between substance and procedure and it is to this point that we now turn.

The qualification question

In relation to injunctive relief granted as an interim measure the question arises whether, before granting an injunction in relation to alleged copyright infringement, the judge should check whether the conditions for imposing such a measure in interlocutory proceedings are met in each of the legal systems potentially concerned. In this respect, it is of fundamental importance to correctly qualify the question in private international law. With regard to infringement of intellectual property rights, there is a delicate distinction between a procedural and a substantive classification.

The substantive classification in the Rome II Regulation

Infringements of intellectual property rights fall within the scope of the Rome II Regulation. It is sufficient to refer in this respect to the specific rule in Article 8 of the Regulation and the *lex loci protectionis* rule contained therein. On questions that are qualified as questions of substantive law, the *local lex loci protectionis* will therefore have to be applied on a territorial basis country by country. The classification as a question of substantive law is then determined by Article 15 of the Rome II Regulation. This is clear from the heading 'scope of applicable law'.

Article 15 of the Regulation requires the application of the *lex loci protectionis* to the question of what constitutes an infringement of copyright law, since for copyright this concerns the ground and extent of liability to which article 15(a) refers. Paragraph (b) logically supplements this with the applicability of the *lex loci protectionis* on the grounds for exclusion of liability. With regard to intellectual property rights, the exceptions not only constitute grounds for expression or limitation of liability, but also determine the precise scope of protection and therefore also the precise scope of liability for an (alleged) infringement.

Intellectual property rights are essentially negative rights, since the exclusive right they confer allows the owner of the right to prohibit anyone who does so without his consent from engaging in restricted acts such as copying the work or communicating it to the public. This means that, for intellectual property law, there is a very close link between the scope of the right, the infringement of the right and the enforceability of the right. In the case of private international law, this translates into the same qualification and the application of the *lex loci protectionis*. Enforceability therefore also falls within the scope of the substantive classification. Article 15 of the Rome II Regulation takes the same approach and paragraph (c) assumes that the existence and nature of the

damage or the claim are determined on the basis of the *lex loci protectionis*. It is important not to lose sight of the fact that the Regulation also adds the estimate of the damage or the claimed. All this is part of one package, certainly with regard to intellectual property rights. But one must put paragraph (c) in context as a logical continuation of paragraphs (a) and (b). On the basis of paragraphs (a) and (b), a ground of liability and its extent shall be determined with due regard for any limitations and exceptions. Paragraph (c) then takes the logical next step and subjects the further requirement to successfully complete the infringement claim to the same applicable law. Damage is a requirement and the applicable law then determines whether or not there is damage, what nature the damage must assume and how that damage must be estimated. That last point was regulated differently in English law for the Rome II Regulation and it is in this context that the comments of Plender and Wilderspin should be read. They also exclude the application of paragraph (c) to 'injunctive relief'. Or as Pontier aptly summed it up, 'in particular, this is about the question of what damages compensation can be obtained...' and, of course, the possible budgeting of that damage. Paragraph (c), on the other hand, makes no reference to the procedure to be followed by the competent court in this matter. It is merely a question of the scope of the substantively applicable law, which is logical since the regulation indicates in its name that it is merely a regulation 'concerning the law applicable to non-contractual obligations'. It is only about the (substantive) obligation.

Paragraph d) further adds in connection with the enforceability. Therefore, the measures that the court can take to prevent, limit or have compensation for injury or damage are also governed by the *lex loci protectionis*. The remedies, and more specifically the answer to the question of which remedies are available, therefore fall within the scope of the *lex loci protectionis* and are given a substantive classification in the Rome II Regulation. One thinks more specifically of the possibility of compensation, but also of the availability of a (cross-border) ban (injunction). However, the commentators agree that paragraph (d) refers solely to the availability of a particular remedy! Only then does it make sense, as the text of paragraph (d) does, to subject the effective application of a remedy under the applicable law and the relevant *lex loci*

protectionis to the restriction that this must be possible within the limits of the court's procedural jurisdiction. If there is nothing left that deserves a procedural qualification, this phrase in paragraph (d) is taken away from every sentence. One must therefore assume with Pontier that the judge 'is not obliged to take measures that are not known to its own procedural law'. In addition to the substantively qualified provisions on availability, there is therefore scope for a procedural classification and the application of the law of the court on the procedure to be followed in the application of the available remedies. This is difficult if the law of the court does not provide for such a remedy and therefore paragraph (d) contains the restriction that in that scenario the court is not obliged to apply the remedy of the *lex loci protectionis* unknown in its law.

Complementary and unavoidable procedural qualification

However, with regard to patent infringements and the potential for (cross-border) prohibitions, this is the limit of the scope of the applicable law as laid down in Article 15 of the Rome II Regulation. This is where the substantive classification for the purposes of private international law stops. In addition, there is therefore a very clear place for a number of questions that will be classified in procedural law and to which the *lex fori* or the law of the court will be applied. Traditionally, one thinks here not only of the way in which the court conducts its proceedings, in cases concerning non-contractual liability, but also of the rules on the taking of evidence. More specifically, the *lex fori* applies to the procedure or procedures available to the patent owner to request the court to grant the remedies (which are available under substantive law/*lex loci protectionis*). The court will therefore apply the *lex fori* and therefore its own procedural law in the handling of that application. It is therefore, for example, the *lex fori* which determines, among other things, whether, and under what conditions, a short or accelerated procedure, such as summary proceedings, can be used to grant those remedies (determined by substantive law). Article 15 refers to this by stating that work is carried out within a procedural law framework, in other words certain aspects do have a procedural classification, and that procedural framework is that of the court, and therefore of the *lex fori*.

