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Article

*1161 INTELLECTUAL PROPERTY, INNOVATION, AND THE FUTURE: TOWARD A BETTER MODEL FOR EDUCATING LEADERS IN INTELLECTUAL PROPERTY LAW

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***1162** I. INTRODUCTION

INTELLECTUAL property (IP) sits at the center of the global economy. [FN1] Today, producers and users of intellectual property come from both developed and developing nations. Intellectual property matters as much to China and India as it does to Germany and the United States. This reality has driven a monumental demand for lawyers who have expertise in intellectual property law. These lawyers are the new leaders in intellectual property law.

The global demand for intellectual property law-trained lawyers triggered a "big bang" in the creation of advanced [FN2] intellectual property law programs (IP Programs) at American law schools. The new leaders in intellectual property law from around the globe now gather and learn together in these IP Programs. This Article describes the "big bang" in advanced intellectual property law programs and the nature of the academic programs that have evolved in its aftermath. The Article argues that by delivering on many of the curricular reforms proposed by the Carnegie Report on Educating Lawyers, IP Programs can better educate these new leaders, and the Article presents a blueprint for doing so. The Article concludes that law schools should embrace their role as a gathering place for the new leaders in IP law and, in the process, become a forum to more deeply consider a variety of perspectives on the productive and just use of intellectual property.

***1163** II. THE "BIG BANG" IN IP PROGRAMS

Two of America's most important intellectual property-related institutions have long made their home in Washington, D.C.: the U.S. Patent Office and the Register of Copyrights. [FN3] Therefore, it comes as no surprise that a law school in our nation's capital, George Washington University (George Washington), pioneered advanced education in intellectual property law. George Washington first offered a Masters degree in Patent Law in 1895. [FN4] In the fifty years following George Washington's creation of its Masters in Patent Law, only five additional IP Programs emerged. Chicago's John Marshall School of Law started an IP Program in 1951. [FN5] Forty years later, in 1991, the University of Houston Law Center started an IP Program, followed by Franklin Pierce Law Center (now the University of New Hampshire School of Law) in 1996 and Cardozo School of Law in 1998. [FN6]

Things changed dramatically in the year 2000. The year 2000 marked the "big bang" in the creation of IP Programs in the United States. [FN7] Beginning in 2000, U.S. law schools launched more than fifteen new IP Programs in a five-year period. [FN8] Today, there are more than twenty-five. [FN9] Among all types of specialty LL.M. programs, IP now trails only tax and international and comparative law in total number. [FN10] On top of that, ***1164** some law schools offer IP concentrations within their general LL.M. programs. [FN11] Why did this "big bang" occur?

Intellectual property lies at the heart of the global economy. We live in an information economy in which the focus is on inventions, works of authorship, ideas, and information. [FN12] Indeed, some believe that innovation is America's primary comparative advantage in the global economy. [FN13] But the United States is not alone in its emphasis on in-

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tellectual property. Intellectual property's importance is global. [FN14] Producers and consumers of intellectual property come in all shapes and sizes, from every corner of the globe. Some nations, such as Japan and China, [FN15] have consciously put intellectual property at the center of their economic development agenda. South Korea has the highest ratio of resident patent filings per billion dollars of GDP, outpacing Japan, China, and the United States. [FN16]

This worldwide emphasis on intellectual property suggests two triggers for the "big bang" in IP Programs. First, it created a demand for IP-trained lawyers. [FN17] The demand comes from all sectors: governments, businesses, law firms, and, lately, even nonprofit organizations. [FN18] In ***1165** terms of government practice, lawyers serve as patent or trademark examiners, officials in the trade or competition ministry, or judges in specialized IP tribunals. In terms of corporate practice, the lawyers may be patent agents or in-house counsel in businesses that rely on intellectual property such as music, motion pictures, pharmaceuticals, biotechnology, consumer electronics, and computer hardware and software. They may also serve as corporate counsel for companies selling traditional products but for which intellectual property is particularly important, such as (to use two Pacific Northwest examples) sporting goods [FN19] and coffee. [FN20] In terms of law firms, IP issues arise in many areas of law practice, such as transactions, financing, mergers and acquisitions, litigation, tax, bankruptcy, and employment law. In the Puget Sound region, for example, enterprises as diverse as aircraft manufacturers, book sellers, beer brewers, grunge singers, hospitals, and universities all need advice from IP lawyers.

