

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

**Part III**  
**APPLICABLE LAW**  
**Chapter 1**  
**In General**

**§ 301. Territoriality**

**Except as provided in §§ 302 and 321-323,**

**(1) The law applicable to determine the existence, validity, duration, attributes, and infringement of intellectual property rights and the remedies for their infringement is:**

**(a) for registered rights, the law of each State of registration.**

**(b) for other intellectual property rights, the law of each State for which protection is sought.**

**(2) The law applicable to a noncontractual obligation arising out of an act of unfair competition is the law of each State in which direct and substantial damage results or is likely to result, irrespective of the State or States in which the act giving rise to the damage occurred.**

**Comment:**

a. Definitions. Rights “exist” in a particular territory if that State recognizes the right at all, for example, whether it accords an exclusive right to display copyrighted works. The “attributes” of the right concern its content, for example, whether the display right extends to private as well as public displays, or whether it is limited to certain kinds of displays, such as via transmissions.

b. State of registration. The State of registration is the State of the registration of the right at issue in the litigation, such as the patent, design or model right, trademark right, plant variety, semiconductor topographies rights, or geographical indications. The law of this State also governs any formalities of recordation and maintenance.

c. Other rights. Other intellectual property rights, whether or not registered, do not arise out of registration. These include copyright and neighboring rights, which arise out of the act of creation or performance; common-law trademarks and commercial-name rights, which in some States may arise out of adoption and use; and right of publicity (or right to one’s image). As to these rights, registration is not a relevant point of attachment, either because there has been no registration, or because registration neither creates nor determines the rights at issue. The usual point of attachment for determining infringement of these rights therefore will be the countries where the right owner’s market for the work has been affected. Finally, this formulation covers artists’ resale rights (*droit de suite*), where the availability of relief depends on the territory in which a work of art (or, in some places, a manuscript) is sold.

d. Point of attachment for law applicable to infringement of other rights. The Principles follow a territorial approach in instructing courts to apply the laws of each State for which the moving party seeks protection. By eschewing the formulation “country where protection is sought,” the Principles endeavor to distinguish and disqualify application of the forum’s law when the sole basis for applying forum law is the bringing of the lawsuit there; see § 103(1).

Moreover, the formulation “law of the country where protection is sought” is unclear: it might mean that the *lex fori* applies or that the *lex loci delicti* applies. The formulation “each country for which protection is sought” is compatible with a market-oriented approach; it corresponds to the markets that plaintiff seeks to protect from infringements that are occurring (or threatened to occur) there. In the case of an unauthorized transmission by satellite or Internet, for example, the infringement may occur in each of the States of receipt, but the right holder may confine its claims to those locations that constitute the significant markets for the work. Finally, the formulation covers declaratory-judgment actions, in which a party seeks a declaration that its activities do not infringe intellectual property rights in that State.

e. Rights of publicity. Section 301(2) includes rights of publicity (or rights to one’s image). This provision departs from a choice-of-law rule that treats rights of publicity like rights of privacy and looks to the law of the residence at the time of creation or at the place of residence at the time of death. The better view is to consider the right of publicity as an economic rather than a personal right, because its essence is to control exploitation. By contrast, privacy rights, which are not covered by the Principles, seek to prevent intrusion.

**Illustration:**

1. An advertisement is broadcast in the United States and Canada using a picture of the United Kingdom’s Prince Charming without his permission. Prince Charming sues for violation of his right of publicity.

Although the United Kingdom does not recognize rights of publicity, the claim will be governed by U.S. and Canadian laws.

f. Moral rights. The Principles do not propose a special point of attachment for disputes involving moral rights. Thus, the general approach applies.

**Illustration:**

2. A is the ghostwriter for a book published under B's name. A signed a contract relinquishing attribution rights. The contract does not specify applicable law. The book is distributed in Xandia and in Patria. In Xandia, contracts waiving authorship attribution are permissible; in Patria, they are not. A subsequently brings an action against the publisher demanding that her name appear on the books.

