

International Intellectual Property, Conflicts of Laws, and Internet Remedies*

Paul Edward Geller†

Law Office, Suite 905, 12100 Wilshire Blvd, Los Angeles, CA 90025, USA

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The notion of territoriality, as applied within the classic framework of conflicts analysis, is ambiguous. This ambiguity is illustrated by cross-border torts, for example, the infringement of intellectual property. Classic conflicts analysis allows for localizing such infringement at diverse spots, for example, where acts triggering infringement occur or where damages take place. This ambiguity is not often troublesome in a world of hard copies or products, but it leads to problematic cases in cyberspace where transactions cross borders worldwide almost instantaneously. Following classic conflicts analysis, courts tend to vacillate between different arguable countries of infringement, and they thus risk applying the law of one country or another arbitrarily across any global network. This article proceeds from the framework of interest analysis that would resolve any conflict of laws by considering the public policies of the jurisdictions with stakes in the outcome of the resolution. Its premise is that diverse interests from one country to the other are best optimized by following the public policies that underlie the community emerging between countries in the relevant field of law. In the field of intellectual property, courts best look to how policies underlying the international treaty regime, effectively the Berne-Paris/TRIPS regime, compel remedies. As a rule, these policies favour applying the laws of the countries whose markets are targeted or prejudiced, respectively, as bases for injunctions or compensatory monetary awards. Exceptionally, the law common to most of the overall marketplace being targeted may be applied, notably as the basis for enjoining the global hemorrhaging of protected matters.

Keywords: Territoriality, private international law, conflicts of laws, international public policy, *ordre public international*, intellectual property, conventions, infringement, remedies

There are strategic points at which legal theories are put to the test of practice. Some of these are the points in law suits at which courts are asked to grant remedies, such as provisional injunctions and money awards. It shall here be argued that, in intellectual property, cross-border acts may best be localized, for purposes of resolving conflicts of laws, by considering consequences for judicial remedies. This method shall be tested by applying it to the hard case of infringement in global networks.

The Territorial Framework

Each community lives by its own law. As transport and media improve, transactions increase between distinct communities. As a result, conflicts tend to arise between the respective laws of these communities. For example, a judge may ask whether to apply the law of the forum community, or that of another community, in a case where one of the parties is from the other community or where a private transaction moves between the communities. In the middle ages, these communities were not necessarily

territorial; they only became so with the modern advent of the nation-state¹.

The nation-state arose as geographers were mapping the world in coordinates of latitude and longitude². National law was then asserted as sovereign within territorial borders traced out in this geographical space. In the nineteenth century, von Savigny conceived of each set of legal relations as having its focal point in one such territory³. For example, rights of real property could be seen as assuring the power of the owner of land to control trespass and like behaviours of any and all legal subjects relative to that land. Such property claims, von Savigny concluded, were subject to the law in effect at the situs of the land⁴.

Von Savigny sought a method for choosing the same laws to govern the same legal claims, no matter where suit was brought or who brought it⁵. His method may be encapsulated in the following three steps: First, determine the appropriate focal point, sometimes called a connecting factor or point of attachment, for each category of legal claim⁶. Second, in order to know what points are appropriate in a given case, characterize (*qualifier*) each claim asserted in the case in terms of legal categories. Third, localise the corresponding point of attachment in a

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†Email: paul@pgeller.com; Web: <http://www.pgeller.com>.

given state whose law then applies to the claim at issue. For von Savigny, there could be no interplay between characterization (*qualification*) and localisation for a simple reason. He posited that legal relations developed inside but without impacting on geographic space⁷.

For broad-ranging torts like defamation or the infringement of intellectual property, the analysis is less simple. Nonetheless, the classic premise that geographic space is a fixed framework for conflicts analysis has not been questioned in the field of intellectual property. The Berne and Paris Conventions, and later treaties, impose the principle of national treatment supplemented by minimum rights, as well as the principle of the independence of rights⁸. That is, foreign treaty claimants enjoy the same rights as nationals of a treaty country, the so-called protecting country, unless they are entitled to more extensive minimum rights, and the rights in one state do not depend on those in others. This approach corresponds to the classic conflicts rule in the field of torts: the law of the place of infringing acts governs resulting claims⁹.

