A PROPOSAL TO IMPROVE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN IP LITIGATION: THE CLIP-PRINCIPLES

Pedro Alberto DE MIGUEL ASENSIO *

Text of the Lecture delivered at the International Symposium

"Intellectual Property and International Civil Litigation" organized by the Copyright Group, Industrial Property Right Group, and International Civil Procedure Group of the "Transparency of Japanese Law" Project

Tokyo, May 8 and 9, 2009

* Catedrático de Derecho internacional privado
Facultad de Derecho
Universidad Complutense de Madrid
E- 28040 MADRID
pdmigue@der.ucm.es

Documento depositado en el archivo institucional EPrints Complutense
http://eprints.ucm.es
Part IV of the CLIP Principles is devoted to the recognition and enforcement of foreign judgments. Provisions in this field are decisive to obtain effective cross-border relief when litigating multi-state infringements in the courts of a single country and in general against infringers who are not domiciled in the forum country. They also influence the choice made by prospective litigants between a multiplicity of available fora. For instance, recognition and enforcement may be decisive with a view to:

- ensure the authority abroad of an injunction ordering a party to desist from an infringement in the territory of several countries
- enforce a foreign ruling on damages in the country where the infringer’s assets are located
- deny the losing party the possibility to bring new proceedings involving the same cause of action and between the same parties in the courts of another State, to the extent that the new forum country recognises the res judicata effect (or claim or issue-preclusion) of the decision rendered abroad.

It is widely accepted that in the current context of increasing globalization of economic relationships and exploitation of IP rights, fostering international enforceability of judgments is necessary to ensure effective and adequate protection of IP rights.

A significant number of bilateral and multilateral agreements on recognition and enforcement of foreign judgments have been concluded so far. Some of those conventions cover IP disputes, although usually they have no specific provisions in this field. In fact, due to the limitations of the existing conventions and the lack of global

---

agreements, the applicable rules on recognition and enforcement depend typically on the law of the country where the enforcement is sought. In some states, the conditions applicable may be different depending on which is the country of origin of the judgment, since international treaties on recognition and enforcement are usually subject to reciprocity. In the EU the unified recognition and enforcement rules only apply to judgments given by a court of other Member State. Indeed, the presence within the EU of a uniform and coherent system of mutual recognition and enforcement of judgments, initially established in the 1968 Brussels Convention, has decisively contributed to facilitate cross-border adjudication of IP disputes within Europe. That system is now contained in the so-called Brussels I Regulation.

In this context, the CLIP Proposal intends to offer a balanced model based upon standards that have achieved significant international acceptance in the area of recognition and enforcement of judgments.

After this brief Introduction, I will arrange my presentation in three parts: First, I will deal with the CLIP approach concerning applicability of Part IV of the Principles; Secondly, I will address the basic concepts of judgment, effects, recognition and enforcement and some procedural issues; Thirdly, I will refer to the grounds for non-recognition of foreign judgments under the CLIP Principles that will be the core part of my presentation.

I. Applicability of Part IV of the CLIP Principles

International conventions on recognition of judgments are usually subject to reciprocity and hence they only apply to decisions adopted by the courts of other contracting States. That typical situation seems to have influenced the approach chosen by the ALI as regards the applicability of the provisions on recognition of the ALI Principles. Under the ALI text, it is also Part IV that deals with recognition and enforcement. According to § 401 of the ALI Principles, that Part applies only to situations in which a judgment has been rendered under the ALI Principles by a court of one jurisdiction and the winning party then seeks enforcement or recognition in the court of another jurisdiction. Indeed, under § 401(1)
“A court in which recognition or enforcement of a foreign judgment is sought shall first ascertain whether the rendering court applied these Principles to the case.

(a) If the rendering court applied the Principles, then the enforcement court shall recognize or enforce the judgment pursuant to these Principles.

