

WIPO INTERNATIONAL SEMINAR ON COPYRIGHT  
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## Applicable Laws and Principle of Territoriality

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### The Louvre

- Two States: France and United Arab Emirates
- Two Museums: In Paris and in Abu Dhabi
- Three laws...



## Conflict of laws

- Jurisdiction: which courts are qualified to hear a case
- Choice of Law: which laws will apply to the dispute
- Recognition and enforcement of judgements: how to secure the cross-border recognition and enforcement of the judgment

## Lex protectionis

- Lex loci protectionis: law of the country where protection is sought
  - Principle of territoriality and national treatment
  - Article 5.2) Berne Convention  
“the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed”
  - Article 14bis.2) Berne Convention  
“Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed”
  - Lex fori?: where protection is claimed, should read in which protection is claimed
  - German case law, France: *Huston v la Cinq* (moral rights)

# Asphalt jungle



# Lex originis

- Lex originis: law of the country of origin
  - Article 5.3) Berne Convention : “Protection in the country of origin is governed by domestic law”
  - *A contrario* argument
    - Article 5.2) Berne Convention: “the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed”
    - Article 14bis.2) Berne Convention: “Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed”
  - Other Articles in Berne Convention: 2(7) (works of applied art), 7(8) (comparison rule on the term of protection), 14bis(2)(c) (agreement signed by authors with the producer of a cinematographic work) and 14ter(2) (droit de suite)
  - Case Law: *Itar-Tass Russian News Agency v Russian Kurier, Inc* (ownership)
  - Initial ownership, existence and duration of copyright

## Lex contractus

- Law applicable to contractual agreements and obligations
- Transfer of rights
- EU Rome Convention on the law applicable to contractual obligations (1980) and Rome I Regulation (2008)
- the contract shall be governed by the law of the country with which it possesses the closest links

## Lex loci delicti commissi

- Lex loci delicti commissi: the law of the place where the infringement took place
  - Extracontractual matters: Torts and delicts
  - Bogsch Theory: emission and reception of satellite broadcasting
  - EU Regulation on the law applicable to non-contractual obligations (Rome II 2007)
  - the law of the country in which the damage occurs will apply, unless the parties both have their habitual residence in another country, in which case the law of that country will apply

## Recent developments

- Negotiations on the protection of audiovisual performances (2000): choice of law for transfer of rights
- Convention on Choice of Courts Agreements of the Hague Convention (2005): commercial transactions such as IP licensing
- Projects
  - American Law Institute (USA)
  - Max Plank Institute (Germany)