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INTRODUCTION

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This symposium issue of the *U.C.L.A. Pacific Basin Law Journal* constitutes the published proceedings of an academic conference on Intellectual Property Law in East Asia, which was held at Washington University in St. Louis, Missouri, on February 25-26, 1994, under the auspices of Washington University School of Law and the Joint Center for Asian Studies of the University of Missouri-St. Louis and Washington University. The conference was funded by a generous grant from the Chiang Ching-kuo Foundation for International Scholarly Exchange. Attending the conference were noted intellectual property scholars, lawyers, and government officials from Japan, Korea, Taiwan, and the People's Republic of China, as well as academics from the United States having expertise either in intellectual property law or East Asia, or both.

The purpose of the conference was to enable the participants to come together to discuss what has become one of the most important international trade issues of the day—protection of intellectual property. Tensions over this area currently plague trade relations between the United States and the four countries of East Asia and thus serve as a useful microcosm of the larger issues of international trade with the region.

Some of the disputes over the administration and enforcement of intellectual property law can be explained by differences in the stages of economic development of the countries involved. However, continuing disputes over the appropriate scope of intellectual property protection between such industrialized countries as Japan and the United States suggests the source may, in part, lie in different economic organizations and cultures. To the extent that this is so, the rapid economic development that is currently sweeping Korea, Taiwan, and the People's Republic of China cannot necessarily be expected to eliminate controversies

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over intellectual property protection. That same reason warrants some effort to understand both the cultural and the economic roots of intellectual property disputes in East Asia. Accordingly, those invited to participate in the conference on East Asian Intellectual Property Law specifically included not only experts in law and economics, but also academics having expertise in the broader political, social, and historical aspects of East Asian cultures.

When planning for the conference first began in 1992, the organizers of the conference could scarcely have known that the conference would ultimately take place only a matter of months after the long-stalled Uruguay Round of GATT negotiations, including its crucial trade-related aspects of intellectual property (or TRIPS) component, were finally brought to a successful conclusion. Once the organizers' fortuitous timing became apparent though, it became equally apparent that the conference would no longer simply focus on the current state of the GATT negotiations and the more immediate impact of bilateral trade negotiations between the United States and the countries of East Asia. The conference would also need to investigate the long-term impact that the TRIPS agreement will likely have on the future of those bilateral trade relations.

This symposium issue consists of the keynote address and papers presented at the conference, as well as prepared remarks and reflections of some of the discussants.

I. THE KEYNOTE ADDRESS

The keynote speaker for the conference was Professor William P. Alford, the Henry L. Stimson Professor and Director of East Asian Legal Studies at Harvard University Law School. In his keynote address, entitled *How Theory Does—And Does Not—Matter: American Approaches to Intellectual Property Law in East Asia*, Professor Alford first offers a quick, but enlightening tour of the treatment of intellectual property law in American academic and public life, focussing particularly on why the area was so neglected prior to the 1980s and why there has been such a significant change over the past decade.

Professor Alford next focusses on some of the ways recent scholarship, particularly in the fields of economic and public policy analysis, philosophical theory, and literary criticism, can aid us in understanding the intellectual property controversies between the United States and the nations of East Asia. He then discusses how and why intellectual property protection in East Asia, as well as internationally, have become such central issues in American international trade policy, and what the foregoing

schools of academic thought can contribute to this issue. Professor Alford concludes by suggesting a sampling of questions that should constantly be kept in mind when discussing the subject of intellectual property protection in East Asia.

II. PAPERS PRESENTED

A. Intellectual Property Protection in East Asia

1. Japan

An expert on Japanese patent law, Professor Toshiko Takenaka, Assistant Director of the Center of Advanced Study and Research on Intellectual Property at the University of Washington School of Law, spoke on the role of the patent system in the industrial development of Japan. In her prepared remarks, Professor Takenaka identifies the particular goals and features of Japanese patent law that distinguish it from U.S. patent law. She then explains how these features have worked to attain the Japanese goals of disseminating new technology and encouraging innovation, but not, as in the United States, of excluding others from using new technologies.

Professor Chikako Usui, Assistant Professor of Sociology and Fellow of the Center for International Studies at the University of Missouri-St. Louis, presented a paper which she co-authored with Professor Dan Rosen, John J. McAulay Professor of Law at Loyola University in New Orleans, entitled *The Social Structure of Japanese Intellectual Property Law*. In her paper, Professor Usui traces various differences in Japanese and U.S. intellectual property law to: (1) differences in prevailing ideas on the nature of society and the individual; (2) different approaches (i.e., incremental versus pioneering) to technological innovation; (3) different emphases on collective and individual innovation; and (4) differences in the extent to which innovation is initiated by those within and those outside of the society.