(b) If the rendering court did not apply the Principles, then the enforcement court shall determine whether to recognize or enforce the judgment pursuant to its domestic rules on recognition and enforcement of foreign judgments”.

Contrary to international conventions, model international rules made by private bodies in the area of recognition and enforcement of judgments are not expected to be applied as such by courts in typical situations. Indeed, Part IV of the CLIP Principles may in practice mainly be useful as a reference to interpret or supplement international and domestic law and as a model for national and international legislators, in line with the possible uses of the Principles as stated in the Preamble. Therefore, the provisions of Part IV of the CLIP Principles are not drafted as to be applicable only to situations in which the rendering court has applied the Principles. This approach seems to be more flexible than the one adopted under § 401(1) ALI Principles. This flexibility may be helpful to design a model not only for international or treaty legislators but also for national legislators when drafting their own national system to be applied to decisions adopted in any country in the world.

Additionally, the CLIP Draft has a specific provision to address the fact that many countries are part of a network of bilateral and multilateral treaties or belong to regional integration organisations that have enacted rules on recognition. Further, international cooperation in this field is always aimed at rendering foreign judgments more easily enforceable.

Article 4:103 of the CLIP Principles is modelled on the rules establishing the so-called favor recognitionis principle in international conventions on the recognition and enforcement of judgments and arbitral awards, such as Article VII, paragraph 1, of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and Article 26 of the Hague Convention on Choice of Court Agreements of 2005, not yet in force. Article 4:103 ensures that the provisions of Part 4 of the Principles shall not restrict the application of multilateral or bilateral agreements
concerning the recognition of judgments entered into by the State in which recognition is sought nor the rules of a regional integration organisation, such as the EU, if that country is a Member State of the organisation to the extent that all those provisions establish a more favourable regime for the recognition and enforcement of the judgment. This provision is essential to coordinate the Principles with the existing international, regional and national rules in that area.

II. Some basic concepts

Now, I would like to address how some basic concepts are dealt with in the CLIP Principles. Part IV of the CLIP Draft begins with the definition of judgment in Article 4:101. It is a very broad definition that encompasses any judgment given by a court of any State, whatever the judgment or the proceedings may be called by that State. It also includes the determination of costs or expenses by an officer of the court. Additionally, under Article 4:801 a settlement to which a court has given its authority shall be recognized and declared enforceable in the requested State under the same conditions as judgments. This approach is well-known from an international perspective, as illustrated by the EU Brussels I Regulation –Regulation 44/2001 (EC)– and Article 12 of The Hague Convention on Choice of Court Agreements of 2005.

The Draft acknowledges also the well-known conceptual distinction between recognition and declaration of enforceability. That distinction does not affect the conditions applicable since the grounds to deny recognition are the same that apply when the declaration of enforceability is at issue. The only additional requirement is that in order to be enforceable, a judgment must be enforceable in the State of origin. As to the extent of recognition, Article 4:102(2) establishes that in order to be recognized, a judgment must have in the State of origin the effect whose recognition is sought in the requested State. Hence, the scope of res judicata (claim or issue preclusion) and the effects that the judgment can have in the State of recognition are limited by its effects in the country of origin. A request for recognition may not go further than the original judgment. This conclusion does not rule out that legal and procedural constraints in the requested State may affect the available remedies, especially to the extent that enforcement of injunctions is at stake, since enforcement takes place in accordance with the law of the requested State to the extent provided by such law.
Under Section 7 of Part IV of the CLIP Draft, recognition and enforcement differ as to the procedure, in line with the prevailing comparative and international approach. According to Article 4:702 (1), foreign judgments shall be recognised by operation of law and without any special procedure being required. Hence, any interested party may invoke recognition as an incidental question in the course of other proceedings or as a defence, for instance in order to challenge proceedings brought by the losing party in the courts of another State based on the *res judicata* effect (claim or issue preclusion) of the foreign judgment. By contrast, declaration of enforceability, that confers the right to proceed to enforcement, is typically subject to a special procedure - for instance, in Japan see Article 24(1) Civil Execution Act-. Under the Principles procedural rules on that specific issue are left to the law of the requested States.

