CHAPTER FOUR

IP REGIME ADOPTION IN ASIA

The emerging globalisation of IP rights and regulations has evolved within a system of relationships and incentives that have affected knowledge economy actors in different countries in different ways and at different times. The role of the nation-state and its institutions retains a key position in this dynamic but its power in respect to regime formation and regulatory adoption have increasingly been subject to restraints and interconnections within a network of non-state parties such as major corporations and political lobby groups, both within the domestic territory and directly between groups across national boundaries.

It will be shown that a three-level game has been developing that changes old presumptions about how states interrelate (Ataman, 2002; Lisowski, 2003). These interactions can be seen to have moved beyond the original idea that states operated at two levels of dialogue (Putnam, 1988), one vertically with their own domestic constituency and the other horizontally, in multilateral forums with other states. Now, evidence appears to be emerging of a significant new third group that have become involved in a more complex set of relationships: transnational corporations and industry lobby groups—with the latter representing both large and smaller-sized enterprises—would appear to be operating horizontally and vertically simultaneously, in networks and through dialogue with both state and non-state actors that cross national boundaries, whilst also maintaining connection with their own government as part of their strategy to further their commercial interests.

Progress of this kind appears to be especially visible within the high technology and IP-rich industries. This is likely to have been due to a number of interrelated factors: the increased salience of international transactions and growth of technology product trade in these industries, the particular significance of domestic knowledge sectors in a number of economies and the ease with which technological capability now facilitates communication channels such as the internet and video conferencing that are independent of national borders.
It will be argued that states now face multiple constraints in terms of domestic policy formation in an IP context. First, they can be subject to bilateral pressures from powerful state actors operating internationally. Second, states are becoming increasingly bound by obligations set through multilateral treaties such as TRIPS. Third, they are subject to influence from interconnected groups of business interests from the domestic constituencies of both their own and overseas knowledge industry sectors.

It will be further argued that economically significant nations within East and South Asia present a particularly useful illustrations of these trends in that, over recent years, they have emerged to co-exist with first world economies within the global IP regulatory landscape and have faced these competing pressures whilst adapting their priorities towards greater international market engagement and domestic technological development. Advances in India and China would appear to present a movement along a continuum of regime development and regulatory adoption that in many ways can be seen as a reprise of that which transformed the Republic of Kórea and, in earlier decades, that of Japan. This would seem to show that there is an observable symbiosis between a country’s level of expertise in the creation of knowledge goods, their incentive to protect the economic fruits of these domestic outputs and the propensity for their governments to willingly encourage and actively to introduce the elements of a robust IP regulatory system. Scholars have already observed these trends occurring across the region (Maskus, 2000:92).

It is, therefore, useful to make a review of regime trajectories across this region that take account of the factors that can influence such progress in some developing countries and the way in which these states and their sub-state entities have come to participate in the wider global regime.

In the context of domestic regulatory evolution of a state’s IP regime, three key questions appear salient: first, what are the motivators to regulatory development that have impact on a state’s IP adoption and from where do these factors originate; second, what other influences besides IP regulations might influence technology-based success; and third, how does the state interact with non-state stakeholders in regime development.

The traditional view of intellectual property regulations being imposed as a blueprint by first world economically and technologically advanced have’s on to struggling and ill-equipped developing