

1. Introduction: the inevitability of “territoriality challenges” in trademark law

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How territorially tethered are trademarks? Legally, the answer seems to be: “very.” But if we move from legal doctrines and international treaties and consider trademarks in wider psychological, technological, and economic contexts, we might say: “not especially.” This tension between formalistic legal principles and the realities of trademarks in the marketplace is of enduring fascination. It is also of enormous practical relevance to firms wanting to roll out and protect brands on an international scale.

In large part, trademark law doctrines, international instruments, and procedural frameworks reinforce trademark’s territoriality and the continued salience of the nation state to the creation and enforcement of trademark rights. Yet for many purposes, the strength and enforceability of trademark rights depend on what happens in people’s minds, and the human mind is not a geographically confined thing. Because the sources that shape the human consciousness do not begin and end at a nation’s borders, tensions will inevitably arise between trademark law’s territoriality principle and the realities of consumer perceptions and behaviors. And when we focus on the supply side, on the firms that market trademarked products in the modern international economy, we see similar tensions. Multinational firms – many of which own “famous” trademarks, the very kinds of marks that most obviously challenge trademark territoriality – are not exactly renowned for their allegiance to the nation states in which they conduct business. Seemingly idiosyncratic domestic laws are irritants at best and, at worst, egregious sources of

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increased compliance and transaction costs, impediments to the inexorable rollout of the juggernaut “international” brand.

From a technological perspective, the territoriality principle can seem quaint or even retrograde. Consider the Apple® iPhone®, marketed under two of the world’s most potent brands. Trademarks are meant to “mark” a “trade,” in the sense that the mark symbolizes the underlying business source of the product – but what *trade* is being *marked*, and, indeed, *where* is it – when the component parts of the iPhone® come from at least seven different countries?¹ In the modern globalized economy in which many consumer goods are the product of long supply chains, are traditional concepts of the trademark, including the fundamental principle of territoriality, even relevant? Many brands are genuinely “of a place.” Geographical indicators present a paradigm case. But modern marketing practices also create international brands that seem at once to be from everywhere and nowhere.

The enduring tensions between territoriality as a formal legal principle and the realities of trademarks in the consumer marketplace are part of what makes the issues explored in this volume so important and challenging. Each of the chapters in this volume advances our understanding of the issues that arise in this context, and provokes new thinking about future developments. In this introductory chapter, which Professors Calboli and Lee have kindly asked me to contribute, my principal aim is to explore in more detail why “territorial challenges,” to use one of the phrases in this book’s title, are inevitable in the global marketplace. To this end, this brief chapter will first provide some of the legal background to the broad theme of territoriality in trademark law. This background need be sketched only briefly here: some extraordinarily useful and enlightening analyses of trademark territoriality have been advanced by others.² Secondly, the chapter will explore a few of the reasons why the issues discussed in the chapters that follow are so important to our understanding of trademark rights in the modern global economy.

The notion of “trademark law’s territoriality” reflects a cluster of different ideas. Most obviously, trademark rights have limited geographical scope, a point that was confirmed relatively early on by two United

¹ The iPhone® 4 component parts come from China, Germany, Japan, Korea, Switzerland, Taiwan, and the United States. See Ram Ganeshan, *The iPhone 4 Supply Chain*, OPERATIONS BUZZ (Nov. 28, 2010), <http://www.operationsbuzz.com/2010/11/the-iphone-4-supply-chain>.

² See, e.g., Graeme B. Dinwoodie, *Trademarks and Territoriality: Detaching Trademark Law from the Nation-State*, 41 Hous. L. Rev. 885 (2004).

States Supreme Court cases, *Hanover Star Milling Co. v. Metcalf*³ and *United Drug Co. v. Theodore Rectanus*.⁴ Registration systems also underscore this sense of territoriality; whether understood as a confirmation of pre-existing rights acquired through use or a state grant of “new” rights created by the registration, the property in a trademark registration reflects the exercise of sovereign power. Of course, the exercise of that sovereignty can be delegated – as various initiatives reflect, including the Community Trademark System⁵ and the Madrid Protocol⁶ – but the link between the nation state and the grant and enforcement of trademark rights remains strong. As will be discussed later, there are exceptions to the idea that territoriality is, as the United States Federal Circuit has put the point, “basic to trademark law.”⁷ Even so, as a general matter, this “fundamental doctrine”⁸ of trademark territoriality suggests that trademark law is a particularized instance of broad ideological, legal, and political commitments to the continued salience of the connection between the applicability of laws and the scope of the territory over which a sovereign exercises power.⁹