The procedural law of the State in which recognition of a foreign judgment is sought also applies to the methods by which any interested party may request a declaration of recognition in a special procedure in cases where the recognition of a judgment is itself the principal issue there being no other proceedings involved and no claim of enforcement. The Principles establish that such a declaration is not necessary to obtain recognition but acknowledge that in limited circumstances a party may have a legitimate interest in obtaining a formal declaration of recognition or non-recognition.

III. Grounds for non-recognition/enforcement

Let me now address the central part of my presentation that deals with the grounds for non-recognition under the CLIP Preliminary Draft. Those grounds are confined to those admitted in the Principles and hence recognition and declaration of enforceability may be refused only for one of the reasons set out in Part IV of the Principles.

Under the CLIP Principles, it is not necessary that the foreign judgment should have become final or conclusive to be recognised or enforced, contrary to the situation in many national systems and even some international conventions. However, in case an ordinary appeal against the judgment has been lodged in the State of origin or if the time limit for seeking ordinary review has not expired, recognition or enforcement may be postponed or refused, although a refusal based on that reason does not prevent a
subsequent application for recognition or enforcement (Article 4:102). Certainly, as it has been noted earlier, enforcement is only possible to the extent that the judgment is provisionally enforceable in the State of origin.

Provisional and protective measures adopted by a foreign court can be recognised and enforced under the Principles. Article 4:301 establishes two specific limitations for those cases. This provision allows only cross-border enforcement of provisional measures adopted by a court having jurisdiction over the merits in accordance with the relevant provisions of Part 2 of the Principles. Therefore, provisional measures ordered by the courts of another country, even under the specific rule on jurisdiction over provisional and protective measures of the Principles –Article 2:501(2)–, shall not be enforceable. The second limitation is that provisional and protective measures adopted without prior hearing of the adverse party and enforceable without prior service of process to that party shall not be recognized or enforced. This provision is based on the interpretation of the Brussels Convention by the ECJ, according to its judgment of 21 May 1980, 125/79, Denilauer and on the idea that although Article 50 (2) of the TRIPS Agreement enables Contracting States to adopt that kind of measures it does not impose on Member States an obligation to recognize foreign decisions adopted under those circumstances.

III.1 Verification of jurisdiction

Among the grounds that justify non-recognition of foreign judgments, the review of the international jurisdiction of the judge of origin plays an important role in most systems. By virtue of that requirement, the enforcing court reviews whether the original court exercised jurisdiction in a manner considered appropriate in the recognizing country. Section 2 of Part 4 of the Principles is devoted to “Verification of Jurisdiction”. The basic criterion is that judgments based on jurisdictional rules which conflict with the Principles are excluded from the recognition and enforcement mechanism of the Principles. Under Article 4:201(1) “A judgment shall not be recognized or enforced if there is no ground of jurisdiction under Part 2 of the Principles which would have allowed the foreign court to assert its jurisdiction”.

Hence Part 2 of the Principles is to play a very significant role to assess so-called indirect jurisdiction. However, the Principles do not impose a self-contained regime in
which the standard of review of the foreign court jurisdiction is to be identical to the
jurisdictional provisions of the Principles, since judgments based on jurisdictional rules
other than those contained in the Principles are not \emph{a priori} excluded from the
recognition and enforcement mechanism of the Principles. For instance, some national
procedural laws might provide for even broader jurisdictional rules or have
implemented such provisions as part of a bilateral or multilateral agreement. It is not
necessary that the court of origin grounded its jurisdiction in one of the specific criteria
established in Part 2 inasmuch as equivalent connections existed between the case in
dispute and the country of the rendering court. Grounds of jurisdiction other than those
included in Part 2 of the Principles may be found sufficient provided that a similar
connection with the country of the rendering court exists. Therefore, the standard of
comparison is not to be found in the individual wording of the specific jurisdictional
provisions of the Principles. Nevertheless, a standard of equivalence is applied in that
the rules in question must come to a similar result. Furthermore, the Principles do not
require the enforcing country to verify that the rendering court had jurisdiction to
adjudicate under the laws of its own state.

