CHAPTER SEVEN

A CENTRAL ROLE FOR IP IN THE GLOBAL DOMAIN

This chapter focuses on the key observations in respect to the development of the international intellectual property regime. It puts forward argument showing that there is a clear trend towards the emergence of a global set of rules in IP regulation and that this convergence has been accelerating in recent years due to the increasing significance of knowledge industries economically and the growing complexity in how best to preserve ownership interest in new markets. It will also present a considered approach to a better understanding of the inter-connections between different actors involved in norm setting and IP regime evolution, reiterating that there appears to be clear evidence of distinctive stages in national regulatory development and emphasising the variation in visibility and behaviour that state and non-state actors seem to exhibit during these different stages. Finally, it provides a functionally based interpretation that may help to put into sharper context the trajectory of regime evolution whilst providing a framework within which to better understand the required characteristics that appear to have determined a successful adoption of IP regulatory norms in China and India.

Trends towards the emergence of a global regime for intellectual property regulation can be captured through analysis of three developments that have characterised recent years. First, there has been a deepening of the scope of IP regulations that has penetrated vertically into new issue areas and deeply into domestic law. Second, there has been a marked horizontal widening of participation in regime building and norm setting that has encompassed the ideas and influence of actors well beyond the traditional formal institutions of the state, which has taken place in concert with an increasing level of sophistication in actor behaviour towards generating desired outcomes from regime development. Third, it can be argued that there has been a noticeable convergence in both the agreed norms and the appropriate structure for implementing each element of an IP-based regulatory framework. These issues range from successive drives towards a global patent law, increasing consistency in copyright protection within the
internet era and a growing tendency for a number of key countries, in not only the industrialised sphere, such as the US and the EU, but also amongst leading developing countries, such as China and India, to reach a measure of consensus on accepting these norms, prompted by growing appreciation of regulatory outcomes that are in the best interests of domestic innovating enterprises.

7.1 Deepening the Scope of IP Regulations

The vertical deepening of the scope of IP regulations is particularly significant in this analysis, whereby there can be seen the emergence of a more complex regulatory framework for creating, managing and enforcing intellectual property internationally, beyond a purely territorial bias and reflecting especially the reality that “national regimes generally disregard cross-border externalities and the resulting need for policy coordination” (Maskus and Reichman, 2005:9).

New areas have also been introduced with both a speed and a significance that has challenged the previously existing regulatory norms encapsulated by the Great Conventions and that has required action by both state and non-state actors. In this regard, there has been particular concern about the way in which the internet plays a radically enlarged role, compared with traditional media, as a means of legal marketing and sales channel enlargement on the one hand and illegal distribution and associated piracy on the other. These trends have become particular concerns for those involved in the creation of electronically available knowledge goods such as software, video and music.

The dimensions of vertical regulatory deepening and the salience of new issues have encompassed a number of initiatives as the actors that participate in rule setting for the evolving global IP regime have sought an adequate response to these new challenges. Activities have been characterised by a blend of outcomes that have included new and refined agreements from multilateral negotiations, regional directives to promote greater harmonisation in areas such as the EU, as well as behind-the-border reforms spurred by bilateral treaties between trading partners, captured particularly by recent American-led Free Trade Agreements (FTAs).