Strongly endorsing trademark territoriality, Justice Holmes once said (in a case involving the assertion of rights in the territory of Hong Kong), “A trade-mark started elsewhere would depend for its protection in Hong Kong upon the law prevailing in Hong Kong and would confer not rights except by the consent of that law,”¹⁰ an idea that was also endorsed by the Privy Council in an appeal from Singapore, when it held that “[Goodwill] is local in character and divisible; if the business is carried

³ *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403 (1916).

⁴ *United Drug Co. v. Theodore Rectanus*, 248 U.S. 90 (1918).

⁵ Council Regulation 207/2009, art. 9(1)(b), 2009 O.J. (L 78/5) (EC). *See generally*, William Robinson, Giles Pratt and Ruth Kelly, *Trademark Law Harmonization in the European Union: Twenty Years Back and Forth*, 23 *FORDHAM INTELL. PROP. MEDIA & ENT. L.J.* 437 (2013).

⁶ Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, June 27, 1989, WIPO Pub. No. 204(E).

⁷ *Person's Co. v. Christman*, 900 F.2d 1565, 1568–69 (Fed Cir. 1990).

⁸ *Barcelona.com, Inc. v. Excelentísimo Ayuntamiento de Barcelona*, 330 F.3d 617, 628 (4th Cir. 2003); *see also* *Vanity Fair Mills, Inc. v. T. Eaton Co.*, 234 F.2d 633, 639 (2d Cir. 1956) (referring to territoriality as a “fundamental principle”).

⁹ *See generally* Kal Raustiala, *The Geography of Justice*, 73 *FORDHAM L. REV.* 2501 (2005).

¹⁰ *Ingenohl v. Walter E. Olsen & Co.*, 273 U.S. 541, 544 (1927) (the spelling of “Hong Kong” in the quotation has been modernized).

on in several countries a separate goodwill attached to it in each.”¹¹ These themes also underlie major international treaties in the trademark context. The Paris Convention, for example (compliance with the substantive articles of which is required by the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)), “recognizes the principle of the territoriality of trademarks.”¹² Indeed, the very idea of national treatment seems to be premised on territoriality:¹³ owners of intellectual property are concerned about how they will be treated under foreign nations’ laws precisely because those laws are assumed to apply in the territories where the rights might be infringed. Procedural law touching on the enforcement of trademark law is also broadly in line with these ideas. In the European Union, the Brussels Regulation on Jurisdiction anticipates that many proceedings relating to the registered intellectual property rights will be litigated exclusively in the place of registration,¹⁴ another endorsement, or, at least, tacit acknowledgement, of connections between disputes over trademarks and the nation states under whose laws the rights are secured.

These formalistic characteristics of trademark law perhaps look a little different in the light of the way some trademarks operate in the global marketplace. Even if, formalistically, trademark rights begin and end at a nation’s borders,¹⁵ consumer responses to brands are not necessarily so

¹¹ *Star Industrial Co. Ltd. v. Yap Kwee Kor* [1976] F.S.R. 256 (P.C. Sing.).

¹² 4 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 29:25 (2013).

¹³ Curtis A. Bradley, *Territorial Intellectual Property Rights in an Age of Globalism*, 37 VA. J. INT’L L. 505, 543, 547 (1997) (reasoning that national treatment principle implies a territorial approach to choice of law).

¹⁴ Council Regulation EC 44/2001 art. 22(4), Dec. 22, 2000 (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters). The exclusive jurisdiction provision is facially limited to proceedings as to the registration or validity of the rights. However, it will often be the case that the validity of the plaintiff’s rights will be put at issue in many cases involving the enforcement of the plaintiff’s rights. *See generally* Graeme W. Austin, *The Concept of Justiciability in Foreign Copyright Infringement Cases*, 40 INT’L REV. INTELL. PROP. & COMP. L. 393 (2009).

