more favorably from an antitrust point of view. Investment capital, by its very nature, obeys laws of economic and not national origin.

It is no accident that the problems of restraint of trade are dealt with by us nationally through action by the central government instead of legislation in 50 jurisdictions. There is no question that with national markets antitrust problems should be dealt with by a national authority. The same logic is applicable to worldwide markets and multinational corporations. There are numerous approaches to putting such an idea into operation and the author discusses some of them in the last two chapters of this book, but one could wish there had been a fuller exposition of the problems that called the treaty proposals and international commissions, which the author describes.in § 15.0 (page 460), into being.

These considerations and the thought that Mr. Fugate has probably done justice to the law by merely setting it down in black and white give rise to another regret. The courts and the antitrust bar conceive antitrust law so narrowly that one may well question how apt a tool antitrust really is for the purposes of regulating competition.

New legal problems beget new legal devices, as for example, environmental problems begot that strange creature, the impact statement. But so often the new techniques are not applied to old problems. Would it not be possible to meet the problems so real to Mr. Servan Schreiber by requiring a new entry into the economic environment of a nation to file something in the nature of an impact statement by which it undertook to provide certain benefits at costs precalculated in terms of economic and cultural impact?

The idea may seem far-fetched but norms for permissible entry have already been formulated by Japan, Mexico and Canada and, in different degrees, by other nations. It would be much better in the long run if there were some uniformity in these norms as they were applied throughout the world.

However, even with these problems, which go beyond the scope he has marked out for himself, Mr. Fugate's book is helpful because he tells us where we are. If some would like to use this as a starting place, the author, no doubt, would not object.

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INTERNATIONAL LICENSING AGREEMENTS. Edited by Götz M. Pollzien and Eugen Langen. Indianapolis and New York: The Bobbs-Merrill Co., 2d Ed. 1971. Pp. xlvi, 593. $35.00.

As the editors stated in the preface to the first edition of this volume, when one negotiates for licensing agreements with another country, it is imperative to have a lawyer from the other country on the negotiating team. But often

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this is not possible; in that event, as one who has recently become involved in the field, I would unhesitatingly recommend this very practical treatse as an additional member of the negotiating team.

Recently, I was very pleased to see that a second edition of this important member of my licensing team was available, since the first edition had been copyrighted in 1965, and had become, on some points, a bit dated. This second edition prudently builds upon the first edition to a large extent. Much of the material is verbatim excerpts from the first edition, but the editors and authors of the various sections have obviously been quite conscientious in updating the materials where required. The general format of this edition remains the same, with Part I, an introductory remarks section, Part II, a national law section, and Part III, a supranational law section.

INTRODUCTORY REMARKS

In their introductory remarks the editors illustrate the relative importance of licensing agreements in modern international trade by stating that, with the exception of direct exports, all international business transactions are made by either concluding licensing agreements, entering into a partnership with an existing company, forming a new company with other partners, or establishing a wholly owned subsidiary. Even in the latter cases, however, a licensing agreement would normally be used. The editors substantiate this claim of trade importance with statistics that show that total United States receipts of payments for fees and royalties from licensees in foreign countries have risen from $650 million in 1960 to $2.18 billion in 1970.

The advantages of the licensing approach are succinctly presented as being: no need for substantial capital investment by the licensor, avoidance of risk of loss due to either expropriation or lack of familiarity with local laws or customs, ease of entry into the foreign market, and the possibility of relying on the reputation of an established local firm. However, the dangers and disadvantages which accompany this approach are also pointed out as being: the danger that the foreign licensee may become a competitor of the licensor upon termination, the lack of control of the quality and quantity of the goods manufactured and sold, and the diminished profits as compared with full scale mass production. The editors submit, as a general recommendation, that licensing is most appropriate where the product involved will be manufactured in a relatively limited quantity or upon individual order, rather than mass produced.

The apparent purpose of this volume is to allow the parties to view a transaction through the eyes of the party at the other side of the table, by providing a discussion of the relevant laws and other factors governing licensing agreements in the various national jurisdictions. Many misunderstandings and disputes in the transnational setting might thus be avoided. Also emphasized is the necessity of distinguishing between, and being aware of, the requirements of the national and supranational orders. As an example, in a licensing agreement between the United States and a Common Market country there are three antitrust frameworks which must be considered, the Federal U.S. standards,

the antitrust rules of the Treaty of Rome, and the individual national antitrust laws of the particular Common Market country involved.

The introductory section also provides a very helpful discussion of practical difficulties which may be connected with international licensing agreements. These include the questions of how to find a licensee, the necessary qualifications of a licensee and language difficulties.

