

INTELLECTUAL
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AND POLICY

Volume 10

Edited by
Hugh C. Hansen

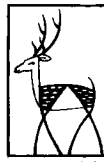


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VOLUME 10

Edited by
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Foreword

This volume is an edited version of the formal presentations and colloquies from the Fordham University School of Law Fifteenth Annual Conference on Intellectual Property Law and Policy held at Fordham April 12th and 13th, 2007. With this volume we have resumed the practice of our first nine years of publishing the conference proceedings. We expect to publish the proceedings from the tenth through the fourteenth conferences to make the printed record complete.

In light of the eminence of conference participants, the importance of the subject matter, and astonishing candor of the exchanges, we hope and expect that the ideas and analyses presented in this volume will make a valuable contribution to worldwide discussions of intellectual property law and policy. The entire series provides an exceptional record of the development of this vital area; pinpointing the issues, ideas, and personalities behind new legal and policy initiatives. For both practitioners and scholars, we have strived to make the conference and these volumes an accessible, comprehensive, and unbiased forum for the best thinking and analysis in this important and often contentious area.

Hugh C. Hansen
Editor

Acknowledgements

Many people and organizations have helped make the Conference and this volume possible. First and foremost are our conference sponsors. The support of over thirty organizations, listed at the beginning of this volume, has been crucial to the conference's success and continued existence. We have benefited as much from their active interest in, and profound knowledge of intellectual property law, as from their generosity. In this regard, we wish to thank in particular Brad Smith, Microsoft Senior Vice President and General Counsel, for his personal and professional support, as well as the Microsoft Corporation itself, which has provided particularly generous support for the conference and for the publication of this volume. We are also grateful to the many representatives of our sponsors, as well as friends of the conference, who participated in the numerous group teleconferences and individual telephone calls that helped us determine which topics would be of most interest and relevance as we put together the program.

Of course, any conference is only as good as its faculty. Our distinguished speakers were from the private sector, government and academia; from across town and across the globe, in fact numbering 139 from 19 countries. They are truly the *crème de la crème*. They came together in a lively, collegial spirit to offer presentations, discussion and commentary of the highest caliber. Also, as will be apparent to even the most casual reader of this volume, those attending the conference asked some of the most incisive questions, and made some of the most telling observations. I have often said that we could switch the speakers and the audience without any diminution in the quality of the proceedings.

William M. Treanor, Dean of the Fordham University School of Law, has from the very start of his eight-year tenure given the conference and intellectual property law at Fordham his full support, for which we are very grateful. Darin Neely, International Director of our Office of Academic Programs, was instrumental in every step of the long arduous task from August through April of organizing this conference which, with its three concurrent sessions, is equivalent to a five-day conference. Also, Darin, David Quiles and the staff of the Academic Programs office worked tirelessly for the weeks immediately before the conference and nonstop for the two days of the conference to efficiently manage the herculean tasks involved in administering the conference. In this regard, members of Fordham's *Intellectual Property, Media and Entertainment Law Journal* provided indispensable support throughout the two days of the conference, as well as assistance with various manuscripts co-published here and in the Journal.

Sandra Sherman, Assistant Director of our new Fordham Intellectual Property Law Institute, oversaw every aspect of producing this volume, from helping to negotiate our new relationship with Hart Publishing to editing individual sessions. Her meticulous attention to detail and exceptional organizational focus kept this immense project on course. Sharon Hammer, President of Verbatim Transcriptions, Inc., managed the recording, transcribing and assembling of this volume's material. Her ability to track down a missing presentation or a stray but crucial submission is extraordinary, and often saved the day when we had nowhere else to turn. The accuracy and attention to detail of Verbatim's transcription and manuscript services are second to none. Research assistants

Anthony Rizzo and Jason Lunardi, both second-year Fordham Law students, provided expert review of the manuscript including very valuable bluebooking. They were able to locate even the most obscure citations and correct the array of errors that always creep into the citations of every manuscript.

Finally, we are very pleased with our association with our new publishing partner, Hart Publishing of Oxford, England. Richard Hart and his colleagues have done a wonderful job in putting this volume together. In particular, Richard, Mel Hamill, Rachel Turner, and Tom Adams have been very professional, agreeable, patient and supportive in a way that I do not think any other publisher could be, or even would want to be. Hart Publishing is in a class by itself.

H.C.H.

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New York, April 12–13, 2007

WELCOMING REMARKS

PROF. HUGH C. HANSEN
DEAN WILLIAM TREANOR
Fordham University School of Law

PROF. HANSEN: Good morning. Welcome to the Fifteenth Annual Fordham Conference.

It is my great pleasure and honor to introduce the Dean of Fordham Law School, William Treanor, for welcoming remarks.

DEAN TREANOR: Thanks very much, Hugh.

Welcome. This is an incredibly exciting event for us at Fordham Law School. Today we have, for the fifteenth year, our International Intellectual Property Law & Policy Conference.

As our alumni and students know, really pretty much every day we have a conference of some kind that meets here. But this is really a high point for us in the year.

What it does is bring together really two of the great focuses of our Law School. Fordham Law School is one of the leading schools — certainly in the United States, I think in the world — in the areas of intellectual property and information law.

Professor Hansen really is a pioneer in the field of intellectual property in the United States, and now we have Professor Sonya Katyal, Professor Mark Patterson, Professor Andy Sims, and Professor Joel Reidenberg. Joining us next year we have Professor Jeannie Fromer, who is a former U.S. Supreme Court Clerk, who also has a Masters in Computer Science from MIT. We also have two exciting visitors coming, Brett Frischmann and Kathy Strandburg.

Fordham Law School has a profound commitment to intellectual property and realizes how much it is at the core of legal practice today. It is also profoundly committed to international law and has one of the preeminent international law programs in the United States. This Conference brings the two together.

It started in 1993. Professor Hansen had the idea of bringing the leading figures in European intellectual property law and the leading U.S. figures together in one conference. Over fifteen years, it has expanded to what it is today. I think we have roughly 350 people here. We have people from six continents, which I think is basically all you can reasonably expect.

It is a level of discussion that is really unparalleled. Professor Hansen's motto for the conference is: Learn something; engage in the debate; have fun. That is what this Conference is about. It is about a top-level discussion, but it is done in a way that is fun and fascinating and that focuses on the debate.

We started yesterday with a program in conjunction with the Intellectual Property Academy of Singapore, which we began in 2004, on Asian intellectual property law. It was a fabulous beginning. Now we have the program today and tomorrow.

I want to thank all the sponsors who make this possible. As a dean, I am very grateful for sponsors. I want to thank them for their financial support.

I want to thank all of you for coming here and bringing so much excitement to this.

I want to thank Helen Herman in our Office of Academic Programs for doing such a great job in putting this together, and particularly Darin Neely, who is really a genius of logistics.

And finally, before I turn things over to Professor Hansen, I want to acknowledge him again. He really is a visionary. In 1993 he thought this was what we had to do. He really reached. At a time in which intellectual property in the United States in the academy was really in its infancy, he realized both its importance and the importance of its international dimension.

I think all of us who know him prize his pithy aphorisms and his sense of humor. In an increasingly soundbite-driven culture, as we have in the United States, if ever there is an IP talk show, I know who will be the host.

In addition to his great wit and his vision, he has the most extraordinary intelligence and vision about intellectual property. All of us are very grateful to Professor Hansen for what he has done.

It is my pleasure now to turn things over to Professor Hansen.

PROF. HANSEN: Thank you very much, Bill. Wow, thanks. That was a great introduction. I have never had an introduction like that.

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