This application of the *lex fori* under a procedural classification has also been adopted in several judicial decisions. The Court of Appeal of England and Wales followed this approach in *Gerard and Daniela Maher v. Groupama Grand Est*. More recently, that was also the case in the decision of the *Supreme Court of the United Kingdom in Actavis UK Ltd v. Eli Lilly and Co*. This case concerned patent infringements in the United Kingdom, France, Italy and Spain and the Supreme Court upheld the handling of the case as set out by Arnold J. at first instance. On the substantive law aspect, or in practice the question of whether there was an infringement of the patent (and the available sanctions and the budget of the damages), the *lex loci protectionis* was applied country by country, but to the entire procedure, including the taking of evidence,

the conditions for granting a remedy and the way in which the court arrives at the finding of an infringement and the granting of a remedy, English law as the *lex fori* was applied without any hesitation. There is also the Opinion of Advocate General Szpunar in Case C-18/18 *Eva Glawischnig-Piesczek v. Facebook Ireland Limited*, which makes a very clear distinction between questions of substantive jurisdiction and questions of procedural classification. The Advocate General agrees with the referring Austrian court that there is a tort in any applicable substantive law and asks whether in certain scenarios a single law can apply if the case has a worldwide scope (that can now be disregarded here and the Advocate General does not answer that either since that was not necessary in this case), but he refers, after having established that the European rules of jurisdiction do not preclude this, the question of whether and how a cross-border order can be issued to the Austrian courts and procedural law. The Court of Justice followed the opinion of its First Advocate General in the judgment, without going into further detail on this point.

The procedural qualification and the application of the *lex fori* to these questions is also the translation of the sociological need for an efficient legal system and procedure to resolve disputes between civil parties. In the same vein, Vlas's suggestion of flexibility in the interlocutory procedure with a (broad) application of the *lex fori* should also be seen. However, the basic rules of applicable law apply both to the main proceedings and to proceedings for interim measures, with the division described above between the *lex loci protectionis* as applicable law to questions which are classified substantively and the *lex fori* as applicable law to questions classified in procedural law.

Summing up on this point, the judge hearing the application for a cross-border prohibition must determine for each country whether the *lex loci protectionis* recognises the existence of an injunction. The answer to this question is fairly simple within the European Union, since Article 9 of the Enforcement Directive expressly provides for such a remedy as a typical example of the provisional and precautionary measures provided for there.

The procedural classification of the question of which procedure or procedures are available to the copyright owner to request the court to grant the existing remedies and of the question of which procedural rules the court will follow in the handling and assessment of such an application leads to the application of the *lex fori* to these questions (and to other procedural aspects). In the copyright infringement context of the interlocutory proceedings, it is then, among other things, specifically about the conditions for imposing a prohibition. It is therefore the *lex fori* that determines whether there must be an urgent interest and, if so, what that should entail. It is the *lex fori* that determines whether and under what conditions and in what way there is a need for a guarantee. In this case there is no room for any application of the *lex loci protectionis*.

CONCLUSION

The picture that emerges remains a complex one, involving the application of several national laws. But the fact that the competent judge can apply a single applicable law to the procedural aspects of issuing a preliminary or interim injunction and the fact that that will be the law of the judge will allow the judge to proceed smoothly and swiftly.

The rightsholder will therefore be able to seek a multi-territorial injunction against an alternative DNS server provider. In terms of whether an injunction as a *tup* of remedy is available we are back to substantive law and there one has to rely of the country by country application of the national intellectual property law. Territoriality is on this point still the rule. But that provides an important safeguard for the defendant and alleged infringer. Intellectual property rights are negative rights to stop others from doing certain things and there is therefore an unbreakable link between (alleged) infringement and remedies. It is therefore logical and an important safeguard that the same law applies to substantive copyright law, i.e., the infringement issue, and the remedy, i.e., the preliminary or interim infringement issue. The way forward here is essentially found in legal harmonisation, both in terms of substantive intellectual property law and in terms of remedies and enforcement.



Prof Dr Paul L.C. Torremans

Professor Torremans taught at the Universities of Leicester and Leeds, before joining the University of Nottingham in September 2002 as Professor of Intellectual Property Law. He also served as a Sub-Dean for Graduate Studies at the Faculty of Law of the University of Leicester. His areas of expertise are Intellectual Property Law and Private International Law. In relation to the latter area Professor Torremans was also

a member of the Department of Private International Law of the Faculty of Law of the University of Ghent, Belgium until 30th September 2008. Professor Torremans is a member of the Association Littéraire et Artistique Internationale (ALAI) and of its British branch BLACA, where he sits on the Executive Committee. He is also a member of the Association for the Enhancement of Teaching and Research in Intellectual Property - ATRIP (the worldwide association of teachers and researchers in intellectual property).

Professor Torremans has acted as an expert for the World Intellectual Property Organisation, the European Commission and other international organisations.

He is also a member of CLIP, an international group of experts developing a set of principles on the interaction between intellectual property and private international law.