The CLIP Principles resemble to a certain extent so-called double conventions,
that cover both jurisdiction and recognition rules. In that kind of instruments unification
of jurisdiction provisions among Member States may be decisive to limit the scope of
jurisdiction review in the recognition stage. An extreme example of the significance of
double instruments is the Brussels I Regulation in the EU in which international
jurisdiction of the court of the Member State of origin is reviewed only exceptionally.
Such a situation is related to the fact that at the time of the creation of the Brussels
Convention the Members States considered appropriate to limit and unify the
jurisdictional grounds available in all Member States in an action against a person
domiciled in a Member State. Therefore, article 35(3) of Regulation 44/2001 states that
the jurisdiction of the court of the Member State of origin may not be reviewed and that
the test of public policy may not be applied to the rules relating to jurisdiction. The sole
exception to that rule is laid down in article 35(3) that states that a judgment shall not be
recognised if it violates the grounds of jurisdiction established in Chapter II of the
Regulation in matters relating to insurance, consumer contracts and exclusive
jurisdiction.

Although the Regulation in this respect can not be a model for the Principles
given the specific nature and functions of the Principles, a sort of presumption of
conformity has been adopted for cases in which the judgment has been rendered in a country that applies the Principles. According to 4:201 (2), “If the court of origin applied the Principles, it shall be presumed that the foreign judgment does not conflict with the rules established in Part 2”.

The Principles contain specific provisions on the verification of jurisdiction concerning the validity and registration of IP rights and on the control of the rules protecting consumers or employees.

The interpretation and scope of exclusive jurisdictional rules on IP litigation are decisive not only directly to allocate competence to the courts but also indirectly because due to their mandatory character they may decisively influence non recognition of foreign judgments. A judgment which falls foul of the provisions on exclusive jurisdiction does not benefit from the system of recognition and enforcement under the Principles.

Given the scope of the exclusive jurisdiction provision of Article 2:401 –that it is more restrictive than the interpretation made by the European Court of Justice of Article 22(4) of the Brussels I Regulation in the GAT judgment (ECJ Judgment of 13 July 2006, C-4/03, GAT)–, Part IV of the Principles restricts the possibility to refuse recognition and enforcement of a foreign judgment for conflicting with that provision to judgments rendered by the courts of a State other than the country where the right has been registered or is deemed registered in disputes having as their object the grant, registration, validity, or revocation of any intellectual property right –such as patents, marks, or industrial designs- protected on the basis of registration. Article 2:401 (2) excludes certain disputes from the scope of the exclusive jurisdiction. Indeed, that exclusion comprises the disputes in which validity or registration arises in a context other than by principal claim or counterclaim to the extent that decisions resulting from such disputes do not affect the validity or registration of those rights as against third parties. In those situations, under Article 4:202 of the Principles, recognition and enforcement of a foreign judgment may not be refused on the ground that in the proceedings before the court of origin the validity or registration of an intellectual property right registered in a State other than the State of origin was challenged. This approach facilitates the adjudication before the courts of a single country of infringement claims in cases in which validity is incidentally challenged because it makes possible the cross-border enforcement of the decisions rendered in those situations. However, this criterion is only applicable when the rendering country has
enacted the CLIP principles or similar rules as to the scope of exclusive jurisdiction on validity and registration disputes.