Applying the general rule designating the laws of the States for which protection is sought, A will have a claim in Patria, but not in Xandia.

g. Unfair competition. Many States entertain these claims together with claims of violations of intellectual property rights such as trademarks, tradenames, or neighboring rights. Thus, it makes sense for the same or similar choice-of-law rules to apply to the entire dispute. The characterization of an act as violating an intellectual property right, or as giving rise to an unfair-competition claim, may vary from State to State. The protection of trade secrets and of databases not covered by copyright furnishes examples of such subject matter. The Principles recognize that acts in one State may affect competition in another location. In such cases, the law of the place where competition is taking place should accordingly apply.

**Illustration:**

3. A develops a customer list in Patria, keeps it secret, and agrees to license it to B in Xandia. On the way to delivering it to B, A stops in Tertia, where C acquires and uses (but does not publish) the customer list without A's consent. Tertia does not recognize this material as a protectable trade secret.

If harm occurred to A's or B's commercial interests only in Tertia, Tertia's law will apply, and no protection is available. If, however, C also exploits the list in other jurisdictions (for example, where the listed customers are located) and A or B suffers direct and substantial damage there, then the laws of those jurisdictions will also apply, and damages may be awarded for those jurisdictions whose laws recognize the trade-secret status of customer lists.

h. Facilitation of infringement. An increasing number of transnational intellectual property controversies concern the acts of persons or enterprises that facilitate infringement, rather than (or in addition to) the acts of the end user/direct infringers. In some States, facilitation (or “authorization”) of infringement may itself be an infringing act, distinct from the infringements committed by those benefiting from the facilitator’s assistance. In such cases, the law that governs the determination of primary infringement applies.

**Illustration:**

4. Grumpster.com distributes from the State of Chaos peer-to-peer file-sharing software to users around the world. Grumpster.com helps users locate files on other users’ computers; Grumpster.com does not carry any music or motion-picture content on its own website. Users seeking to copy music or movie files contact the Grumpster.com site to acquire the software and to initiate their searches for other file-sharers. The offering or copying of files from one user’s computer to another’s infringes the rights of the copied works’ copyright holders.

The copyright holders may have two claims. One is for facilitating infringing downloads in Chaos. This is determined by the law of Chaos, which may characterize the facilitation as a direct infringement, or as a basis for secondary liability. The other claim is for facilitating downloads outside of Chaos, which is determined by the laws of the States in which the unauthorized end uses occur. Whether the basis of liability in those States is direct or indirect will depend on those States’ characterizations.

i. Remedies. The Principles require courts to apply the remedies available under the applicable law, even if that remedy would be unavailable under forum law. This situation is to be distinguished from the case in which a court cannot order a remedy because the mechanism for implementing it is not available under forum law. It should also be distinguished from cases involving acts occurring in multiple jurisdictions in which a remedy cannot be awarded for a given jurisdiction because the intellectual property right at issue has not been violated

(or does not exist) in that jurisdiction. Finally, when devising means of redress, the court should have particular regard to the ability to secure enforcement of those remedies in the other jurisdictions concerned.

**Illustrations:**

5. A, a resident of Patria, and B, a resident of Xandia, enter into a licensing agreement governed by the law of Patria requiring B to make milestone payments for use of A's patented research tool. B does not make the payments required, and A sues B in Xandia. The remedy law of Patria allows for periodic payments.

Even if the only form of relief in Xandia is a lump-sum payment, a Xandian court should grant the relief requested by A under Patrian law, which governs the agreement. However, if Xandia lacks a mechanism to supervise periodic payments, Xandia can refuse to grant that relief.

6. Database producer A sues B, a competitor that has systematically copied information out of A's database. B distributes its database in Patria, Xandia, and Tertia. The latter two countries provide for sui generis protection of databases against the systematic extraction of substantial portions of their contents. Patria does not. B's copying does not amount to copyright infringement under any of these countries' laws. Thus, B has not violated any intellectual property rights in Patria.

No accounting for profits should be ordered with respect to B's sales in Patria. But because B's sales in Xandia and Tertia violate those countries' sui generis protections, A should be able to obtain relief against B under the laws of Xandia and Tertia.

In some cases, the lack of remedial procedure may present challenges when another State's court is asked to enforce the judgment. See §§ 411-413.