The Ambiguity of Territoriality

It is in this sense that laws of intellectual property are territorial. The category at the heart of the classic conflicts rule, the place of infringing acts, is territorial. In the nineteenth century, the meaning of this category seemed self-evident to courts considering infringement claims at home. They easily localized places where copyright works were put on stage or published, where trademarked goods were sold, and where patented inventions were used or made. Such acts took place where live performances, hard copies or products, or factories were found, on one side or the other of clear-cut borders, inside a patchwork of national markets¹⁰.

Unfortunately, the key category here, the place of infringing acts, can be doubly ambiguous. To start, before knowing what place that is, a court must localize the acts in question, but authorities differ about what law or laws provide terms in which to characterize infringing acts¹¹. In addition, the place of such acts can be extended backwards to that of preliminary acts, like organizing the infringement, or forwards to the place of damages. At the end of the twentieth century, the meaning of this place, once apparently obvious in geographical space, is becoming impossible to pin down in cyberspace. Now

transactions cross multiple borders simultaneously in global, interactive networks¹².

This ambiguity arises out of the increasing efficacy of the media and technology. Legal relations develop within spaces in which, with increasing speed and power, subjects communicate with each other and control objects at a distance¹³. To the extent that legal claims bear on communication and control itself, as they will in fields such as defamation and intellectual property, a principle of indeterminacy comes into play. Depending on what laws govern claimants' rights in such fields, their respective positions of power will change in what might be called social space, that is, in the relevant communication and control networks. Thus characterization and localization are not categorically independent of each other, but rather tied together to the extent that they impact on the values at stake in the overall resolution of any conflict of laws which they help to formulate. In these threshold inquiries to determine the places of infringing acts, the public policies underlying conflicts analysis, ultimately considerations of *ordre public*, already come into play. Courts in the United States may approach this cluster of issues functionally by following the *Second Restatement*, which expressly allows for resolving conflicts in the light of public policies¹⁴. Courts in Europe tend to approach these issues in more categorically rule-bound analyses, although notions such as *ordre public* exceptionally allow for taking account of underlying values¹⁵.

Localising acts taking place within the Internet dramatizes the policies at stake in conflicts analysis. In localising an infringing act at one spot or another, a court might apply the law of one country or another throughout any global network. That is, improper localisation, especially of Internet transactions, can lead to extraterritorially spilling the policy effects of one country's law over another country. In particular, if the law of one country provides too little protection, or another too much protection, applying one or the other law can result in pirate havens or choke points for data flow in the network. For example, what law should govern transmitting raw data from a European database via the Internet to the United States or China? Suppose, on the one hand, the court localizes relevant acts in the United States or China, where data is received but not strongly protected: then, to European eyes, pirates may find havens in these countries, from which data might be more or less

freely retransmitted¹⁶. Suppose, on the other hand, the court localizes inside Europe all unauthorized transmissions of raw data from Europe, then a European law granting property rights in the data¹⁷ might apply to the transmissions, even to the United States or China. The choice of law might well choke off data flow to or at points within the Internet that policies in these countries would still leave open¹⁸.

Typically, while reasoning in terms of fixed territorial categories, courts vacillate in localizing infringing acts and choosing applicable laws. Courts in the United States have not been consistent in choosing copyright laws to apply to cross-border transactions, often but not always avoiding the application of domestic law to foreign acts¹⁹. These same courts continue to apply domestic trademark law more or less aggressively to cross-border transactions including foreign acts, speaking of its 'extraterritorial' application²⁰. European courts had held that cross-border broadcasts infringed copyright or neighbouring rights in the countries where the broadcasts were received²¹. A Community directive now compels localization of satellite-relayed broadcasts in those countries where transmissions are respectively initiated, but contemplates basing compensation for cross-border transmissions on 'the actual audience, the potential audience, and the language version'²². Decisions sounding in copyright and patent laws have vacillated about localising the infringing use of software across borders²³.

Resolving the Ambiguity

Recall that conflicts of laws arise as transactions increase in frequency between distinct communities with different laws, while smaller communities tend eventually to come together into larger communities²⁴. Courts have a choice here: either they treat conflicting laws as arising out of communities that are static and unchanging, or they resolve conflicts in the light of the historical dynamics that have been bringing communities together. Under the static view, it is difficult to transcend the incoherence that tends to arise when courts respectively follow their own established laws in formulating conflicts of laws. Under the dynamic view, it is possible to look to globalising law that is emerging to govern many smaller communities as they come together into larger communities. The Internet has now accelerated such processes²⁵.

