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The Coordinating Role of Public International Law: Observations in the Field of Intellectual Property

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The recent surge of multijurisdictional IP disputes and increase in non-binding soft laws have made scholars cast doubt on the sustainability of public international law and the validity of the current IP legal system. Private lawyers may now think that they do not have to pay keen attention to public international law any longer when providing legal advice to their clients, particularly MNCs. This study makes a concise description of today’s legal environment in the field of IP, focusing on the emerging legal norms of transnational law, particularly in the context of its interplay with public international law. With respect to this, the ongoing and even heightened roles of public international law will be discussed. Finally, a typology is suggested using exponents to express intensity of State sovereignty to facilitate understanding on the relationship between public international law and other categories of law.

Keywords
Intellectual Property, Multijurisdictional IP Disputes, Public International Law, Private Lawyers, MNCs, Transnational Law

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I. Introduction

Globalization has brought about a new phenomenon. In particular, legal questions in such fields as human rights, the environment, and the finance, frequently transcend national boundaries. Adequate laws addressing the issues in these fields will relieve the individuals or corporations that suffer from them. However, what if there is no such law, whether international or domestic, to tackle these legal issues? Against this backdrop, the so-called ‘transnational’ law has emerged and evolved historically.

These new classes of law have become a point of contention among international law scholars, given that most legal norms in this category are regarded as non-binding ‘soft law.’

In the past decades, the most significant development in international legal practice has been the surge of multijurisdictional Intellectual Property (“IP”) disputes. The recent global IP war between Apple Inc. and Samsung Electronics Co. Ltd. is a typical example of this. However, there are repeated concerns and criticisms against multijurisdictional IP disputes in that they inhibit innovation of the Multinational Corporations (“MNCs”) by draining out valuable corporate resources to redundant legal battles over the same legal issues around the globe. Accordingly, a group of practitioners and scholars proposed some public international laws

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