2. Taiwan

From Taiwan, Dr. Chung-Sen Yang, who is both Director General of the National Bureau of Standards (the government agency having supervisory authority over the administration and enforcement of Taiwan's patent and trademark laws) and Professor of Law at National Taiwan University, has co-authored a paper with Ms. Judy Y.C. Chang, Esq., from the law firm of Lee and Li, in Taipei, discussing recent developments in the intellectual property law of the Republic of China.

In their paper, Dr. Yang and Ms. Chang detail a variety of legislative amendments made to Taiwan's intellectual property

laws between 1992 and 1994. These changes were largely in response to bilateral trade negotiations and a resulting Agreement for the Protection of Copyrights between the United States and Taiwan, but also were designed to conform Taiwanese intellectual property law with existing international standards. Dr. Yang and Ms. Chang also describe other newly enacted legislation in the related fields of consumer protection and trade practice regulation, proposed legislation governing integrated circuit layout protection, trade secrets, and industrial design protection, and other follow-up and enforcement efforts carried out by the government and the private sector in Taiwan.

To complete the discussion of Taiwanese intellectual property law, Professor Paul C.B. Liu, Associate Director, Competition, Trade and Technology Projects, Asian Law Program of the University of Washington School of Law, presented a paper entitled *U.S. Industry's Influence on Intellectual Property Negotiations and Special 301 Actions.* In this paper, Professor Liu examines: (1) how U.S. industry participated in and influenced the legislative process that produced the "Special 301" provisions, which have become the cornerstone of U.S. bilateral trade negotiation strategy; (2) how U.S. trade negotiation strategy is formulated; and (3) how U.S. industry engages in the Special 301 process and effectively influences the outcome of particular intellectual property trade negotiations. After a general discussion of these points, Professor Liu gives special attention to recent U.S.-Taiwan bilateral trade negotiations.

3. Korea

From Korea, Professor Sang-Hyun Song, Professor of Law at Seoul National University, and Mr. Seong-Ki Kim, a member of the law firm of Kim & Chang, in Seoul, presented a paper entitled *The Impact of Multilateral Trade Negotiations on Intellectual Property Laws in Korea.* In their paper, Professor Song and Mr. Kim point out that the tremendous growth in the Korean economy has created a growing awareness, among Korea's leaders, at least, of the positive role that intellectual property rights play in economic development generally, and more particularly in the development of advanced technologies. Even after the Korea-U.S. bilateral trade negotiations of 1986, and the resulting legislative strengthening of Korea's intellectual property laws, however, Professor Song and Mr. Kim report that government and industry leaders continue to confront two interrelated problems in enforcing these laws. Korean leaders must address not only a traditional Confucian philosophy that generally considers ideas or creative thoughts to be in the public domain, but also a contemporary political atmosphere poisoned by the per-

ception that intellectual property laws were enacted to meet the demands of foreigners.

Nevertheless, Professor Song and Mr. Kim report that external and internal changes have brought much progress over the past decade. Externally, the multilateral TRIPS negotiations have had a positive impact on Korean law and politics. Internally, pharmaceutical and chemical industries have responded and reorganized to take advantage of changes in Korean patent law, publishers have favorably responded to a changing business environment, and a software industry has developed as a result of legislation strengthening copyright and software protection.

4. The People's Republic of China

Concluding the presentations by participants from the four countries of East Asia is a paper authored by Mr. Jianyang Yu, of the law firm of Liu, Shen & Associates, in Beijing, entitled *Protection of Intellectual Property in the P.R.C.: Progress, Problems, and Proposals.* In his paper, Mr. Yu reviews what, by this time in the conference, had become a familiar story—namely, the progress achieved in the protection of intellectual property in the two years following bilateral trade negotiations and the eventual signing of a bilateral Memorandum of Understanding between the United States and the People's Republic of China in January, 1992; and the problems encountered in the course of implementing this bilateral agreement, with some proposed solutions. Indeed, with Mr. Yu's paper, a chronology of recent developments in intellectual property protection within the three rapidly developing economies of East Asia began to emerge. Within the past two years, both the People's Republic of China and Taiwan have gone through essentially the same experience that Korea went through six years earlier. Accordingly, both the People's Republic of China and Taiwan should be expected to profit from and, to some extent, follow Korea's path over the past eight years.

