

**INTELLECTUAL PROPERTY:**  
**PRINCIPLES GOVERNING JURISDICTION, CHOICE OF LAW,**  
**AND JUDGMENTS IN**  
**TRANSNATIONAL DISPUTES**  
**(with Comments and Reporters' Notes)**

**Part IV**  
**RECOGNITION AND ENFORCEMENT**  
**OF FOREIGN JUDGMENTS**  
**IN TRANSNATIONAL CASES**

**Introductory Note**

Chapter 1 sets out the criteria for recognizing and enforcing foreign judgments in transnational cases, as defined by the Principles. It deals with the situation in which a judgment has been rendered under these Principles by a court of one jurisdiction and the winning party then seeks enforcement in the court of another jurisdiction, or one of the parties then seeks to rely on the judgment for claim- or issue-preclusion purposes in another jurisdiction. It leaves to domestic law general questions regarding enforcement, such as jurisdictional requirements for entertaining enforcement actions. It also leaves to domestic law the question of enforcing domestic judgments. However, these Principles can be used as guidance in wholly domestic cases. The Principles are animated by the proposition that as courts come to hear broader disputes, a stronger affiliation between the defendant and the rendering State is necessary to support enforcement of the resulting judgment. (That approach

is no less appropriate when the court that entertained the dispute and the court enforcing the judgment are courts from different jurisdictions within the same State.)

Because the criteria for enforcement and recognition are identical, the Principles use the terms interchangeably unless otherwise noted. The Principles use the term “enforcement court” to mean any court in which enforcement or recognition is sought. For the distinctions between the two, see ALI Foreign Judgments Project § 2, Comment b.

In the main, Chapter 1 adopts a familiar approach: only a judgment rendered on generally accepted bases of jurisdiction is entitled to recognition. Furthermore, such a judgment is recognized only to the extent it would be recognized in the rendering jurisdiction. In this way, the parties to the initial action know the maximum effect of the judgment at the time they are litigating and can plan accordingly. In addition, the recognition provisions reinforce the safeguards of the Principles by requiring the enforcement court to satisfy itself that the requirements the Principles set out for entertaining the case and adjudicating it were met in the rendering court. Arguably, provisions of this sort, which require a “second look” at jurisdiction and applicable law in the court where enforcement is sought, undermine principles of repose. However, they are necessary in a system that lacks resort to a court, like the United States Supreme Court or the European Court of Justice, with power to exercise coordination authority over the judicial system as a whole. Without a second look, and the possibility that recognition will be denied, the court entertaining the case may lack the incentive to provide rigorous safeguards. The Principles do not permit full-scale relitigation. Instead, the determinations of the rendering court are reviewed on a sliding scale of deference, depending on the importance of the issue and its susceptibility to sharp practice in the rendering court. Such a procedure also operates to encourage the rendering court to explain the reasoning underlying its decisions. The resulting dialogue among participating courts should contribute to a greater understanding of the terms on which international intellectual

property disputes are decided and promote convergence on standards of due process and private international law.

Chapter 2 expands the enforcement court's options by giving it some flexibility regarding the scope of its remedial obligation. This flexibility is consistent with international norms. For example, article 44(2) of the TRIPS Agreement permits a member State to limit injunctive relief to deal with local needs if monetary compensation is provided; the Principles similarly allow the enforcement court to conform its award of injunctive relief to what could have been granted under its domestic law, and to award monetary damages in lieu of the full scope of the rendering court's order.

The enforcement provisions proposed here are informed by the ALI Foreign Judgments Project. Both identify situations where enforcement is mandatory, where it is discretionary, and where prohibited. However, the Principles propose distinct solutions for problems that are particular to international intellectual property matters and to the coordinated adjudication envisioned. For example, there is no reciprocity provision comparable to § 7 of the ALI Foreign Judgments Project. The Principles are not designed as the law of any one jurisdiction; accordingly, diplomatic objectives related to encouraging enforcement of judgments generally are out of place. Moreover, in multinational intellectual property instruments, reciprocity is rarely the norm. Similarly, the remedial provisions take into account the special role that awards of nonmonetary relief (declaratory judgments and judgments granting injunctions) play in the information industries; they also take account of the public nature of intellectual property rights, and the impact that private judgments can have on the public interest, including local citizenry's access to medicine, to safe products, and to materials of cultural or political significance. Thus, on the one hand, nonmonetary awards are more easily enforced under the Principles than under the ALI Foreign Judgments Project; on the other hand, the enforcement court has greater power under these provisions to alter the remedy so that it does

not exceed the award that would have been available had the case been decided locally. Other distinctive provisions on enforcement relate to Sections unique to these Principles, such as the special provisions on standard form agreements and applicable law.