**REPORTERS' NOTES**

1. Territoriality. Scholarship exemplifies the debate prompted by the pressure that the pervasiveness of digital communications puts on traditional choice-of-law rules. Compare Andreas P. Reindl, *Choosing Law in Cyberspace: Copyright Conflicts on Global Networks*, 19 *Mich. J. Int'l. L.* 799 (1998) (favoring application of a single law to certain worldwide disseminations) with Graeme W. Austin, *Domestic Laws and Foreign Rights: Choice of Law in Transnational Copyright Infringement Litigation*, 23 *Colum.-VLA J.L. & Arts* 1 (1999) (advocating the application of a multitude of laws to worldwide infringement actions); Graeme W. Austin, *Social Policy Choices and Choice of Law for Copyright Infringement in Cyberspace*, 79 *Or. L. Rev.* 575 (2000) (addressing the social-policy issues involved in the debate surrounding “single governing law” approaches to transnational infringement cases); Graeme W. Austin, *Valuing “Domestic Self-Determination” in International Intellectual Property Jurisprudence*, 77 *Chi.-Kent L. Rev.* 1155 (2002) (addressing related sovereignty issues).

2. Characterization of connecting factors. The international conventions on intellectual property, when applicable, do not characterize with certainty the connecting factor or factors, nor do they, as a general matter, clearly set forth a choice-of-law approach. For example, although art. 5(2) of the Berne Convention states that “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,” many scholars contend that art. 5(2) of the Berne Convention should not be construed as a rule on conflicts of law. See, e.g., Roberto Mastroianni, *Diritto Internazionale e Diritto d’Autore* 390-397 (1997); François Dessemontet, *Conflict of Laws for Intellectual Property in Cyberspace*, 18 *J. Int’l Arb.* 487, 489 (2001) (“Article 5(2) of the Berne Convention is a rule on the treatment of foreigners, rather than a rule on conflicts of law.”) and Maria Martin-Prat, Jane Ginsburg, Shira Perlmutter, & Graeme Dinwoodie, *Commentary and Panel Discussion on Choice of Law*, in 7 *International*

Intellectual Property Law and Policy 99-1 (Hugh C. Hansen ed., 2002). For an extensive rebuttal of the characterization of art. 5(2) of the Berne Convention as a choice-of-law rule, see Mireille van Eechoud, *Choice of Law in Copyright and Related Rights: Alternatives to the Lex Protectionis*, 106-110 (2003).

Article 5(2), moreover, is unclear as to the precise characterization of the connecting factor, i.e., “where protection is claimed,” especially when the infringement is committed on the Internet, and also as to the exact scope of the applicable law. For example, the reference to the country “where” protection is claimed could mean the substantive or the conflicts law of the forum State, or it could mean the substantive law of the country (or countries) “for which” protection is claimed. As an example, suppose a copyright infringement suit is brought in the United States regarding an unauthorized transmission from Canada of a U.S. work, received in France. “[T]he country where protection is claimed” in this instance might mean the *lex loci delicti*, which, in turn, might mean the place(s) of commission/initiation of the infringement (Canada), or the place(s) of its impact (France). Alternatively, “where protection is claimed” might mean the *lex fori*, the law of the forum State where the action is brought (the United States). In other words, even if the Berne Convention purported to announce choice-of-law rules, the disagreement as to what those rules are counsels clear enunciation of choice-of-law rules in these Principles.

Art. 8(1) of the EC Rome II Regulation designates that for intellectual property rights other than a “unitary Community intellectual property right,” “the law of the country for which protection is claimed” controls infringement (emphasis added). The same approach is taken here.

3. Moral rights. A principle designating the author’s residence as the point of attachment for moral rights was considered, on the ground that a personal point of attachment was consistent with the personal nature of moral rights. Nonetheless, it was rejected as

impractical. First, countries that enforce foreign authors' moral rights are likely to continue to do so under their public policies or mandatory rules; see Court de cassation, première chambre civile [Cass. 1e civ.], May 28, 1991, Bull. civ. I, No. 172 (Huston v. La Cinq) (Fr.). Thus, the law of the country for which protection is sought is likely to apply, one way or another. Second, having the law follow the residence of the author can create problems for exploiters whose conduct with respect to the work may be permissible at one point in time, but impermissible later, when the author changes residence.