The international aspect of this demand for IP-trained lawyers is worthy of special note. American firms manufacture goods in, and distribute goods to, many developing countries. In this environment, foreign lawyers who have legal training in the United States are particularly valuable to firms on both sides of the transaction. For example, when an American company manufactures luxury goods in China or enters into a franchise relationship with a company in China, both the Chinese and American companies find it advantageous to use Chinese lawyers who have studied IP law in the United States. [FN21]

Second, the emphasis on intellectual property in the world economy raises a multitude of important issues about the application and scope of IP protection. For example, passage of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) [FN22] triggered numerous discussions about the fairness of enforcing IP rights in developing nations. These issues increased demand for legal scholarship in IP law and policy. Law schools have responded by hiring IP-specialist faculty in increasing numbers. [FN23] These IP faculty members often collect around an IP Program. [FN24] In addition, IP Programs organize academic conferences and journals where ideas about IP law and policy are shared and debated.

***1166** This Part explains why IP Programs suddenly arose in significant numbers. Part III describes the students who have been attracted to them.

III. STUDENTS OF IP PROGRAMS

Who are the students of these IP Programs? What is the profile of students who are attracted to an IP Program? Who pursues an IP LL.M. degree and why? [FN25] This Section describes this diverse group of students with equally diverse ambitions. To do so, it is useful to group IP Program students into five general categories: [FN26] international students, practice switchers, resumé enhancers, skill builders, and budding academics.

A. International Students

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International students make up a significant portion of students [FN27] in IP Programs at U.S. law schools. [FN28] In most countries, law is an undergraduate degree; thus, many international university graduates go abroad seeking an advanced degree. Since the United States is seen as a world leader in the creation of intellectual property and in the sophistication of its IP legal system, American law schools are a logical place for international students to study IP law. [FN29]

Often, international students bring a wealth of practical experience in IP. [FN30] In the course of their studies, international students hope to make life-long contacts with U.S. lawyers and others in the IP-law ecosystem. [FN31] ***1167** These contacts will be useful to international students and their clients when they return home to practice law. As mentioned above, these lawyers serve both local companies and American companies who do business in their homeland. While many students return home after graduation, some stay, [FN32] hoping to pursue employment [FN33] or further educational opportunities [FN34] in the United States.

B. Practice Switchers

Some IP Program students are practicing lawyers who are returning to law school after several, sometimes many, years of practice. Practicing lawyers use an IP Program as a method to switch from one type of law practice to another. For instance, an IP litigator may use an IP Program to switch to an IP-oriented transactional or corporate practice. A patent agent may switch to an IP litigation practice. A practicing lawyer who has a general litigation or business law practice may use an IP Program to shift from a general practice to a practice that specializes in intellectual property.

Moreover, some lawyers and law graduates take an IP Program to switch practice locations. They want to move from one area of the country to another to establish an IP practice. [FN35] An IP Program gives a transplant time to network and to learn about his or her new IP legal community. [FN36]

C. Resume Enhancers

Conventional wisdom says that students who graduate from so-called “tier one” law schools have an easier time finding employment than students who graduate from lower-tier law schools. Even at many “top tier” law schools, conventional wisdom holds that students who place at the top of the class have better job prospects than those who place at the middle or bottom. Faced with this reality, students who hope to practice in IP law often find it useful to take an IP LL.M. as a way to enhance ***1168** their resume. [FN37]

The notion is that the LL.M. student will enhance his or her resume by signaling a serious interest in IP law [FN38] and will develop deeper knowledge of and skill in IP law. [FN39] The IP Program also gives the student another chance to demonstrate excellence in academics. [FN40] One of the underappreciated benefits of an IP Program is its ability to give students a chance to shine in front of adjunct faculty who may be hiring or who may provide a strong personal reference. The student-teacher relationship provides a no-obligation method for a student to show a practicing lawyer that he or she is bright and capable.

