

MINI-SYMPOSIUM: INTERNATIONAL PUBLIC GOODS AND THE TRANSFER OF TECHNOLOGY UNDER A GLOBALIZED INTELLECTUAL PROPERTY REGIME

INTRODUCTION TO THE SYMPOSIUM

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In recent years the world has moved decisively toward successive strengthening – and harmonization – of intellectual property protection. The result is the emergence, more than ever before, of a globalized regime of private rights in information and of the foundations for a rudimentary transnational system of innovation. This new system will have profound implications for the nature of such basic processes as innovation, technology transfer, competition, and economic development. It also raises fundamental, and often disturbing, questions about the ability of governments to provide critical public goods to their citizenry, both within and across countries. Such goods include public health, education, environmental protection, and other elements of social worth that must rely increasingly on the exercise of private rights over technical inputs.

It is conceivable that the globalized intellectual property regime will improve prospects for information trade by encouraging invention and resolving failures in technology markets. It is also possible that the system will throw up high roadblocks in the path of follow-on innovation, competition, and the attainment of public goods. These questions are deep and complex, and they require sustained analysis.

The objective difficulties of this task constitute one of the main reasons that we decided to organize the Conference on International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime in April 2003 at Duke University.¹ This was a major attempt to subject the complex conceptual foundations of the changing worldwide intellectual property regime to systematic legal and economic analysis.

To this end, we invited a distinguished group of economists, political scientists, and legal experts to assess the public processes and inputs they

¹ Conference on International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime, held at Duke University School of Law, Durham, North Carolina, on 24–26 April 2003. Oral presentations are available at: <http://www.law.duke.edu/trips/webcast.html>.

deemed likely to become indispensable in a transnational system of innovation that, while still dependent on territorial law, must aim to promote technical progress, economic growth and welfare for all participants. The contributors were also urged to propose ways and means to minimize the social costs and enhance the benefits that might ensue from the TRIPS Agreement and related standard-setting initiatives by deliberately taking the promotion of public goods into account.

Their responses, which Cambridge University Press will publish in late 2004,² have been organized under four major rubrics. Part I, entitled 'International Provision of Public Goods under a Globalized Intellectual Property Regime', explores the concept of public goods in the expanding knowledge economy. It is followed by a series of analyses and comments on preserving the cultural and scientific commons.³

Part II of the conference volume will address the general theme of 'Innovation and Technology Transfer in a Protectionist Environment'. Framework papers focus on obstacles to the transfer of technology under international intellectual property standards and on ways and means of stimulating local innovation in developing countries.⁴

Part III, entitled 'Sectoral Issues: Essential Medicines and Traditional Knowledge',⁵ is followed in Part IV by numerous contributions gathered under the general theme of 'Reform and Regulation Issues'. A first subdivision deals with balancing public and private interests in the specific intellectual property regimes and the second explores the role of competition law in a worldwide market for knowledge goods.⁶ A final set of papers, dealing with dispute settlement at the WTO and intellectual property rights, emphasizes the need for WTO panels to take public goods into account.⁷

In the meanwhile, Professor John Jackson invited us to share a representative selection of the Duke Conference papers with readers of the *Journal of International Economic Law*. In preparing this Symposium, we have

² *International Public Goods and Transfer of Technology under a Globalized Intellectual Property Regime* (Keith Maskus and J.H. Reichman (eds), Cambridge University Press, forthcoming 2004) [hereinafter *International Public Goods and Intellectual Property*].

³ See, e.g., the framework analyses by Peter Drahos, Paul David, Richard Nelson, and Ruth Okediji, in *International Public Goods and Intellectual Property*, above n 2.

⁴ See framework articles by Carlos Correa, Keith Maskus (with Kamal Saggi and Thitima Puttitanum), Arti Rai, Michael Blakeney, Ashish Arora (with Andrea Fosfuri and Alfonso Gambardella), Tracy Lewis and J. H. Reichman, in *International Public Goods and Intellectual Property*, above n 2.

⁵ See framework papers by Frederick Abbott, Henry Grabowski, Patricia Danzon and Adrian Towse, Thomas Cottier and Marion Panizzon, Graham Dutfield, and Anthony Taubman, in *International Public Goods and Intellectual Property*, above n 2.

⁶ See papers by John Barton, Timothy Swanson and Timo Goeschl, Pamela Samuelson, Eleanor Fox, Hanns Ullrich, and Mark D. Janis, in *International Public Goods and Intellectual Property*, above n 2.

⁷ See framework analyses by Rochelle Cooper Dreyfuss and Graeme Dinwoodie, Eric Bond, Joost Pauwelyn, and Gregory Shaffer in *International Public Goods and Intellectual Property*, above n 2.

accordingly tried to reflect the richness of the contributions as a whole, the diversity of viewpoints expressed, and the breadth of topics that were covered. We have also interwoven legal and economic analyses, in keeping with the overall aim of the conference, and provided a mix of longer and shorter papers, which reflect the interplay of ideas and insights that the commentators made possible.

Inevitably, any selection of this kind from such a distinguished roster of contributors was bound to prove difficult, and the end result can only hint at the intellectual wealth of the collection as a whole. Nevertheless, we think six framework articles in particular will give readers a good overview of the issues.

The first, by Keith Maskus of the University of Colorado and J.H. Reichman of Duke Law School, sets out the main analytical issues in the context of 'the globalization of private knowledge goods and the privatization of global public goods'. It then argues for re-injecting into the global debate a strong regard for public-goods provision. The second, by Peter Drahos of the Australian National University, illuminates 'The Regulation of Public Goods' from both a legal and economic perspective. John Barton, of Stanford Law School, then provides an insightful meditation on 'Issues Posed by a World Patent System'. The crucial but at times exasperating role of competition law and policy is admirably surveyed by Hanns Ullrich, Professor at the European Institute, Florence, Italy, in his article, 'Expansionist Intellectual Property Protection and Reductionist Competition Rules: A TRIPS Perspective'.

Thomas Cottier and Marion Panizzon of Bern University's World Trade Institute share their latest findings concerning 'Legal Perspectives on Traditional Knowledge: The Case for Intellectual Property Protection'. Finally, Graeme Dinwoodie of Chicago Kent College of Law and Rochelle Cooper Dreyfus of New York University Law School discuss the potential impact of WTO dispute settlement procedures on domestic efforts to preserve the research commons. Their article is entitled 'Preserving the Public Domain of Science under International Intellectual Property Law'.

These framework analyses are enriched by three shorter comments. In the first, Lee Branstetter of Columbia University's Business School ponders a query implicit in John Barton's study, namely, 'Do Stronger Patents Induce More Local Innovation?'. In the second, Wilfred Ethier, Professor of Economics at the University of Pennsylvania, provides a novel perspective on 'Intellectual Property Rights and the Dispute Settlement Procedure of the World Trade Organization'. Finally, Gregory Shaffer of the University of Wisconsin Law School closes our mini-symposium with a thoughtful work based on a major research project, entitled 'Recognizing Public Goods in WTO Dispute Settlement: Who Participates? Who Decides?'

The organizers of the conference, who are also the editors of this symposium, wish to thank the Rockefeller Foundation, the John D. and Catherine T. MacArthur Foundation, the McGuire Center for International Studies at the University of Colorado, the Center for the Study of the Public

Domain at Duke University, and the Center for the Public Domain for their generous support. They also express their gratitude to Cambridge University Press for providing permission for this selection of articles to be published in the *Journal of International Economic Law*.