

International Law Association’s Guidelines on Intellectual Property and Private International Law (“Kyoto Guidelines”): General Provisions

by Alexander Peukert and Benedetta Ubertazzi

Abstract: The chapter “General Provisions” of the International Law Association’s Guidelines on Intellectual Property and Private International Law (“Kyoto Guidelines”) focuses on their scope of application. It provides the conditions under which the Guidelines are intended to be applied. The Guidelines cover only cross border disputes and transactions between private parties involving intellectual property rights. Hence, they only refer to situa-

tions connected to more than one State. The definition of “intellectual property rights” is of particular relevance to determine the scope. Given the similarities to certain claims based on unfair competition the possibility to apply the Guidelines *mutatis mutandis* to such claims is also contemplated.

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Recommended citation: Alexander Peukert and Benedetta Ubertazzi, Kyoto Guidelines: General Provisions, 12 (2021) JIPITEC 4 para 1.

Judgment

35 The definition of the term “judgment” is mainly intended to clarify the decisions that can eventually be recognized and enforced under the Guidelines, provided that the particular judgment concerned meets the requirements laid down in the section on recognition and enforcement. The broad concept of judgment encompasses decisions of many different types, including monetary and non-monetary judgments and, hence, the features of the particular judgment concerned influence the application of the provisions on recognition and enforcement, particularly with regard to the grounds for non-recognition. The determination of costs or expenses of the proceedings by the court is also covered to the extent that it relates to a decision on the merits. Provisional and protective measures are also covered, but recognition and enforcement of such measures remain subject to specific restrictions,

as it is also the case with regard to judgments which have not become final yet. Interlocutory decisions of a procedural nature are in principle not covered by the definition and hence not subject to recognition and enforcement under the Guidelines.

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45 Cf. Article 2(viii) WIPO Convention; Article 102(1) Joint Korean-Japanese Principles.

46 Cf. Comment 1:101.C03 CLIP Principles.

47 Article 2(viii) WIPO Convention; Articles 1(2), 8 Paris Conventio