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 propos-
als 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 beget 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.

Paul P. Harbrecht*

International Licensing Agreements. Edited by Götz M. Pollzien and

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

*Professor of Law, University of Georgia School of Law. J.D. Georgetown Univ. 1950; J.S.D.
Columbia Univ. 1958.
this is not possible; in that event, as one who has recently become involved in
the field, I would unhesitatingly recommend this very practical treatise 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 agree-
ment would normally be used. The editors substantiate this claim of trade
importance with statistics that show that total United States receipts of pay-
ments 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 cus-
toms, ease of entry into the foreign market, and the possibility of relying on
the reputation of an established local firm. However, the dangers and disadvan-
tages which accompany this approach are also pointed out as being: the danger
that the foreign licensee may become a competitor of the licensor upon termi-
nation, the lack of control of the quality and quantity of the goods manufac-
tured 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 transac-
tion 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 agree-
ments in the various national jurisdictions. Many misunderstandings and dis-
putes 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 agree-
ment 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. 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. 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

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

William M. Poole*  
*McClain, Mellen, Bowling & Hickman, Atlanta, Georgia. J.D. University of Georgia, 1973.