4. Unfair competition. The text of the provision applies the substance of the solution found in art. 99 § 2(2) of the Belgian Code of Private International Law ("l'État sur le territoire duquel le dommage est survenu ou menace de survenir" [territory where damage occurred or threatens to occur]).

On divergent protection of databases (not covered by copyright), compare Council Directive 96/9/EC of 11 March 1996 on the Legal Protection of Databases, arts. 7-11, 1996 O.J. (L 77) 20, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML> (last visited Jan. 3, 2008) with Bundesgesetz gegen den unlauteren Wettbewerb [UWG], Loi fédérale contre la concurrence déloyale [LCD] [Federal Law on Unfair Competition] Dec. 19, 1986, SR 241, RS 241, art. 5(c) (Switz.), available at <http://www.admin.ch/ch/d/sr/c241.html> (last visited Jan. 3, 2008) (in German); <http://www.admin.ch/ch/f/rs/c241.html> (last visited Jan. 3, 2008) (in French); [http://www.wipo.int/clea/docs\\_new/pdf/en/ch/ch016en.pdf](http://www.wipo.int/clea/docs_new/pdf/en/ch/ch016en.pdf) (last visited Jan. 3, 2008) (English translation). Regarding phonograms, see Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms art. 3, Oct. 29, 1971, 866 U.N.T.S. 67, available at <http://www.wipo.int/treaties/en/ip/phono>

grams/trtdocs\_wo023.html (last visited Jan. 3, 2008) (allowing member States to protect against unauthorized reproduction of phonograms by means of copyright or neighboring rights, or through an unfair-competition claim).

5. Rights of publicity. The Principles' choice of law for rights of publicity is inconsistent with the choice of law applied in U.S. cases; see, e.g., *Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1149 (9th Cir. 2002) (applying the law of the plaintiff's domicile); *Rogers v. Grimaldi*, 875 F.2d 994, 1002 (2d Cir. 1989) (same); *Bi-Rite Enterprises, Inc. v. Button Master*, 555 F. Supp. 1188, 1197 (S.D.N.Y. 1983) same; *Southeast Bank, N.A. v. Lawrence*, 489 N.E.2d 744, 745 (N.Y. 1985) (same). The genesis of this rule, which mirrors the choice-of-law approach to privacy claims, probably lies in the U.S. right of publicity's initial conception as a facet of the right of privacy, in William Prosser's formulation, *W. Page Keeton et al., Prosser and Keeton on the Law of Torts* § 117 (5th ed. 1984). Although plaintiff's reputation may be harmed where the plaintiff lives, the right of publicity protects an economic interest. Thus, the rule expressed here follows the general rule for other intellectual property rights. For example, in Illustration 1, following the U.S. rule would deny Prince Charming the ability to control the economic exploitation of his name and image, even in countries where those rights are recognized.

With respect to enforcement in a State that does not recognize the right of publicity of a foreign judgment awarding damages for violation of the right of publicity, see § 403, Comment c and Illustration 2.

6. Facilitation of infringement. Different jurisdictions may consider acts of facilitation of infringement as giving rise to derivative liability; others may deem those acts torts in their own right, see, e.g., *Moorhouse v. University of New South Wales* (1976) R.P.C. 151 (H.C. Austl. 1975); *Universal Music Australia Pty Ltd v Sharman License Holdings Ltd.* (2005) F.C.A. 1242 (Austl.); and still other jurisdictions may rule some kinds of facilitation

independently tortious, but subject others to a secondary- liability analysis. Compare 17 U.S.C. § 1201(b) (direct liability for trafficking in devices primarily designed to circumvent technological protection measures) with *Sony Corp. of Am. v. Universal City Studios Inc.*, 464 U.S. 417, 456 (1984) (no secondary liability for sale of devices that facilitate infringement if devices are capable of substantial noninfringing uses). Moreover, among (or within) jurisdictions that characterize facilitation as a form of secondary liability, the standard for establishing a violation may vary. Compare the analysis of Sony in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 125 S. Ct. 2764, 2787 (2005) (Breyer, J., concurring) (capacity for substantial noninfringing use met even if substantial majority of uses are infringing) with *id.* at 2783 (Ginsburg, J., concurring) (defendant must show there are in fact substantial noninfringing uses). For a decision applying the law of the end-user's State to acts occurring elsewhere, see *MEMC Electronic Materials, Inc. v. Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369 (Fed. Cir. 2005) (manufacture and sale in Japan of patented silicon technology may be considered "inducement" under U.S. law when ultimate customers were located in the United States).