In addition, some solo practitioners use the IP LL.M. degree to enhance their resume. For them, the IP LL.M. degree provides a tangible indication that they are qualified to handle IP matters. In other words, it gives the sole practitioner expertise with an imprimatur that he or she can market. [FN41]

D. Skill Builders [FN42]

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Some students take an IP Program out of a deep interest in learning about IP law in depth. They believe that increasing knowledge about the law and policy of IP law will pay dividends later as they face complex IP issues in their law practice. These students may not have had or taken the opportunity to study IP law in any depth in their J.D. program. [FN43] They also use an IP Program to get a head start on building skills that will be useful in law practice. For example, IP Programs often offer applied-law courses in patent prosecution, license drafting, or IP litigation that give students a good foundation for law practice in these disciplines. IP-related law clinics and externships can also provide hands-on law-practice experiences. [FN44]

***1169** E. Budding Academics

It is probably fair to say that in the past the LL.M. degree was the Rodney Dangerfield of graduate degrees in the United States--it got no respect. [FN45] An IP LL.M. certainly would not have been seen as a step on the path to a career in American academia. That is changing. Some American students use an IP LL.M. as a prelude to a Ph.D. program. Others use it as one step in a transition from law practice to the academy. Of course the degree alone is only marginally valuable; the IP Program is particularly useful because it gives the student the opportunity to pursue research and writing that can enhance the student's credentials as a scholar. Thus, today a path to law professorship in the United States might look something like this: law school; clerkship; law practice; LL.M.; visiting assistant professorship or fellowship; law review publications; academic position. [FN46]

For foreign students, an advanced degree from a U.S. law school has long served as a path to the academy. [FN47] An LL.M. degree often precedes an S.J.D. or Ph.D. [FN48] Many foreign universities now prefer an advanced degree in IP law to a general LL.M. or a degree in international or comparative law. [FN49]

IV. IP PROGRAMS: THEIR VALUE FOR LAW SCHOOLS

Part II described the factors that led to a “big bang” in the creation of IP Programs. Part III explained the value of IP programs from the students' point of view. This Part provides a deeper discussion of the value that IP Programs have for law schools, beyond the fact that they meet an educational need and contribute to scholarly discourse.

A. Money Matters

The academy often shies away from talking about the business of running a law school, [FN50] but it is impossible to discuss the value of IP Programs without doing so. The bottom line is that money matters. For ***1170** private law schools, IP Programs can be a significant source of revenue. [FN51] Indeed, an IP Program opens up revenue opportunities from international students that would not exist by simply offering a J.D. degree. [FN52] Few international students take a J.D.; [FN53] thousands can take, and are eager to take, an LL.M.

Public law schools accept IP LL.M. students too, but the value calculation is a bit different. States subsidize most public university education. [FN54] Student tuition does not fully cover the cost of education; the state subsidizes a portion of each student's tuition bill. In other words, each incremental student does not necessarily represent a net-positive contribution to the bottom line.

There are two ways to address this problem. First is the tried and true method of charging out-of-state students higher tuition than residents. [FN55] Second, some public universities set up their IP Programs as “self-sustaining” units administered separately from the law school's J.D. program. In this model, the IP Program runs as a separate business with-

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in the law school--in other words, essentially as a "private" school within a public law school. [FN56] As such, it may charge a different tuition rate than the J.D. program, but at the same time it must pay all of its costs from the tuition that it collects. [FN57] If the self-sustaining unit can generate a profit, however, this profit can be used by the law school to enhance its capabilities in IP law or apply profits to other areas of its law program.

