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**WHICH LAW APPLIES? THE CHOICE-OF-LAW PROBLEMS IN  
CROSS-BORDER COPYRIGHT CASES**

**Master Thesis of International Business Law**

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I declare that the thesis presented here is entirely the result of my original research and has not been submitted elsewhere, either in part or whole, for a degree or other academic credits. I undertake the sole responsibility for any inaccuracy in this declaration.

Yours Sincerely,

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April 11, 2014

## **Abstract**

In the recent information age, copyright protection has been attracted more and more attention. With the increasing number of international transactions, disputes arising from foreign-related copyright are more frequent. Due to the fact that principle of territoriality plays a pivotal role in the area of copyright protection and there is not a universal copyright law in the world, a work protected in one state may be unprotected in another state, or the level of protection is different from country to country. As a consequence, it is crucial to determine which law governs a transnational copyright case.

Traditionally, it is recognized the *lex loci protectionis*, meaning the law of the place in which the protection is sought, mirrors the territoriality of copyright. And thus it is generally regarded as the most reasonable choice-of-law rule for copyright disputes. However, the *lex loci protectionis* is challenged in the digital world. Apart from the *lex loci protectionis*, there are various choice-of-law rules adopted by different national states to copyright cases. Besides, the approach of *dépeçage* is often adopted to determine the applicable law. In this approach, separate choice-of-law rules are applicable to different parts of copyright (e.g. validity, existence, ownership, infringement, contract, etc.). The *lex originis* is often regarded as the most competitive alternative method, especially in the field of initial ownership of copyright. Yet the *lex originis* has its own disadvantages as well. As a matter of fact, none of these approaches are perfect.

The problem of choice-of-law rules in the field of copyright has become a hot topic nowadays. Several relevant provisions are stipulated by codes and academic legal instruments, especially in the EU and the US. It is significant not only to establish a series of choice-of-law rules which are most suitable for copyright cases, but also to harmonize choice-of-law rules of different states and thus the applicable law to a particular copyright case is definite no matter where the case is heard. In China, the academic study of this topic started lately. Nevertheless, the choice-of-law rules on intellectual property have been legislated currently, but they still have room for the improvement.

**Key words:** choice-of-law rule, copyright, the *lex loci protectionis*, the *lex originis*, principle of territoriality

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