

Legal Regulation & Education: Doing the Right Thing?

Anabela Gonçalves

University of Minho

asgoncalves@direito.uminho.pt

Cross-border infringement of intellectual property rights

The intellectual property rights are a way of protecting the creation, the innovation, the research by granting the creator an exclusive right to explore their inventions. That means that they can prevent others from using their creations and enjoy the economic advantages of their exploration in a period of time and in a certain territory. As a part of each country wealth, the protection and enforcement of the intellectual property rights is essential and is done in different ways by each legal system. However, with the globalization, the international trade of intellectual property rights became more significant and the need of international protection of these rights arose. The development of technology brought new techniques of reproduction of books, paintings, films, program computers, and new methods of distribution that allows the non-authorized distribution of those reproductions with a large geographical reach, like the internet. The globalizations and the technological breakthroughs facilitate the infringement of trademarks and other distinctive signs. In this context, it is important for the right-holder to be able to enforce his right internationally.

The cross-border infringement of intellectual property rights raises several questions. The differences between each country legal system relating the protection and enforcement of intellectual property rights became a source of dispute between States and an obstacle to spread the inventions and innovations on a global level. To expand the protection of intellectual property rights across borders, it was developed an international legal intellectual property framework, under the aegis of some international organizations like the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). It was concluded international agreements that introduced minimum levels of protection in signatory States regarding intellectual property rights originating from other signatory States, under the aegis of some international organizations. With this aim, there's the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), of 9th September 1886, the Paris Convention for the protection of Industrial Property (Paris Convention), of 20th March 1883, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), of 15th April 1994.

Besides these international agreements, the European Union (EU) has also created intellectual property rights that are ruled by EU legal instruments which define their legal protection. The aim of these EU intellectual property rights is to assure the good functioning of the internal market, removing the obstacles to free competition, without the distortions arising from boundaries. However, this EU legislation is incomplete, and not all the issues are provided for. To all those issues not legislated by European Union or in those where there is an indication to apply the national law of the Member States by virtue of legislation of the European Union, it is important to determine which law shall rule the cross border enforcement of intellectual property rights and which law can the

right-holder rely to protect, enforce his rights and to prevent the improper use of those rights or their exploitation across borders without the right-holder authorization. The infringement of intellectual property rights can occur at a contractual level or at a non contractual level. On a contractual level when what is at stake is the breach of contracts concluded between the right-holder and another party that aim to regulate the creation, exploitation and use of an intellectual property right. On a non-contractual level when there is an infringement of the legal protection that grants the exclusive right to explore the invention or the work given by national law, international convention or UE law. This study will focus only on this last point and the solutions arising from Article 8 of Regulation (EC) No 864/2007 of the European Parliament and the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).