The business of IP Programs raises important philosophical issues. For private schools and public schools that run the IP Program as a self-sustaining program, a temptation exists to admit large numbers of students. The incentive to open the doors wide is often in tension with the desire to ***1171** admit only highly qualified students. [FN58] In discussing this tension at an AALS session on IP Education in 2006, several professors put the proposition in stark terms during a question and answer session: they thought it was unethical for law schools to "take money from" large volumes of students, particularly international students, knowing that these students faced dim prospects of employment following graduation. [FN59] The professors also were bothered by the contrast in the care and attention that some law schools gave to J.D. students versus international LL.M. students. [FN60] They believed that some law schools were simply using LL.M. students as money makers and giving back much less in return. [FN61] Somewhat paradoxically, other law schools worry that by giving added attention to LL.M. programs, the law school might compromise the quality and resources of its J.D. program. [FN62]

B. Marketing Matters

A difficulty with the "big bang" from a law school-business point of view is that many IP Programs are competing for students. Consequently, marketing matters. [FN63] By "marketing," I do not mean advertising--although that has been on the rise judging from the avalanche of brochures [FN64] that I receive regularly. [FN65] By "marketing," I mean how one ***1172** IP Program differentiates [FN66] itself from other IP Programs. [FN67]

For some "tier one" law schools the primary differentiator may simply be their U.S. News & World Report ranking. [FN68] Other schools tout their U.S. News & World Report IP-Program specialty ranking. [FN69] For others, geography works strongly in their favor--the classic case being George Washington University Law Center's proximity to the U.S. Patent Office and Federal Circuit Court of Appeals. In many cases, the differentiator is expressed as a plus factor--some signal that the law school focuses on intellectual property plus something else. For example, some law schools signal their focus on science and technology [FN70] while others emphasize the creative arts. [FN71] Some emphasize international IP. [FN72] Finally, IP Program size may be a differentiator. [FN73] Some schools run like Ph.D. programs with generous faculty-student ratios [FN74] while others admit large classes each year.

C. More Than Money and Marketing Matters

Of course IP Programs bring more to law schools than money. Many law schools use the IP Program as a way to create a center of excellence in IP law. [FN75] As intellectual property becomes a focal point, the law school hires additional full-time and part-time faculty [FN76] to teach in the program. More IP electives are offered. The addition of new full-time faculty increases a law school's scholarly productivity and creates a focal point for scholarly conferences on IP issues. Moreover, IP faculty often ***1173** work well on interdisciplinary scholarship, which is highly favored at many universities. [FN77]

A final advantage that an IP Program can bring to a law school is curriculum enhancement. Starting an IP Program creates an opportunity for a law school to take a hard look at its IP law curriculum. [FN78] Will the curriculum satisfy the high expectations of an LL.M. student who is paying top dollar for the degree? Will it serve the needs of internation-

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al students? Will it serve students who come with extensive practice background? Will it attract students who want to link theory with law practice? Part V takes a closer look at IP Program curriculum development.

V. IP LAW EDUCATION: A BLUEPRINT

Not all law schools take the opportunity to systematically rethink their IP curriculum. Some simply offer the pre-existing slate of courses. Taking the opportunity, however, can lead to curricular innovation. Not only can curricular reform have positive effects for IP-related education but it often leads to ideas and approaches that spill over into other areas of the law school. Moreover, delivering a top notch education in IP law through a thoughtfully created and well-executed curriculum may, at least to some degree, answer critics of IP Programs who question the value that IP Programs provide to international students.

This Part provides a case study of curricular reform, describing lessons learned from the University of Washington School of Law's approach to reforming its IP law curriculum as it launched its Intellectual Property Law & Policy Graduate Program. It also describes some of the ideas that have spilled over into the J.D. curriculum.