### **§ 302. Agreements Pertaining to Choice of Law**

**(1) Subject to the other provisions of this Section, the parties may agree at any time, including after a dispute arises, to designate a law that will govern all or part of their dispute.**

**(2) The parties may not choose the law that will govern the following issues:**

**(a) the validity and maintenance of registered rights;**

**(b) the existence, attributes, transferability, and duration of rights, whether or not registered; and**

**(c) formal requirements for recording assignments and licenses.**

**(3) Any choice-of-law agreement under subsection (1) may not adversely affect the rights of third parties.**

**(4) (a) Except as provided in subsection (5), a choice-of-law agreement is valid if it is valid under the designated law.**

**(b) Capacity of a party to enter into the agreement is determined by the internal law of the State in which that party was resident at the time the agreement was concluded; if that party had more than one residence, capacity will be recognized if it existed under the law of any one of its residences.**

**(5) (a) In addition, choice-of-law clauses in standard form agreements are valid only if the choice-of-law clause was reasonable and readily accessible to the nondrafting party at the time the agreement was concluded, and is available for subsequent reference by the court and the parties.**

**(b) Reasonableness under subsection (a) is determined in light of:**

**(i) the closeness of the connection between the parties, the substance of the agreement, and the State whose law is chosen, and**

**(ii) the parties' residences, interests, and resources, taking particular account of the resources and sophistication of the nondrafting party.**

**(6) If the choice-of-law clause is not valid under this Section, the applicable law is determined according to the other provisions of Part III.**

**Comment:**

a. Scope of the rule. The Principles are premised on party autonomy with respect to choice of court (§ 202), and with respect to contractual allocation of ownership rights (§§ 311-313), but not all questions can be determined by a law chosen by the parties. In general, the public-law aspects of intellectual property must be adjudicated under the laws

that give rise to the rights in each jurisdiction concerned. These include the mandatory nature of administrative procedures and fees to obtain or maintain registered rights, the validity of registered rights, and the formal requirements for recording assignments and licenses. These also encompass the existence, attributes (specific content), transferability, and duration of rights (whether or not registered). In addition, if portions of the dispute are not appropriate for resolution under the law chosen by the parties, the court should nonetheless give effect to that choice for those issues that are amenable to such resolution. Further, as a consequence of § 302(3), the law applicable to the effect on persons not parties to assignments or licensing agreements cannot be elected by the parties to those agreements.

Illustration:

1. A and B enter into an agreement to distribute photographs produced by A through a purely mechanical process without human intervention. The threshold for copyrightability in Patria is extremely low; A's photographs would therefore be protectable in Patria. Xandia and Tertia, however, require a level of originality that A's photographs do not meet. A and B agree that Patrian law will apply to the photographs in all countries of distribution, including Xandia and Tertia.

If C, who is not a party to the contract, reproduces and distributes the photographs in Xandia, Xandia's law will apply (and no infringement will be found) because A's and B's agreement does not affect third parties. If B stops paying royalties to A for B's exploitation of the photographs in Xandia and Tertia, A's copyright infringement claim will fail because the A-B agreement cannot create intellectual property protection in jurisdictions where none exists. But A may claim remedies for breach of contract.

The parties may validly choose a single law to adjudicate claims deriving from alleged infringements. For example, if several States are impacted by an alleged infringement, the parties may elect to apply the law of one State to compute damages for all infringing acts.

**Illustration:**

2. Same facts as above, except that A's photographs meet minimum originality standards in all three jurisdictions. The parties may choose Patria's law to adjudicate A's damages claim against B, but, absent a valid agreement with C, not against C.

b. Choice-of-law clauses. These Principles recognize the freedom of the parties to select the law applicable to their transaction when transferring ownership or licensing rights in intellectual property. The principle of unfettered party autonomy is widely recognized in business-to-business transactions. It admits the choice of a third legal order, not being that of the grantor or of the recipient, even when the chosen law lacks any relationship to the parties, to the right, or to the territory of use. Indeed, the chosen law could be "soft law" such as the UNIDROIT Principles for international commercial contracts. This freedom goes together with the freedom to select a court (or an arbitration tribunal) sitting in a third State and instructed by the parties to apply the law chosen by them, which will often be the law of the place of dispute resolution.