¹⁵ For present purposes, it is unnecessary to engage with issues arising from regional systems, the most obvious example of which is the European Union. These quasi-federalist approaches do not undermine the importance of territoriality: it is merely that the borders have shifted to the edge of the federal system. The regional exhaustion principle adopted within the European Union (*see* Joined Cases C-414/99 to C-416/99, *Zino Davidoff S.A. v. A&G Imports Ltd., Levi Strauss & Co. v. Tesco Stores Ltd., Levi Strauss & Co. v. Costco Wholesale UK Ltd.*, 2001 E.C.R. I-8731). The concept of regional exhaustion is now

confined. As to doctrine, the relevance of consumer responses is most obvious in use-based systems: the *legal* strength of trademark rights can depend greatly on what occurs in people's minds. As the U.S. Supreme Court explained in the *Rectanus* decision, "[a] trade-mark ... is merely a convenient means for facilitating the protection of one's good-will in trade by placing a distinguishing mark or symbol – a commercial signature – upon the merchandise or the package in which it is sold."¹⁶ Trademark rights are not rights in gross, at least not in the common law tradition. There is thus no "property" in the trademark except to the extent that the mark symbolizes, in the minds of consumers, a firm's goodwill.¹⁷ Even in registration systems, the strength of the mark – the extent to which it has impacted consumers' minds – will be critical to its enforceability.¹⁸

The human imagination is not tethered within domestic borders; nor are the stimuli that shape it. For many, life is a constant shuffle across international borders. This is true not just of the (literally) high-flying executive; it also reflects the reality of life for many in "borderland" communities;¹⁹ and, in the modern global city, with increasingly frayed commitments to the nation state, the stimuli that help shape the "consumer consciousness" derive from a multiplicity of sources, some local, many from elsewhere. Similarly, many consumer products are "internationalized," with seemingly little connection to specific geographical sources. Apple[®] is the source of the iPhone[®]; *where* it was manufactured has relatively little relevance. At the same time, the trademark laws of the place where it is marketed seem only tenuously connected with the consumer experience. To be sure, localized consumer protection laws,

embedded in EU Trademark Directive: Council Directive art. 7, 89/104, Approximate the Laws of Member States Relating to Trade Marks art. 7, 1989 O.J. (L 40) 1, 5 (EC).

¹⁶ *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 98 (1916).

¹⁷ See William P. Kratzke, *Normative Economic Analysis of Trademark Law*, 21 MEMPHIS ST. U. L. REV. 199, 205 (1991): ("Until a word, name, symbol or device plays some informational or identificatory role with respect to a product it has no value.")

¹⁸ As the Court of Justice of the European Union pointed out recently, "[i]n order to determine whether the use of a sign takes unfair advantage of the distinctive character or the repute of the mark, it is necessary to undertake a global assessment, taking into account all factors relevant to the circumstances of the case, which include the strength of the mark's reputation." Case C-487/07, *L'Oreal v. Bellure*, 2009 E.C.R. I-05185 at [44].

¹⁹ See generally GLOBALIZATION ON THE LINE: CULTURE, CAPITAL, AND CITIZENSHIP AT U.S. BORDERS (Claudia Sadowski-Smith ed. 2002).

some of which are of imperative application, and cannot be avoided through contractual disclaimers and choice of law clauses,²⁰ are not entirely irrelevant to the value secured at the point of purchase. Yet the overall brand experience that accompanies the purchase of such products seems to have very little to do with the (territorially confined) domestic laws that create and protect the mark.

How trademark law should respond to the realities of consumers' experience in the global marketplace is a theme explored in a number of chapters in this volume. One obvious response to the realities of international marketing is the "famous" or "well-known" mark doctrine, which makes and facilitates the international expansion of brands.²¹ As a number of chapters in this volume explain, the famous marks doctrine is not fully embraced in U.S. decisional law. The Ninth Circuit has held that a foreign trader could achieve priority in a mark in the United States even without "use in commerce" where "a substantial percentage in the relevant American market is familiar with the foreign mark."²² The Second Circuit, however, has not been so accommodating, holding that this adaptation is for the U.S. Congress to make, not the courts.²³

Another response is the willingness of some courts to apply domestic trademark laws in foreign territories. However much of an affront to the territoriality principle this might seem, under prevailing U.S. doctrine, this strategy remains possible.²⁴ In a leading case,²⁵ the Supreme Court countenanced the idea that U.S. trademark law could apply to the

²⁰ In the U.S. context, Louisiana prohibits the enforcement of a choice of law clause in a contract where such a transaction has a connection to the state's territory. LA. REV. STAT. ANN. § 51:1418 (2001).