A. The Foundation

1. IP Law Core

The first question facing an IP Program is how to introduce students to the key areas of intellectual property law: patents, trade secrets, copyrights, and trademarks. [FN79] The question is even more challenging in an IP LL.M. context where students often come with a greater diversity of backgrounds and experience than one finds in a typical class of J.D. students. [FN80] There is an ongoing debate among teachers of intellectual property***1174** law about whether it is preferable to teach these subjects as individual courses or as part of a survey course. [FN81] The primary advantage of the survey approach is to demonstrate that intellectual property issues do not present themselves in neatly labeled containers. [FN82] As such, a survey course allows the instructor to show the inter-relationships--gaps and overlaps--between types of IP protection. [FN83]

IP survey courses can only touch lightly on each type of IP law, however, so instructors who want to go deeper typically favor the silo approach. [FN84] We broke through this dilemma by offering a mega survey course, [FN85] one that would give students a significant dose of each type of intellectual property law. We call this course “IP Law Core.” Although aimed initially at IP LL.M. students, to our surprise, this course became very popular with J.D. students primarily because the J.D. students wanted to benefit from the perspectives of more experienced IP LL.M. students. [FN86] Now we offer the course both to IP LL.M. and J.D. students who want to study IP law in depth. [FN87]

2. Legal Systems and Skills for IP Law

As mentioned, a significant number of students in IP LL.M. programs come from outside the United States. [FN88] These students are unfamiliar with the U.S. system of state and federal courts, and its mixture of statutory and common law. The peculiarities of the U.S. legal system are especially prevalent and relevant in IP law and policy. In addition, international students often have no experience in the style of legal research and writing that is expected in a U.S. law school. This inexperience comes into play across the IP Program curriculum because students ***1175** are expected to read, analyze, and brief cases; write research papers; and take law school exams.

This situation is not new, of course. LL.M. programs have long dealt with it. Most, if not all, LL.M. programs offer

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a course titled something like "Legal Analysis and Research for Students Not Trained in the Common Law System." [FN89] IP LL.M. students certainly can and often do take this course but there are several shortcomings. First and foremost, the cases and statutes used to illustrate the U.S. legal system normally have no relation to intellectual property law. For students with only one year to study IP law in depth, this diversion is unsatisfactory. Second, the research and writing component of the course tends to focus on law firm memos and briefs, whereas the focus of the IP Program tends to be on research papers. Third, if a course is shared across LL.M. programs, it is often difficult to work out satisfactory sequencing with IP courses.

Our solution was to create a version of the "Legal Analysis" course designed specifically for IP LL.M. students. We call this class "Introduction to Legal Systems & Skills for IP Law." [FN90] This approach allows us to link the course tightly with the rest of the IP Program curriculum. In the fall quarter, the course works in tandem with IP Core and a "hot topics" course, described infra, titled "IP Innovations in Science and Technology." [FN91] For example, if the IP Legal Systems/Skills course is teaching students to brief cases, students will brief a case that is being discussed in IP Core or IP Innovations. The course also works as a prelude to an advanced research and writing course that is offered in winter and spring quarters: "Advanced Research and Writing in Intellectual Property Law." [FN92] Another important benefit of the course is that it can serve as a safe place for international students to ask questions that relate to their ***1176** studies in the IP Program in general. [FN93]

B. Advanced Courses

1. IP in Depth

Once students acquire a foundation of knowledge about intellectual property law, they need opportunities to explore a particular type of intellectual property in greater depth. To enable this we offer seminar courses in Advanced Patent, Advanced Copyright, and Advanced Trademark. We also offer a course called "International Intellectual Property" that allows students to deepen their understanding from an international and comparative law perspective. In addition, our IP LL.M. students are required to take a "hot topics" class that we call "IP Innovations in Science and Technology" and that we use to go deeper into topics taught in our IP Law Core. [FN94] Outside of these courses, independent studies remain a popular way for students to study intellectual property law in greater depth.