The Principles do not contain specific jurisdictional provisions aimed at protecting weaker parties, such as consumers or employees, although they acknowledge that a significant number of legislations include protective and mandatory rules on jurisdiction concerning consumers and employees. The provisions of Part 2 of the Principles on jurisdiction are to be applied without prejudice to specific jurisdictional rules of the forum protecting those weak parties. Hence, the protective jurisdictional provisions prevail over the rules of the Principles and these allow for the application of national provisions in those fields (Article 2:101). Under Article 4:204, recognition and enforcement may be refused if the judgment is manifestly incompatible with specific jurisdictional rules protecting consumers or employees in the State of recognition. In account of the different national consumer and employee protection statutes, the rule is drafted widely in order to give courts flexibility in deciding whether to recognize and enforce.

III.2 Public Policy

Article 4:401 of the Draft CLIP Principles refers to public policy as a ground for non recognition that is common to international conventions and national legislations in this field, as illustrated by Article 34(1) EU Regulation 44/2001 and Article 118(3) of the Japanese Code of Civil Procedure.

Article 4:401 refers to substantive and procedural public policy in different provisions. According to its first paragraph recognition or enforcement is not possible to the extent that it would be manifestly incompatible with the public policy of the requested State. This ground for non-recognition can be relied on only in exceptional situations. It is an exception. Mere differences in substantive or procedural law do not give raise to a manifest incompatibility with the essential fundamental principles and values of the requested State. Further, under the Principles recognition is not to be refused on the sole ground that the court of origin applied a law other than that which would have been applicable under the private international law of the State in which recognition is sought.
Particularly noteworthy as regards differences in substantive law is the variability of principles concerning the function and purposes of the liability system. In this connection, the Principles include a specific provision as to the enforceability of decisions awarding punitive damages in jurisdictions where civil liability is considered as essentially compensatory and hence limited to compensate a party for actual loss or harm caused to the victim. Article 4:402 addresses recognition and enforcement of foreign judgments awarding non-compensatory damages. This provision is modelled on Article 11 Hague Convention on Choice of Court Agreements of 2005. Its rationale is that also in these situations public policy as a ground to refuse recognition should be restrictively constructed and therefore only applied in situations in which the recognition or enforcement of the foreign judgment is manifestly incompatible with the public policy of the enforcing country.

In this regard, it is important to note that punitive damages are remedies under private or civil law. Moreover, given that in many European jurisdictions compensatory damages may cover non-monetary damage and that the costs related to litigation are commonly awarded to the successful claimant, it may happen that the amount of punitive damages awarded by a US court may not always go grossly beyond the amount a European court would grant the plaintiff in the same dispute. Hence, under the CLIP Principles, recognition and enforcement of a judgment may only be refused if, and only to the extent that, the judgment awards damages that do not compensate a party for actual loss and exceed the amount of damages (plus costs relating to the proceedings) that could have been awarded by the courts of the State where enforcement is sought including the costs relating to the proceedings if the same events had been adjudicated in that country.

The wording of the procedural public policy provision –Article 4:401(2)- is very restrictive because it is only a ground for non-recognition to the extent the specific proceedings leading to the foreign judgment were manifestly incompatible with fundamental principles of procedural fairness of the requested State. Hence, the existence of significant differences between the procedural law of the country of origin and that of the country in which enforcement of the decision is sought is not determinative to refuse the enforcement. Given the exceptional and restrictive understanding of public policy, only under exceptional circumstances procedural differences between jurisdictions or procedural defects in foreign litigation can be a reason to refuse enforcement of foreign decisions on IP. For instance, it seems
appropriate to consider that enforcement of a civil judgment based on a jury verdict should not be in principle regarded as a breach of fundamental process in countries that do not use civil juries. Also, differences with respect to the availability of discovery devices between the country of origin and the country in which enforcement is sought should not be an obstacle to the enforcement of the judgment inasmuch as such differences do not decisively affect in the case concerned fundamental procedural fairness and do not undermine essential principles of the system in which enforcement is sought.

III.3 Other grounds for non-recognition

The remaining grounds for non-recognition are listed in Article 4:501 of the Draft Principles that consists of four paragraphs.