Law may emerge in many forms to bring

communities together. Supranational law, like that of the European Union, effectively recognizes a larger community as an autonomous law-making entity. Public international law stops short of this point, rather recognising smaller communities, notably nation states, as autonomously submitting to overriding law that binds a group of such states, most clearly by virtue of treaty language²⁶. Private international law, optimally following such emerging law between communities, is subject at least to treaty provisions and, more broadly, to considerations of international public policy, ultimately to *ordre public international*²⁷. Traditionally, only after conflicts analysis resulted in possible choices of law would a court refer to ordering principles or public policies, ultimately to *ordre public*, as grounds for rejecting any of these choices as objectionable²⁸. Under the analysis proposed here, the court is to take account of the policy goals of the international regime of intellectual property at the very threshold of analysis, that is, as soon as it starts localizing infringement²⁹.

Fortunately, a treaty regime rather systematically governs conflicts of law in the field of intellectual property. Furthermore, it is common ground that courts must interpret key legal terms consistently with the treaties applicable in a given field³⁰. This article accordingly asks: What remedial *desiderata* should guide interpreting the notion of the 'country where protection is sought' in order to achieve the goals of the treaty regime in intellectual property? The TRIPS Agreement has most recently restated treaty goals for intellectual property as providing 'adequate standards' and 'effective and appropriate means for . . . enforcement' worldwide, while 'taking into account differences in national legal systems'³¹. On the one hand, the goal of 'effective and appropriate means for . . . enforcement' implies a globally seamless fabric of remedies in which neither pirates nor counterfeiters might find havens. In particular, the TRIPS Agreement provides for seizures of infringing copies and goods to stop them from crossing borders to reach markets in geographical space³². The new WIPO treaties in the field of copyright contemplate 'effective' and 'expeditious remedies' to protect markets against pirates in cyberspace as well³³. On the other hand, the goal of 'taking into account differences in national legal systems' implies a globally coherent fabric of remedies. Here the principle of national treatment comes into play³⁴.

The first *desideratum*, a globally seamless fabric of

remedies, should lead courts to stop infringing transactions in their tracks. A distinction may be drawn between inward-bound and outward-bound transactions relative to any given country, often but not always the forum country, which this article calls the 'home' country³⁵. Inward-bound transactions commence outside the home country, for example, with preparatory acts such as authorising and organising infringement and fabricating infringing copies or products abroad, but end up in acts of marketing inside the home country; outward-bound transactions commence in the home country but are consummated in acts of exploitation in foreign markets. The case law provides instances of US and European courts that, with jurisdiction over parties abroad who are engaging in inward-bound infringing transactions that threaten markets at home, localise these transactions as taking place in the home country in that they enjoin them under that country's law³⁶. By parity of reasoning, courts should localise outward-bound transactions, not where they commence in the home country, but in the other countries whose markets they target, and should apply the laws of these foreign countries, respectively, to enjoin acts at home that authorise or otherwise generate infringing exploitation abroad. Some cases fall outside this distinction, notably, where copies that are illicit under the law of the home country transit that country's territory on their way to another country where they may be marketed, perhaps legitimately. Special provisions may still mandate seizure in the home country³⁷.

Some or all of these relations can operate across global, interactive networks at the same time. To the extent that this takes place, the inquiry into localisation, as well as the fashioning of remedies, becomes more complex. For example, in the 1980s, *Playboy* had the Italian magazine *Playmen* enjoined from infringing its trademark in the United States³⁸. In the 1990s, the Italian publisher set up a *Playmen* website in Italy, after having registered that title as a trademark in Italy. The Southern District of New York then ordered the publisher either to stop access to the website in the United States or to shut down the site entirely³⁹. In imposing the latter alternative, the court would seem to have lapsed into the questionably extraterritorial application of domestic trademark law. One fact, however, distinguishes the case: as the court noted, *Playboy* had succeeded in asserting its mark against *Playmen* in European countries besides Italy⁴⁰.

Thus the website effectively also infringed foreign marks, making the case one in which infringing transactions were potentially inward-bound relative to many countries at once, although infringement outside the United States was neither pleaded nor remedied as such. It has been argued that, in such cases where infringement ostensibly takes place in many jurisdictions at once, the courts should apply the most protective of the laws effective in all these possible protecting countries⁴¹. This argument has the merit of providing grounds for a preliminary injunction to stop the unauthorized hemorrhaging of protected materials into a global network, but it risks imposing the policy effects of one country's law on other countries⁴². Optimally, a court would explore more differentiated solutions, for example, as the facts would have allowed in the *Playmen* case, basing a wide-ranging injunction on law common to most of the overall marketplace threatened by the infringing act⁴³.