Discussing the various types and subject matters of licensing agreements, the authors warn of the deficiencies and inadequacies of various license agreement forms:

> Circumstances differ to such an extent, when an international licensing agreement is being drafted, that it will be better to discard such forms or else use them only to check whether a material point has been overlooked in the draft of the international licensing agreement.[1]

Therefore, the editors provide only a general discussion of various provisions of a typical licensing agreement, relying upon the authors of the various national sections to discuss more specifically, and in greater length, the appropriate terminology and necessary provisions. It would seem, however, that a somewhat more in depth discussion of the various provisions and, possibly, proposed model provisions would have been helpful to the average practitioner. Along these lines, the authors did include discussion of an arbitration provision which is in considerably greater detail than that of the other provisions; it is especially useful in providing the approved forms of the American Arbitration Association and the International Chamber of Commerce and discussing the procedures thereunder.

An example of additional features which would have made this treatise even more valuable may be found in a recent article in *The International Lawyer*, which provides two devices that have been helpful to me in preparing agreements. These are an outline or check list as a guide for drafting such an agreement and a glossary of the various terms that are pertinent to such an agreement.[2]

The editors' discussion of the taxation impact on licensing agreements does no more than point out a potential problem area for consideration by businessmen and their counselors. Had the editors included a typical provision concerning royalties treatment under a typical tax treaty or the OECD draft model double taxation convention, a reader of this volume would have received a better insight into the normal treatment of such a licensing agreement. This treatment is particularly pertinent since the tax advantages of a licensing agreement are often one of the main reasons for the agreement.

The second edition contains a brief introduction to licensing in East European countries by David Winter, and his discussion of the national law of the Union of Soviet Socialist Republics provides an excellent insight into some of

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[1]G. POLLZIEN & E. LANGEN, INTERNATIONAL LICENSING AGREEMENTS 11 (2d ed. 1971).

[2]Jones, *Fundamentals of International Licensing Agreements and Their Application in the European Community*, 7 INT'L LAW. 78, 82, 113-14 (1973).

the important considerations involved in licensing with a state controlled economy.

NATIONAL LAW

This section of the second edition consists of discussions of the pertinent legal framework of an expanded total of 32 countries, 10 more countries than the first edition. The added countries include Australia, Czechoslovakia, Hungary, India, Israel, Mexico, Poland, Romania, South Africa and the Union of Soviet Socialist Republics.

Without exception, these discussions of the various national parameters have been uniformly well revised and updated; there are 22 new authors in the second edition. As an example of the pertinence of these discussions, the treatment of Japan by Yoshikatsu Sakamoto points out the important distinction between Class A and Class B Technological Assistance Agreements under the Japanese law. The effective period of such agreements determines whether governmental validation or permission will be necessary. The procedure for validation or permission is quite complicated and without this discussion would be somewhat difficult to decipher. Mr. Sakamoto's discussion, and most of the others, also considers miscellaneous legal factors such as applicable law, provisions granting jurisdiction to certain courts and arbitration clauses.

The section entitled "International Licensing from the American Point of View," by Robert Goldscheider, is, I am sure, particularly enlightening for a foreign attorney; however, this discussion is also valuable for a United States attorney in preparation for negotiations and drafting of international licensing agreements.

The use of this treatise would have been simplified and possibly made more valuable, if there had been a unified outline format for each of the discussions of the various national sections. Had the editors provided a list of certain topics which were specifically to be commented upon with full discretion given to the authors of the individual sections to include whatever else they considered appropriate, the inherent resistance of authors to editors' structural concepts might have been avoided. As the sections are now structured what may seem to be a particularly good format and outline in one national discussion will not be paralleled to any extent in other sections, and certain aspects of the discussion will be completely unconsidered in the treatment of another nation.

SUPRANATIONAL LAW

The section entitled supranational law contains one article, which provides an extremely valuable and well documented insight into the important antitrust requirements of the Common Market in regard to licensing agreements with member states, particularly concerning Article 85 of the Treaty of Rome. Also included is an annex providing the text of Articles 85 to 89 of the Treaty of Rome, Regulation 17, and other Regulations and forms pertinent to the application of the Common Market antitrust rules to an international licensing agreement.

The second edition contains, as did the first, a bibliography of principal works, presenting citations of the major source documents for each of the nations considered in this edition; however, it would seem that it could be more helpful to the average American practitioner if it were to include a listing of various articles which have appeared in legal periodicals. The authors have apparently made a decision to limit their bibliography to main sources since a comparison with the first edition shows that many reviews and comments were listed in that edition which are not listed in the current edition.

This treatise is written by practitioners in 32 different nations for use by fellow practitioners. The approach is not an obstruse, theoretical or academic discussion, rather it is pragmatic and points out the major potential obstacles and requirements of the various jurisdictions. As such the editors have made a much more valuable contribution to the furtherance of transnational legal transactions than would have resulted from a less practically oriented volume.

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