The first paragraph refers to the situations in which the document which instituted the proceedings was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence. The standard of review is neither the internal law of the State in which the judgment was given nor that of the country where recognition is sought. The focus rests on the verification that the defendant was notified of the proceedings in a way that did not hinder his right of defence, that he received actual knowledge of the proceedings and that he was given the opportunity to defend himself. Process serving not undertaken in accordance with a treaty on judicial cooperation to which the country of origin and the enforcing country are parties does not necessary fall within the ground of non-recognition of Article 4:501(1).

The provision applies mainly to default judgments and it does not cover those situations in which the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested. Under this regime, it is in the defendant’s best interests to appear in court and to defend himself in any foreign jurisdiction to the extent that he is notified in a way that enabled him to get proper knowledge of the commencement of the action with sufficient time to prepare his defence, especially when the jurisdiction of the foreign court is based on a ground of jurisdiction which under Part 2 of the Principles would allow the foreign court to assert its jurisdiction.

Paragraph 2 of Article 4:501 refers to the possibility to refuse recognition and enforcement due to the existence of pending proceedings between the same parties and
having the same cause of action before a court of the requested State. Such possibility is limited to the situations in which the proceedings in the requested State were the first to be instituted. Article 2:706 of the CLIP draft sets forth the relevant criteria to determine the time when a court is deemed to be seized also for the purposes of Article 4:501. Additionally, Section 7 of Part 2 on coordination of proceedings and especially Article 2:701 on congruent proceedings establish means to coordinate congruent proceedings commenced in the courts of different States with a view to avoid the risk of inconsistent judgments.

Incompatibility of the foreign judgment with a judgment given in the requested State between the same parties is the third ground for non-recognition established in Article 4:501. In order to guarantee the rule of law in the enforcing country, a judgment rendered in that State must prevail over the foreign conflicting judgment regardless of which suit was filed earlier and which judgment was given earlier. The same criterion applies in case a conflict arises between two incompatible foreign judgments concerning the same parties and having the same cause of action to the extent that the recognition of one of them has already been declared in the requested State. The judgment that has already been recognised always prevails. In situations in which none of the conflicting foreign judgments has already been recognised, the judgment that was given earlier prevails.

III.4 Exclusion of substantive review and scope of injunctions

Article 4:601 sets forth the basic principle that recognition and enforcement of a foreign judgment shall be decided without reviewing the substance or merits of the foreign judgment. This basic principle is common to almost all international, regional and national systems of recognition and enforcement, as illustrated also by Article 36 Regulation (EC) 44/2001 and Article 24.2 Japanese Civil Execution Act. The relevant provision of the CLIP Principles makes it clear that the exclusion of substantive review is to be understood without prejudice to the provisions of Part 4 of the Principles since the application of certain grounds of non-recognition may require an assessment of the contents of the judgment in the light of certain standards. That is usually the case to the extent that the compatibility with substantive public policy is at issue. Further, under Article 4:203, the authority of the requested State shall be bound by the findings of fact on which the foreign court based its jurisdiction.
The second paragraph of Article 4:601 deserves special attention. According to this provision, in spite of the exclusion of substantive review, the court of the country where recognition or enforcement is sought is allowed to review the territorial scope of the remedies for the infringement of an intellectual property right when applying Part 4 of the Principles. Additionally, the Article affirms that such a review shall not be deemed as a substantive review.

