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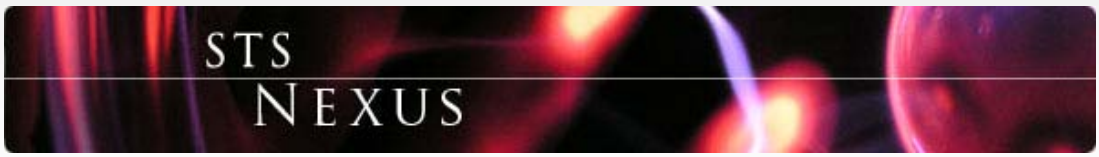

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Interlaced economies and silicon-based ICT (Information and Communication Technologies) have combined to produce much of what we understand as "globalization." ICT exist because clever and innovative people figure out how to harness nature's principles and put them to work. They invent. The inventors may be individuals or small research groups, or they may be employees of corporations or universities. In any event, what they invent creates value, value which their employers or they themselves wish to own and control.

Because of this quest for control, Intellectual Property Rights (IPRs) have now become a particularly important area of consideration in business and in law. These rights also figur e prominently in international trade and in recent treaties, such as the TRIPs ("Trade Related Aspects of Intellectual Property Rights") appendix to the WTO (World Trade Organization) treaty, and recent enhancements treaties administered by WIPO (World Intellectual Property Organization). Readers interested in more detail on international IPRs, should see H. C. Anawalt and E. Enayati Powers, *IP Strategy—Complete Intellectual Property Planning, Access, and Protection,* (New York:West, 2002), sections 1:99-1:104.

By their nature private property rights exclude some or many people from the use or enjoyment of a thing, place, or activity, for example, conflicting claims of access, on the one hand, and control, on the other. Fur thermore, when treaties or trade pressure impose intellectual property regimes on nations, these regimes are bound to have economic and social impact that can be far ranging.

Four scholars have addressed different aspects of the intellectual property legal doctrines in panels and papers presented at the *Networked World: Information Technology and Globalization* international coference and contained in the *STS NEXUS 3.2 Supplement*. These scholars are:Jacqueline Lipton, Peter K. Yu, Doris Estelle Long, and Hector Postigo. In the paragraphs that follow, I summarize their conclusions briefly and intersperse comments of my own.

One of the areas addressed by these papers is the effectiveness of intellectual property laws. As noted above, the primary function of property is to reserve for a few certain benefits. When one divvies up such valuable rights as control of information or inventions, one is bound to have a great impact on people's welfare. One of the approaches to dealing with the allocation of such rights in the past two decades is to create ever more forceful *international* intellectual property institutions. That is, intellectual property rights have become increasingly the subject of international treaty obligations. Jacqueline Lipton surveys a variety of contexts of these international arrangements in her paper, "Can Intellectual Property Law Survive?" She concludes that traditional intellectual property systems "based on international treaties enacted into domestic law" do not suffice. She sees some degree of promise in private arrangements, such as contracts, which governments monitor as "guardians of the global public domain."

In his article, "Dis-networking Rules," Peter K. Yu emphasizes the gap between developed and less developed countries. In order to have intellectual property systems succeed in the sense of serving broader communities, he sees three components which need international recognition as part of international intellectual property laws or systems: 1) accommodating the differing preferences of nations; 2) partnerships among nations, rather than competition, in framing intellectual property arrangements, and 3) international partners must become "stakeholders" in the system.

About the Author

Howard C. Anawalt

Howard C. Anawalt is Professor of Law at Santa Clara University. He has researched and written extensively in the area of intellectual property law and was instrumental in establishing Santa Clara University's High Technology Law Program. Before coming to Santa Clara he received his J.D. from the University of California (Boalt Hall, 1964) and his B.A. from Stanford University in 1960. He has been a visiting scholar at Boalt Hall, Stanford, and the University of Washington; Chair of the Computer Law section of the Santa Clara Bar Association; and is a member of the bars of the states of California and Washington and of the United States Supreme Court. His legal practice has included transactional work as well as major involvement in litigation. He and his wife, Susan, have spent the better part of four summers in Japan, where he directed a law program and lectured on intellectual property.

Doris Estelle Long urges in her essay, “Intellectual Property on the Internet,” that “unless the Netconnected world reconsiders its chauvinistic belief in the global benefits of technological homogenization, its promises may stumble.” She argues that intellectual property operates to balance access and control rights. This notion, she says “reflects a cultural bias” that favors a debate over private rights at the expense of broader public concerns. She concludes that when major public choices are made, as by treaties, these choices should take into account that “different cultures approach the Net in uniquely different ways.”

Hector Postigo, focuses on how technologies such as DVDs (Digital Video Disks) challenge copyright enforcement in “Copyright Violations on the Internet.” Policy makers ought to r ecognize that certain technologies themselves have capacity to become the regulators. He urges that in some sense, “tech-nologies cease to be simply technologies and become socio-technological structures (i.e. both artifact and social order.)” He cites the scrambling systems used to protect the content of DVDs as such an artifact. He concludes that he would “like to see copyright stakeholders embrace the communications network available through the Internet to cheaply and efficiently distribute their media.”

Much depends on the resolution of intellectual property questions both domestically and internationally. Public inter est and well-being depend on a combination of innovation, priority selection, and fair distribution of the gains of innovation. At the heart of the matter lies the concept of the social good. In fact, the United States Constitution commits our own laws to pursuit of that good. The sole justification for granting patents and copyrights is a social good: “to promote the Progress of Science and useful Arts.”

International intellectual property rules and procedures cut very deeply into the fabric of different national cultures. This is especially true when those rules become part of such modern necessities as membership in clubs of trading partners—e.g. the WTO and NAFTA. Nations may with ver y good reasons differ on where they wish to spend precious law enforcement resources. They may determine that innovation receives sufficient incentive with shorter terms of software protection or mandatory licensing of certain patented technologies. They may decide it is far more important to give priority to legal efforts that protect the environment, safety, families, or children, rather than devote them to expensive patent litigation. They may determine that forms of property other than traditional private property are appropriate. These forms of property include ones familiar in our country—public ownership of parks and the broadcast airwaves, community property in marriages as in Louisiana, California and some other western states.

In conclusion, I add my voice to those who ask for far greater accommodation to national cultures in the area of intellectual property rights. W orldwide rules should emerge to curtail war and enhance human rights. But uniformity is not needed when it comes to intellectual property rights. Let the nations discuss such things as “harmonizing” patent laws without the pressure of trade sanctions. •