The second *desideratum*, a coherent web of remedies, becomes critical as courts reach final judgment, specifically in granting monetary awards. The international regime of intellectual property is predicated on national treatment, so that enterprises normally consult the law of a country before marketing in that country⁴⁴. To be coherent with this principle, the law of a given country should apply to ascertaining monetary awards to remedy infringement which prejudices or usurps the market for protected materials in that country. Unfortunately, national courts have not adopted fully consistent approaches to granting monetary awards in cross-border cases, sometimes applying their own home laws in ascertaining damages or profits incurred abroad. Consider this pair of cases with similar holdings but not necessarily consistent results across borders. In a US case, videos of the 1992 Los Angeles riots were copied in New York and transmitted across the Atlantic for exploitation in Europe without consent, and plaintiff was ultimately allowed to invoke US law as a basis for sharing in defendant's profits from exploitation overseas⁴⁵. In a Canadian case, a court followed a similar approach, applying only Canadian law, indeed rejecting defences akin to US fair use, while it awarded profit shares deriving from sales in the US market⁴⁶. However, in cases of infringement in both the United States and Canada, such precedents could allow courts in both countries to grant overlapping awards, or they could allow a court in one country to apply its approach to establishing and

assessing monetary liability to prejudice actually incurred in the other country⁴⁷. Now consider a pair of cases with globally more consistent approaches to awards. Faced with an award of about two million dollars, half due to exploitation in the United States and half outside, one US court, with an eye on the 'international regime', refused to apply home law as the basis for awarding monetary relief for marketing abroad⁴⁸. More emphatically, a French court rejected the argument that French law should apply to imposing damages just because the claimant was headquartered in France, and it rather applied Swedish, Dutch, and British laws, respectively, to award damages incurred in each of these countries⁴⁹. Following such precedents, courts would grant monetary awards more coherently by applying, respectively, the law of each country where damages were sustained or undue profits gained⁵⁰.

This analysis then localises the place of infringement in the country of the targeted market. Thus the law of this country will generally apply to incoming transactions to the extent that these threaten or actually prejudice this country's market, but this law will not normally apply to outgoing transactions aiming at foreign markets. In Internet cases where many markets are targeted at once, the court may find it sufficient to base a provisional injunction on law common to most of the overall marketplaces being threatened; however, the court should base final monetary awards on the law of each country whose market is prejudiced⁵¹. In extreme cases, it might be possible to argue for exceptions to this general approach by invoking international public policy, the *ordre public international*, that underlies the treaty regime of intellectual property. Such policy is most authoritatively manifest in the TRIPS Agreement, which provides for specific injunctive remedies to stop cross-border piracy, while it generally contemplates 'remedies which constitute a deterrent to further infringements'⁵². Thus, in a case where no other remedy is available to stop proliferating cross-border infringement, this policy could be invoked to support applying home law which specifically contemplates relief against outgoing transactions that target foreign markets⁵³. Sparse case law imposes special awards, such as statutory or punitive damages, under the law of a single country in order to adjust monetary liability for prejudices incurred in other countries⁵⁴. However, following the analysis proposed here, a court would better impose any such special

award under one country's law by looking only to the impact of the transaction at issue in that country. Where special awards apply country by country in cross-border cases, they may accumulate, with globally deterrent effects⁵⁵.

Remedial anomalies complicate matters here. To start, the *lex fori* determines the procedures for obtaining injunctions and establishing monetary awards. Where suit is brought in one court for infringement in many countries, this court's procedures might lead to results different from those otherwise resulting in the courts and under the laws of these other countries⁵⁶. Further, courts may well differentiate cross-border remedies when digital content is protected in one country but not in another, but there is no assurance that computers routing such content within global networks can always be easily reprogrammed to comply with such differentiated relief. Still other problems will arise as computerized systems are introduced to manage or police digital content⁵⁷.

Conclusion

Courts will increasingly encounter difficult conflicts of laws in the field of intellectual property. Many difficulties may be resolved by localising infringing acts with an eye to satisfying the remedial *desiderata* of the international regime. Accordingly, the laws of the countries whose markets are respectively targeted or prejudiced by the transactions at issue in a case will most often best provide bases for relief. Other difficulties, however, arise out of basic disharmonies, some substantive and some procedural, and courts will have to exercise their ingenuity to resolve them as equitably as they can from case to case⁵⁸. Progress towards a systematic international code of intellectual property, or towards globalised dispute-resolution regimes in the field, would eventually help us transcend such difficulties⁵⁹.