This provision does not add a new ground for non-recognition but is based on the idea that the Internet demands a proper understanding of those grounds with a view to avoiding the excessive scope of territorial application of certain injunctions against infringements. In principle, an injunction should only prohibit the infringer’s behaviour in so far as it produces its infringing effects in a country or several countries whose law has been applied in the judgment. In Internet cases, the displaying, offering for sale or download of an IP protected product might be legal in some countries of reception but not in others. Under such circumstances, a court’s injunction must only encompass the illicit part of the behaviour, and the infringer must be allowed to continue his legal Internet activities or be able to adapt his Internet presence without the right holder having the possibility to prevent him from doing so on the basis of the original judgment. If necessary, public policy or verification of jurisdiction may be invoked to refuse the recognition of the foreign injunction to the extent that its territorial scope effects grossly exceeds the territorial scope of the laws applied to the infringement unfairly undermining the activities of the defendant in territories in which they are completely legal given the territorial nature of the rights involved.

IV. Conclusions

In order to conclude I would like to stress some basic features of the provisions on recognition and enforcement of the Draft CLIP Principles that may be especially significant to illustrate how Part 4 of the Principles establishes a balanced system of recognition and enforcement of foreign judgments based on standards that have achieved significant international acceptance. Use of Part IV of the Principles as a model for national and international legislators and as a reference to interpret or supplement national or international law would promote and facilitate cross-border
recognition and enforcement of judgments, including provisional measures, resulting from IP disputes.

- Certain grounds of non-recognition known in some systems are not admitted:
  a) There is no verification that the court of origin applied the law that would have been applicable under the choice of law rules of the enforcing country.
  
b) There is no reciprocity requirement as to the application of the provisions on recognition and enforcement of the CLIP Principles. No control is established in order to refuse recognition based on the idea that recognition should be restricted to decisions adopted in countries in which comparable judgments coming from the now recognising country are recognised under substantially the same conditions. The rationale behind the exclusion of reciprocity is related to the inappropriateness of such a mechanism in situations involving typically private rights in litigation between private parties. Moreover, a trend can be found in many national systems favouring the suppression of reciprocity with respect to judicial cooperation in civil matters.

  - Part IV of the CLIP Principles enhances legal certainty by providing –in conjunction with Part 2- reasonable standards for the verification of the jurisdiction of the rendering court

  - The CLIP Principles offer standards ensuring a restrictive application of public policy and a reasonable verification of the notification of the proceedings.

  - The Principles contain a mechanism to control the territorial scope of injunctions that can be especially useful in the Internet context.
PART 4: RECOGNITION AND ENFORCEMENT

Section 1: General rules

Article 4:101: Definition of judgment
For the purposes of these Principles, judgment means any judgment given by a court or tribunal of any State, irrespective of the name given by that State to the proceedings which gave rise to the judgment or of the name given to the judgment itself, such as decree, order, decision or writ of execution. It also includes the determination of costs or expenses by an officer of the court.

Article 4:102: Recognition and enforcement in general
(1) A judgment given by a foreign court shall be recognized and enforced in accordance with this Part of the Principles.
(2) In order to be recognized, a judgment must have in the State of origin the effect whose recognition is sought in the requested State.
(3) In order to be enforceable, a judgment must be enforceable in the State of origin.
(4) Recognition or enforcement may be postponed or refused if an ordinary appeal against the judgment has been lodged in the State of origin or if the time limit for
seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

(5) If the foreign judgment contains elements which are severable, one or more of them may be separately recognized or enforced.

**Article 4:103: Favor recognitionis principle**

The provisions of Part 4 of the Principles shall not restrict the application of multilateral or bilateral agreements concerning the recognition and enforcement of judgments entered into by the State in which enforcement or recognition is sought nor deprive any interested party of any right he may have to avail himself of a judgment in the manner and to the extent allowed by the law or the treaties of that country including the rules of a regional integration organisation if that country is a Member State of the organisation.

**Section 2: Verification of jurisdiction**

**Article 4:201: Jurisdiction of foreign courts**

(1) A judgment shall not be recognized or enforced if there is no ground of jurisdiction under Part 2 of the Principles which would have allowed the foreign court to assert its jurisdiction.

(2) If the court of origin applied the Principles, it shall be presumed that the foreign judgment does not conflict with the rules established in Part 2.

