Private International Law
Aspects of FRAND

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Lack of international norms concerning jurisdiction

- No international convention (Article 2 par 1 m of the Hague Convention on Recognition explicitly excludes IP).

- Each domestic PIL determines on its own accord whether local judge has jurisdiction

Extraterritorial jurisdiction dependent on acceptance abroad

- A French decision over an infingement committed abroad may not be recognized abroad.

- An antisuit injunction ordered by a Chinese may not be recognized in France.

Extraterritorial jurisdiction locally enforced

Jane C. Ginsburg, Proto-Property in Literary and Artistic Works: Sixteenth Century Papal Printing Privilèges, 36 Columb. J. L. & Arts 345 (2013)

The tool for the extraterritoriality of papal privileges : excommunication *subpoena*.

The judge of the contract

- How to characterize a FRAND litigation?

- How to localize the place of performance of the obligation in question?

Actor sequitur forum rei

- General jurisdiction,

- Extraterritorial jurisdiction.

The judge of the codefendant

- To consolidate an action against SEP owners and ETSI in France.

- The risk of irreconciliable decisions.

The judge of the harmful event

- Under EU law, jurisdiction is limited to non contractual issues.

- Under EU law, territorial jurisdiction.

The UK practice of conditional injunctions

Nokia v. OPPO *[2022]* EWCA Civ 947

22 a so-called "FRAND injunction" to restrain infringement of the UK Patents (meaning an injunction which has effect unless and until OPPO take a licence on the terms determined by the court to be FRAND).

What about the UPC ?

- Practical advatange : the size of the market.

- Procedural obstacle : how to interpret "*actions for actual or threatened infringements of patents ... and related defences, including counterclaims concerning licences*" (article 32 UPCA).

- Legislative obstacle: Which law is applicable?

Thank you!

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