²¹ In particular, see *infra* Marshall A. Leaffer, *Protection of Well-Known Marks: A Transnational Perspective*; Leah Chan Grinvald, *Interactivity, Territoriality, and Well-Known Marks*; and Lee Ann Lockridge, *Territoriality (Mis)Understood: Enforcing Well-Known Marks in the United States*. An early initiative that facilitated international brand expansion was the Pan-American Convention of 1929, which is discussed in this volume by Professor Farley. See *infra* Christine Haight Farley, *The Pan-American Convention of 1929: A Bold Vision of Extraterritorial Meets Current Realities*.

²² *Grupo Gigante v. Dallo*, 391 F.3d 1088 (9th Cir. 2004). See also *Karoun Dairies, Inc. v. Karoun Dairies, Inc.*, 2010 WL 3633109 (S.D.Cal. 2010).

²³ *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135 (2d Cir. 2007).

²⁴ See generally Graeme W. Austin, *The Story of Steele v. Bulova: Trademarks on the Line*, *INTELLECTUAL PROPERTY STORIES* 395 (Jane C. Ginsburg and Rochelle Cooper Dreyfuss eds., 2006) (examining the background to the leading U.S. case, *Steele v. Bulova Watch Co. Ltd.*, 344 U.S. 280 (1952) and the subsequent case law it has generated).

²⁵ *Steele v. Bulova Watch Co. Ltd.*, 344 U.S. 280 (1952).

defendant's activities in Mexico. The significance of that case, and the scope of its holding, continue to occupy lower courts, as trademark owners seek to litigate issues relating to trademark infringement in U.S. forums,²⁶ and courts continue to explore the bases for allowing cases involving trademark rights arising under foreign laws to proceed.²⁷

Yet another response has been a tendency toward the localization of trademark disputes, especially in the domain name context,²⁸ as is illustrated by case law that has emerged under the "reverse domain name hijacking" provisions of the U.S. Lanham Act (the Anti-Cybersquatting Consumer Protection Act (ACPA)).²⁹ The Fourth Circuit's decision in *Barcelona.com v. Excelentísimo Ayuntamiento de Barcelona*³⁰ concerned an application under ACPA by a Delaware corporation, Bcom, Inc., that had registered "www.barcelona.com," for a declaration that this registration was not unlawful under the U.S. Lanham Act. This followed proceedings under the Uniform Dispute Resolution Policy (UDRP)³¹ that had been decided in favor of the Excelentísimo Ayuntamiento de Barcelona (the City Council of Barcelona). The City Council alleged that the defendant's domain name was confusingly similar to some 150 trademarks that it had registered in Spain, most of which included the name "Barcelona" in some form. Bcom invoked the "reverse domain name

²⁶ See, e.g., *Vanity Fair Mills v. T. Eaton Co.*, 234 F.2d 633 (2d Cir. 1956); *Sterling Drug v. Bayer AG*, 14 F.3d 733 (2d Cir. 1994); *McBee v. Delica Co.*, 417 F.3d 107 (1st Cir. 2005); *Les Ballets Trockadero de Monte Carlo, Inc. v. Trevino*, 945 F.Supp. 563 (S.D.N.Y. 1996).

²⁷ For some courts, the citizenship of the defendant appears to be an especially salient issue. See e.g., *E.I. DuPont de Nemours & Co. v. Kolon Industries, Inc.*, 2012 WL 4490547 (E.D. Va. 2012).

²⁸ On the regulation of domain names generally, see *infra* Jacqueline Lipton and Mary Wong, *Trademarks, Free Speech, and ICANN's New gTLD Process*.

²⁹ 15 U.S.C. § 1114(2)(D)(v) (authorizes an aggrieved domain name registrant to "file a civil action to establish that the registration or use of the domain name by registrant is not unlawful under [the Lanham Act]"). This provision is designed to prevent what is sometimes called "reverse hijacking" or overreaching by mark owners. See *Maruti.Com v. Maruti Udyog Ltd.* 447 F.Supp.2d 494, 496 (Md. 2006).