**Article 4:202: Validity and registration**

Recognition and enforcement of a foreign judgment may not be refused on the ground that in the proceedings before the court of origin the validity or registration of an intellectual property right registered in a State other than the State of origin was challenged, provided that the recognition and enforcement produces effects only between the parties.

**Article 4:203: Findings of fact**

In its examination of the grounds of jurisdiction according to Article 4:201 to 4:202, the authority of the requested State shall be bound by the findings of fact on which the authority of the State where the judgment was rendered based its jurisdiction.

**Article 4:204: Jurisdictional rules protecting consumers or employees**

Recognition and enforcement may be refused if the judgment is manifestly incompatible with specific jurisdictional rules protecting consumers or employees in the State of recognition.
Section 3: Provisional and protective measures

Article 4:301: Provisional and protective measures
(1) Provisional and protective measures adopted by a foreign court shall not be recognized and enforced if there is no ground of jurisdiction under Part 2 of these Principles, which would have allowed the foreign court to decide on the merits.

(2) Provisional and protective measures adopted without prior hearing of the adverse party and enforceable without prior service of process to that party shall not be recognized or enforced.

Section 4: Public policy

Article 4:401: Public policy in general
A judgment shall not be recognized or enforced if:

(1) such recognition or enforcement would be manifestly incompatible with the public policy of the requested State;

(2) the specific proceedings leading to the judgment were manifestly incompatible with fundamental principles of procedural fairness of the requested State.

Article 4:402: Non-compensatory damages
(1) Recognition and enforcement of a judgment may be refused if, and only to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered and exceed the amount of damages that could have been awarded by the courts of the State where enforcement is sought.

(2) The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

Section 5: Other grounds for non-recognition of foreign judgments

Article 4:501: Other grounds for non-recognition of foreign judgments
A judgment shall not be recognized or enforced if:

(1) the document which instituted the proceedings or an equivalent document was not notified to the defendant in sufficient time and in such a way as to enable her/him to arrange for her/his defence, unless the defendant entered an appearance and presented her/his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested;

(2) proceedings between the same parties and having the same cause of action are pending before a court of the requested State, provided that those proceedings were the first to be instituted;

(3) it is incompatible with a judgment given in the requested State between the same parties;
(4) it is incompatible with a judgment given in another State between the same parties and having the same cause of action, provided that this judgment fulfils the conditions necessary for its recognition in the requested State and it was given earlier or its recognition has already been declared in the requested State.

Section 6: Exclusion of substantive review

Article 4:601: Exclusion of substantive review
(1) A foreign judgment may not be reviewed as to its substance or merits, without prejudice to the application of the provisions of this Part.

(2) Notwithstanding paragraph 1, the territorial scope of the remedies for the infringement of an intellectual property right may be reviewed by the court addressed when applying this Part of the Principles. This review shall not amount to a substantive review.

Section 7: Procedure

Article 4:701: General Principles
(1) Recognition and enforcement procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

(2) The requested court shall act expeditiously.

Article 4:702: Recognition
(1) A foreign judgment shall be recognised by operation of law and without any special procedure being required. Recognition may be raised as an incidental question and by way of counterclaim, cross-claim or defence.

(2) Without prejudice to paragraph 1, any interested party may request from the competent authorities of a State that they decide on the recognition or non-recognition of a foreign judgment. The procedure shall be governed by the law of the requested State.

(3) Recognition may be refused only for one of the reasons set out in this Part of the Principles.

Article 4:703: Enforcement
(1) The law of the requested State determines the methods by which a foreign judgment is declared enforceable.

(2) The declaration of enforceability may be refused only for one of the reasons set out in this Part of the Principles.

(3) Foreign judgments declared enforceable in the requested State shall be enforced as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law.
Section 8: Settlements

Article 4:801: Settlements
A settlement to which a court has given its authority shall be recognized and declared enforceable in the requested State under the same conditions as judgments, so far as those conditions apply to settlements.