


PhD Viva

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Subject	Study on the Right of Making Available to the Public under the WIPO Internet Treaties (WCT and the WPPT) and Its Infringement: From Copyright and Private International Law Perspectives	
Language	Korean, English, and Chinese	
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<p>The interactive on-demand transmission of works, as governed by the “making available to the public” right (The Right) affirmed by the 1996 WIPO Internet Treaties (The Treaties), has become an important means of communicating works to the public in the digital network environment. Disputes over infringement of the Right have the potential to be transnational because of the ubiquitous nature of the Internet. Therefore, theoretically, it would be desirable for every country to have a uniform law on the Right and its enforcement. However, such uniformity seems to be a distant goal given the various legislative implementations of the Right and the coexistence of different domestic private international law (“PIL”) regimes between the contracting parties of the Treaties. This study first investigates how the so-called “Umbrella Solution,” which allows contracting parties to legally characterize the Right with relative freedom, emerged in the process of making the Treaties. Then, it conducts a comparative analysis on how the Right has been implemented and applied in infringement cases in Europe, the US, Japan, China, and Korea. The study also reviews research by the WIPO scholars on PIL issues relating to the Right, and then analyses PIL regimes mainly in the above-mentioned countries and how their courts have dealt with PIL issues arising from infringement of the Right. Lastly, after reviewing the special PIL principles relating to the Right proposed by scholars and the initiatives to redefine the Right, this study concludes that efforts should be made to harmonize copyright laws and adopt uniform specialized PIL principles to resolve disputes over infringement of the Right in an effective and uniform fashion.</p>		

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The number of international investment treaties are increasing recently to attract more foreign direct investment. As one of the substantial articles in international investment treaties, the content and applicable methods of national treatment clause are becoming clarified. This research intends to analyze the interpretative ways and applicable methods, clarify ambiguous concepts of national treatment clause, and summarize the attitude changes of arbitral tribunals in applying national treatment clause on the basis of international investment treaties as well as recent cases before the ICSID and the NAFTA arbitral tribunals. This study discusses how to balance the flexibility and foreseeability of law; how to protect the interest of foreign investors; and how to reconcile the pluralism and uniformism of law. Furthermore, some suggestions are made to construct a more sustainable and balanced international investment legal regime. In regard to China's embrace of comprehensive pre-establishment for national treatment with a negative list management model, more suggestions are made so as to promote Sino-foreign investment treaties texts and arbitral practice in response to China's national conditions and recent development tendency of national treatment clause in international investment law.