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- 4 *See ibid*, 174-181 (§ 366)
- 5 *See ibid*, 70 (§ 348)
- 6 *See ibid*, 221-233 *passim* (§§ 372-373)
- 7 *See ibid*, 56-57 (§ 345)
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- 32 TRIPS Agreement, note 8 above, Arts 51-60; also Paris Convention, note 8 above, Art 9, and Berne Convention, note 8 above, Art 16 (providing for seizure of infringing goods or copies on importation)
- 33 WIPO Copyright Treaty, Arts 11, 12, and 14, and WIPO Performances and Phonograms Treaty, Arts 18, 19, and 23, both adopted by the Diplomatic Conference in Geneva on 20 Dec 1996 and reprinted in *IIC*, **28**, 1997, 208
- 34 *See* Hans Ullrich, Technology Protection According to TRIPS: Principles and Problems, in F K Beier and G Schricker (eds), *From GATT to TRIPs*, Weinheim, VCH Verlagsgesellschaft, 1996, 357 at 366-369 (noting that national treatment leaves countries free to fashion laws of intellectual property pursuant to national policies)
- 35 *See* Max Planck Institute, Stellungnahme des Max-Planck-Instituts für ausländisches und internationales Patent-, Urheber- und Wettbewerbsrecht zum Entwurf eines Gesetzes zur Ergänzung des internationalen Privatrechts (außervertragliche Schuldverhältnisse und Sachen), *GRUR Int*, 1985, 104 at 105-107 (elaborating this distinction in applying it to hypothetical cases)
- 36 *See, eg, Spindelfabrik Suessen-Schurr v Schubert & Salzer*, 903 F 2d 1568, 1578 (Fed Cir 1990) (US) (enjoining preparatory acts in Germany leading to patent infringement in the US); *The Doors* case, Bundesgerichtshof (Germany), 18 Feb 1993, *GRUR Int*, 1993, 699, excerpts translated in *IIC*, **26**, 1995, 305 (confirming application of German law as basis of injunction against the importation of sound recordings legally fabricated abroad)
- 37 *See* note 32 above and accompanying text. *See, eg, Gramophone Co of India Ltd v Pandey*, AIR 1984 SC 667,