On the other hand, as the discussion of Mr. Yu's paper made clear, the People's Republic of China presents a unique challenge to the hitherto successful bilateral trade negotiation strategy of the United States. In contrast to Korea and Taiwan, and for that matter, Japan, which are all more dependent on their trade with the United States than the United States is dependent on its trade with them, China more nearly approaches trade interdependence with the United States, and thus (as the Clinton administration's delinkage of human rights and trade issues suggests) may be more resistant to bilateral pressure than the other countries in East Asia. The recently escalating U.S.-China dispute over copyright protection more than amply bears this out.

Although Mr. Yu was unfortunately unable to attend the conference, his paper was capably summarized and commented upon by Professor Paul Edward Geller, Attorney and Adjunct Professor of Law at the University of Southern California, and Professor Andrew G. Walder, Professor of Sociology at Harvard University. An expanded version of Professor Walder's remarks is published under the title *Harmonization: Myth and Ceremony?* while Professor Geller has provided a more general summary of his reflections in the third and final section of the conference proceedings.

B. International Intellectual Property Protection from a Policy Perspective

The last three papers in this symposium issue explicitly address some of the policy questions that are implicit in the rapidly changing face of intellectual property protection in East Asia. The first of these papers, presented at the conference by Professor Edmund W. Kitch, Joseph M. Hartfield Professor of Law at the University of Virginia, is entitled *The Patent Policy of Developing Countries*, and addresses the question of why developing countries—i.e., those whose nationals are much more likely to pay, rather than receive, patent royalties—might nevertheless choose to participate in the international patent system to further their own self-interest even if this is likely to result in substantial net payments by their nationals to non-nationals. Professor Kitch suggests three reasons why such a country would not simply examine foreign patents and select the technology that is useful, thereby avoiding both the costs of investing in research and development and the expense of paying royalties on the use of technology developed by others.

The second paper addressing policy considerations had been originally presented by Professor Dennis S. Karjala, Professor of Law, Arizona State University College of Law, at a conference on intellectual property rights in computer software and their impact on developing countries, held at the Indian Institute of Science, in Bangalore, India, in August, 1993. Professor Karjala also circulated the paper at this conference as well. The paper is entitled *Theoretical Foundations for the Protection of Computer Programs in Developing Countries.* Professor Karjala argues that limited copyright protection of computer programs best balances developing countries' interest in technology development and transfer and the software developers' antipiracy interests.

The third and final paper offering a policy perspective was prepared subsequent to the Conference by Professor Paul Edward Geller of the University of Southern California, and is enti-

tled *Legal Transplants in International Copyright: Some Problems of Method.* In that paper, Professor Geller defines a "legal transplant" as any legal notion or rule which, after being developed in a "source" body of law, is then introduced into another, "host" body of law. A classic example is the reception of Roman law into the law of modern Europe. As he points out, however, the subject of intellectual property law in East Asia is, in effect, a contemporary problem of legal transplants. Professor Geller then goes on to address how such legal transplants work, what problems of method they create, how these obstacles might be overcome, and whether legal transplants should or should not be encouraged.

III. ACKNOWLEDGEMENTS

No introduction to the symposium issue which follows would be complete without mention of those most responsible for making it a reality. No one deserves more thanks than Professor William C. Jones, Charles F. Nagel Professor of International and Comparative Law at Washington University, who not only conceived the idea of holding such a conference but also secured funding for the conference through a generous grant from the Chiang Ching-kuo Foundation for International Scholarly Exchange, making it possible to gather distinguished experts, on both intellectual property and East Asian studies, from both sides of the Pacific Ocean. Equally deserving of thanks is Dr. Michelle Shoresman, Associate Director of International Studies at Washington University, who together with her assistant, Ms. Cindy Brame, made most of the arrangements for the conference, and Ms. Beverly Jarboe, Professor Jones' secretary, who not only assisted in making many of the final arrangements for the conference, but also supervised the preparation of a typed transcript of the conference proceedings.

Special thanks are also due to the two co-sponsors for the conference—the School of Law and the Joint Center for East Asian Studies of Washington University, and its sister institution, the University of Missouri-St. Louis—and the editors and staff of the *U.C.L.A. Pacific Basin Law Journal.*

Finally, a special word of thanks is owed to all of those who participated in the Conference on East Asian Intellectual Property Law and cooperated to produce this symposium issue.