³⁰ *Barcelona.com v. Excelentísimo Ayuntamiento de Barcelona*, 330 F.3d 617 (4th Cir. 2003).

³¹ UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP), <http://www.icann.org/en/help/dndr/udrp/policy>. The UDRP specifically preserves the ability to litigate cases in national courts. See *ibid.* at § 4.k ("The mandatory administrative proceeding requirements ... shall not prevent [the parties] from submitting the dispute to a court of competent jurisdiction for independent resolution ...").

hijacking” provisions of the Lanham Act, which protect domain name registrants against trademark proprietors that “overreach” in their assertion of rights under the UDRP. ACPA enables a domain name registrant to establish that its registration or use is “not unlawful under this chapter,” that is, under U.S. federal trademark law. The Fourth Circuit held that the district court had been wrong to apply Spanish trademark law to the dispute, and it remanded for consideration of the parties’ rights under U.S. federal trademark law. The Court of Appeals invoked the *territoriality* of trademark law to justify application of U.S. trademark law to a dispute that involved a Spanish trademark owner whose trademarks are likely to have principal relevance to people within Spain. It might be objected that by localizing the case under U.S. law, the Fourth Circuit’s approach is at odds with the “non-national” character of the UDRP.³² At the same time, the approach can be understood to impinge upon the territoriality principle – to the extent that the Court insisted on the application of United States law to a dispute whose center of gravity seemed to be Spanish.

Yet another inroad to territoriality can be seen in the relaxation of rules relating to the exhaustion of trademark rights. Trademark owners’ international licensing arrangements will often reinforce formalistic principles associated with territoriality, as different geographical regions are “carved up” through exclusive licensing arrangements. With many products marketed under internationally recognized brands, many consumers appear to be indifferent to the physical source of the products and respond positively to the efforts of entrepreneurs to source and import those products at the cheapest price point. “Gray marketing” thereby cuts across the “territoriality” represented by brand owners’ attempts to silo national markets according to price points. A full-blooded gray market regime has the effect that sale of geographically confined rights in one country is in effect sale of those rights in every country in which there are sufficient similarities between goods such that consumers would not be confused.³³ Opportunities for gray marketing are enhanced when

³² See generally Graeme B. Dinwoodie and Larry Helfer, *Designing Non-National Systems: The Case of the Uniform Domain Name Dispute Resolution Policy*, 43 WM. & MARY L. REV. 141 (2001).

³³ In the U.S. context, Justice Kagan appeared to make just this point in a recent case concerning gray market copyright-protected goods:

[A]s a matter of copyright theory, I had always understood copyright to – a copyright holder has a kind of a bundle of rights. It’s not one right that applies everywhere in the world. It’s you have your U.S. rights and you have your Chinese rights, you have your rights under each jurisdiction’s law. And your

owners of any copyright in a product's packaging, trade dress and logos and, where relevant, the product configuration itself, are likewise precluded from enforcing their rights to prevent importation of legitimate products sourced from abroad.³⁴

Do these developments, and others discussed in the chapters that follow, mean that territoriality should be jettisoned altogether? In the "global economy" do trademarks operate in a kind of state of nature – or, perhaps, "state of consumption" – in which the nation state no longer has any purchase? Literally, that is of course an overstatement: domestic laws, systems of registration, and so on continue to remain relevant to the existence and enforcement of trademark rights. But do all of these developments underscore the prescience of Sir Robin Jacob's observation that "the world will realize that at least for intellectual property the days of the nation state are over"?³⁵ Does the uncoupling of intellectual property from the nation state mean that this species of property is beginning to enjoy a kind of "pre-legal" existence?

These debates of course have a long pedigree. Jeremy Bentham, for example, took the opposite view (on property rights generally), and famously declared that "[t]here is no such thing as natural property ... it is entirely the work of the law,"³⁶ a theme that was vigorously elaborated

position is essentially to say that when I sell my Chinese rights to somebody, I'm also selling my U.S. rights to that same person, because the person who has the Chinese rights can just turn around and import the goods. I mean, that's the nature of your position, isn't it, that your U.S. rights are always attached when you sell more – your rights under the jurisdiction of another country?