A contractual relationship between the parties in cases of infringement may be rare. Nonetheless, if there is a preexisting relationship, the parties may validly enter into a negotiated choice-of-law agreement before the dispute arises. Moreover, after the litigation begins, the parties should also have the ability to enter into contracts that simplify resolution of their dispute and make outcomes more predictable. In cases that cannot settle because the parties cannot agree on the facts or the application of law to the facts, the opportunity to try the case under an agreed law allows a court to clarify the disputed issues expeditiously. The claim is most likely to be resolved expeditiously if the parties agree that the court will apply its own law.

It can be argued that this choice derogates from the sovereign interests of the States whose law would otherwise be applied. However, those interests are mainly related to the

validity of registered rights and other public-law issues, which are not subject to this provision. Further, if policies in a State expressed through substantive rules are so strongly held that they would be outcome-determinative, it seems unlikely that a litigant disfavored by those rules would agree to their application in a negotiated agreement. A standard form choice-of-law agreement will be enforced only to the extent it is reasonable, under the considerations set out in § 302(5). Finally, the interests of the States are protected by §§ 322-323 on public policy and mandatory rules. Recognition and enforcement of the judgment are also subject to the safeguards of §§ 401-413.

c. Effect on third parties: The Principles' commitment to party autonomy does not permit the parties to choose law that affects the rights of others. Third-party rights could arise in the context of sublicenses or of security interests, see § 317.

d. Capacity and validity. The Principles apply similar safeguards for choice-of-law and choice-of-forum clauses. See § 202(3) and (4) and Comments c, d, and g, and REPORTERS' NOTES 2 and 3.

## **REPORTERS' NOTES**

1. Party autonomy generally. Party autonomy is an important value undergirding these Principles. This approach is consistent with evolving international norms. For example, Rome Convention art. 3 poses a general principle of party autonomy. The increasing amenability over the last 30 years of intellectual property issues to arbitration; see, e.g., 35 U.S.C. § 294 (rendering "valid" and "enforceable" clauses for "[v]oluntary arbitration" of "any dispute relating to patent validity or infringement arising under [a] contract"), demonstrates that some States now are willing to commit to party autonomy intellectual property disputes whose resolution the State previously confined to courts in that State. The danger of selecting a law

disproportionately favorable to one party is reduced because of the close scrutiny to which the Principles subject any standard form agreement.

Limitations on the freedom of the parties derive from the scope of the issues to be adjudicated under the applicable law. Competition law, currency regulations, protection of consumers, product liability, or transferability restrictions under domestic intellectual property law cannot be contracted away by the parties through a choice-of-law agreement. The law chosen by the parties applies to contractual issues such as the common will and intent of the parties, its existence, its interpretation, its effects, avoidance and termination of the contract, warranties and guarantees, consequences of a material breach such as the duty to put the other party on notice to remedy it, contractual damages and accounting for lost profits, confidentiality, best-efforts clause, or the status of affiliated companies and subsidiaries.

2. Infringement actions. Under the Principles, the parties may choose the law applicable to an infringement action after the dispute arises. Recent codifications of private international law accept this notion. See, e.g., Swiss Law on Private International Law art. 110(3); Belgian Code of Private International Law art. 104(2) (for quasi-contractual relations). However, Rome II, while it poses a general rule permitting the parties to a dispute to choose the applicable law, art. 14 precludes party autonomy for intellectual property infringement actions; see *id.* art. 8(3). The Principles do not follow the Rome II approach because efficiency interests are better served by allowing the parties to agree among themselves on the law that will determine what will usually be the monetary consequences of their conduct. Injunctive relief brings the public policies of the affected States more closely to the fore, but the Principles' preservation of local mandatory rules (see § 323) allows a court to take those interests into account notwithstanding the otherwise applicable law. See also §§ 403(1)(e) and 412(1)(b).