- (1985) Fleet St Rep 136 (Supreme Court) (India) (ordering seizure of copies in India on their way to Nepal), commented by Praveen Dalal, The Long Arm Jurisdiction of Courts Regarding Copyright Law in India, *Journal of Intellectual Property Rights*, 9, 2004, 557-564-565
- 38 *Playboy Enterprises Inc v Chuckleberry Publ Inc*, 687 F 2d 563 (2d Cir 1982)
- 39 *Ibid*, 939 F Supp 1032 (S D N Y 1996)
- 40 *Ibid*, 1034
- 41 See François Dessemontet, Internet, le droit d'auteur et le droit international privé, *Revue suisse de jurisprudence*, 1996, 285. But see *Stellungnahme des Max-Planck-Instituts*, note 35 above, 105-107 (critiquing project to codify application of the most protective law in cases of cross-border infringement)
- 42 For a hypothetical example, see text accompanying notes 16-18 above. See Lawrence B Solum and Minn Chung, The Layers Principle: Internet Architecture and the Law, *Notre Dame Law Review*, 79, 2004, 815, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=416263 (exploring the spillover effects of transterritorial injunctions of Internet transmissions)
- 43 See Geller, Conflicts of Laws in Copyright Cases, note 9 above, 342-346, 352-355
- 44 See Henri Desbois, André Françon, and André Kéréver, *Les conventions internationales du droit d'auteur et des droits voisins*, Paris, Dalloz, 1976, 153
- 45 *Los Angeles News Service v Reuters Television Int'l*, 340 F 3d 926 (9th Cir 2003), *modifying* 149 F 3d 987, 991-993 (9th Cir 1998), *cert denied*, 119 S Ct 1032 (1999), *reversing* 942 F Supp 1265, *concl*, 942 F Supp 1275 (C D Cal 1996)
- 46 *Hager v ECW Press Ltd* (1998) 85 C P R (3d) 289
- 47 For other examples, see text accompanying notes 16-18 and 42 above
- 48 *Subafilms, Ltd v MGM-Pathé Communications Co*, 24 F 3d 1088, 1094-1099 (9th Cir 1994) (en banc), *cert denied*, 513 US 1001 (1994)
- 49 *SISRO c Sté Ampersand Software*, Cour d'appel, 4e ch, Paris, 8 Feb 2002, *Expertises* 2002, 230, *affirmed* Cass civ I, 5 March 2002, *JCP* 2002 II, 10082, 994, excerpts translated in *IIC*, 34, 2003, 701
- 50 See Geller, Conflicts of Laws in Copyright Cases, note 9 above, 346-349, 352-355
- 51 See text accompanying notes 35-50 above
- 52 See text accompanying note 32 above; also TRIPS Agreement, note 8 above, Art 41(1). See Thomas Dreier, TRIPS and the Enforcement of Intellectual Property Rights, in *From GATT to TRIPS*, note 34 above, at 248 (examining these provisions in context)
- 53 See, eg, *AT&T Corp v Microsoft Corp*, 71 US PQ 2d 1118 (S D N Y 2004) (US) (applying section 271(f) of the US Patent Act as a basis for relief against exporting software information for installation in computers made abroad for marketing to foreign end-users); *BBC Enterprises Ltd v Hi-Tech Xtravision Lt* (1992) 9 R P C 167 at 170-183 (Chancery Division), *reversed*, *ibid* at 184-195 (Court of Appeal), *reversal affirmed*, *ibid* at 195-203 (House of Lords) (UK) (invoking section 298 of UK Copyright, Designs and Patents Act to enjoin the illicit marketing of decoders abroad; otherwise, the law could 'readily be bypassed by decoders being made' in one country and sold in another)
- 54 See, eg, *Nat'l Football League v PrimeTime 24 Joint Venture*, 131 F Supp 2d 458, 479 (S D N Y 2001) (US) (finding that infringement by capturing work-carrying signals in the United States and transmitting the works abroad was 'knowing or at least reckless' and awarding statutory damages for such acts under US law), *on remand from* 211 F 3d 10 (2d Cir 2000), *cert denied*, 532 US 941 (2001); *Regina v AFC Soccer*, 22 C P R (4th) 369 (Man Prov Ct 2002) (Canada) (assessing a fine under domestic law by taking account, *inter alia*, of the extent of illicit sales abroad, some via the Internet)
- 55 By parity of reasoning, we would not follow the commentary that contemplates attenuating monetary liability by applying the law of the home country of an infringer who, on the basis of that law and comparable laws elsewhere, could not have reasonably foreseen that his acts would have constituted infringement abroad. See André Lucas, Private International Law Aspects of the Protection of Works and of the Subject Matters of Related Rights Transmitted over Digital Networks, paras 89-90, 101, in WIPO Forum on Private International Law and Intellectual Property, WIPO Doc PIL/01/1 Prov, 17 Dec 2000, http://www.wipo.int/pil-forum/en/documents/doc/pil_01_1p.doc
- 56 See Donald S Chisum, Normative and Empirical Territoriality in Intellectual Property: Lessons from Patent Law, *Virginia Journal of International Law*, 37, 1997, 603, 614; also Dieter Stauder, Einheitliche Anknüpfung der Verletzungssanktionen im Gemeinschaftspatentübereinkommen, *GRUR Int*, 1983, 586 (asking how to overcome differences between national remedies in a unified European patent system)
- 57 See Geller, From Patchwork to Network, note 25 above, 561-566, also in *Duke Journal of Comparative and International Law*, 9, 1998, 76-82; for examples, WIPO Workshop on Service Provider Liability, 9 Dec 1999, <http://www.wipo.int/eng/meetings/1999/osp/index.htm>
- 58 See Jan J Brinkhof, Internationalisation of Patent Law, Transborder Injunctions and Summary Proceedings in the Netherlands, *CEIPI Texts on Intellectual Property*, 1995, 1 at 12-13 (pointing out that Dutch courts may decline to impose remedies not known to the foreign legal system of another protecting country)
- 59 See Laurence R Helfer and Graeme B Dinwoodie, Designing Non-National systems: The case of the Uniform Domain Name Dispute Resolution Policy, *William and Mary Law Review*, 43, 2001, 141, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=275468 (explaining such a regime for domain name disputes); Paul Edward Geller, An International Patent Utopia?, *European Intellectual Property Review*, 2003, 515, <http://www-rcf.usc.edu/~pgeller/publications.htm> (contemplating such a regime for patent disputes)