Kirtsang v. John Wiley & Sons, Inc. 133 S.Ct. 1351 (2013) (Oral Argument), at 23.

³⁴ Kirtsang v. John Wiley & Sons, Inc. 133 S.Ct. 1351 (2013). See also *infra* Irene Calboli, *The (Avoidable) Effects of Territorially Different Approaches to Trademark and Copyright Exhaustion*; Mary LaFrance, *Avoiding Mutant Trademarks: A Statutory Exclusion for Copyrighted Accessories to Parallel Imports*; and Pierre-Emmanuel Moysé, "La Confusion des Genres": *Logos and Packaging as Copyrighted Works*.

³⁵ The Hon. Mr. Justice Jacob, *International Intellectual Property Litigation in the Next Millennium*, 32 CASE W. RES. J. INT'L L. 507, 516 (2000). Sir Robin's comments were specifically directed at the prospect of the creation of "truly international courts" to manage intellectual property disputes. *Ibid*.

³⁶ JEREMY BENTHAM, *THEORY OF LEGISLATION* vi, 111 (London, Paternoster Library, 1896).

upon by the Legal Realist movement.³⁷ And, as a descriptive matter, of course, not all trademarks *are* operating “beyond the local.” If anything, we are seeing trends toward localized markets and localized use of marks.³⁸ Consumer responses to geographical indications and the use of trademarks by indigenous peoples as signals of authenticity are examples. Marketplace phenomena such as these indicate sites of consumer and producer resistance to the “globalizing” trends that present the most obvious challenges to territoriality.

Whether property of any kind, including property in trademarks, is “pre-legal” or an artificial legal construct probably distills a fairly sterile normative debate. The more important questions always relate to how the law responds to the variety of competing claims of accountability – or lack of accountability – to the nation state. The salience of that inquiry is reflected in the searching *contextual* analysis of the notion of territoriality that occurs in the following chapters in this book. This book is situated against a background of intense and increasing interest in the role of intellectual property and its societal and economic effects. Whereas intellectual property was once seen as a fusty and arcane branch of private law, it is difficult nowadays to get very far discussing intellectual property without also encountering very basic questions of justice and fairness.

As with all legal phenomena, it behooves us to consider carefully the kind of negative externalities that might be generated by the creation and enforcement of trademark rights.³⁹ Our sensitivity to those externalities

³⁷ Joseph William Singer, *Review Essay: Legal Realism Now*, 76 CAL. L. REV. 465, 482 (1988) (discussing the legal realist perspective that “[a]ny definition of property and contract rights necessarily requires the state to determine the character of relations among citizens in the marketplace”).

³⁸ See *infra* Margaret Chon, *Marks and More(s): Certification in the Global Value Chains*; Doris Estelle Long, *Branding the Land: Creating Global Meanings for Local Characteristics*; and Daphne Zografos Johnsson, *Signs Beyond Borders: Moving from Commodity to Differentiated Exports in the Coffee Industry*.

³⁹ See generally ROSEMARY J. COOMBE, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION, AND THE LAW* (1998). A number of chapters in this volume explore this theme. See, in particular, the chapter by Professor Chow, which explores the burdens imposed on developing countries by the creation and enforcement of luxury brands. See Daniel Chow, *Trademark Enforcement in Developing Countries: Counterfeiting as an Externality Imposed by Multinational Companies*. See also *infra*, for an example of national enforcement challenges, Peter K. Yu, *The Curious Case of Fake Beijing Olympics Merchandise*.

might also provoke us to think in more subtle ways about the best forums in which to ventilate those concerns. The creation and enforcement of rights also create duties on the rest of us.⁴⁰ As the title of this volume underscores, parts of the economy *are* increasingly “global.” At the same time, *local* laws and *local* forums might provide some of the most powerful and appropriate sites for working through the myriad competing claims that are distilled by the expansion of intellectual property. The chapters that follow in this illuminating volume will offer a powerful lodestar as we navigate these difficult issues.

⁴⁰ Jeremy Waldron, *From Authors to Copiers: Individual Rights and Social Values in Intellectual Property*, 68 CHI-KENT L. REV. 841 (1993) (advancing a Hohfeldian analysis to the relationship between rights and duties in intellectual property).