2. IP in Relationship

An important perspective in learning intellectual property law is to understand how it relates to other laws and to non-law disciplines. For example, the relationship between intellectual property law and antitrust law is very significant, as is the interaction between intellectual property and the First Amendment or tax law. [FN95] With respect to non-law disciplines, understanding the interplay between intellectual property and economics is very important, and today its relationship to international development is on the front burner. [FN96]

3. IP in Context

Intellectual property is particularly important in certain sectors. For example, intellectual property plays a fundamental role in the software, biotechnology, digital arts, and entertainment industries. We now have courses that explore IP in these contexts, as well as a host of e-commerce and technology law related courses that complement them.

4. IP in Practice

Those students who practice intellectual property law will likely serve as litigators, policy makers (or advisors to

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them), prosecutors, or transactional***1177** lawyers. We offer courses that give students a taste of each of these types of practice. For example, we offer courses in Strategic Litigation for Technology Protection, Patent Prosecution, and Drafting Technology Contracts. [FN97] In addition, our Entrepreneurial Law Clinic, Technology Law Clinic, and our association with Washington Lawyers for the Arts gives students a hands-on experience in advising clients with issues that cut across all these areas of practice (as they often do in actual law practice).

5. Advanced Writing in IP

Some IP Programs require a "thesis" or major research paper (MRP). In the sense that an LL.M. degree is a Masters degree, this makes good sense. We offer a course designed to assist students in writing their MRP. The course spans two quarters. The first quarter deals with topic selection and development, and enhancing legal research and writing skills. The second quarter is devoted to writing the MRP under the supervision of an IP faculty member and presenting the MRP to the other students in the class.

With work, the MRP can be turned into a publication by the student. [FN98] ***1178** These publications enhance the stature of the student and the IP Program. The emphasis on intellectual property at law schools has resulted in a plethora of IP-oriented law journals. [FN99] Often these journals are in need of good content. This environment makes publication more likely than in other fields of law.

Despite its many benefits, an MRP requirement comes with a high associated cost: faculty supervision time. The larger the IP Program student body, the larger the cost. This cost has deterred many IP Programs from requiring an MRP and convinced some IP Programs to drop the requirement.

C. Tutorials

One curricular issue facing an IP Program is how to cover niche topics in IP law without overextending the IP curriculum and instructors. Niche topics may be of vital interest to a handful of students in the IP Program but not relevant to enough students on a regular enough basis to offer a full-blown course. Our solution has been to offer tutorials modeled on the Oxford/Cambridge style of tutorial instruction.

Tutorials are small and informal by design. Adjunct faculty members typically serve as instructors or sometimes full-time faculty who want to add a little bit to his or her teaching package. The size and informality allows the instructor to fit the assignments to the particular topic and ability level of the students. It also gives the instructor flexibility over when and where the course meets. [FN100] We offer certain tutorials on a regular***1179** basis because we know we will have student interest and instructor availability, but others we offer only in winter or spring quarters based on expressions of student interest that we solicit in the fall quarter. [FN101]

D. A Word on Course Sequencing and Maintenance

To run an excellent IP Program a law school needs to offer a rich set of IP law electives that can be taken in a logical sequence in the course of one academic year. A significant number of international LL.M. students also want to take general law courses to qualify to take a U.S. bar exam. [FN102] In the fall term, our international LL.M. students take IP Core, IP Innovations, and Legal Systems and Skills for IP. [FN103] This is nearly a full load (LL.M. students from the United States omit Legal Systems and Skills). This leaves winter and spring quarters available to take most of the specialized IP courses and, for some, the general law courses. This reality puts a premium on minimizing course conflicts--between IP courses and between IP courses and those general law courses that are available to LL.M. students.

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The foregoing discussion about sequencing raises another important issue: curriculum maintenance. Even if a law school nicely sequences IP Law in one year, there is no guarantee that the careful sequence will hold for the following year. In fact, experience shows that it will not--professors come and go and courses get rearranged for a variety of legitimate reasons. Unless someone constantly watches over IP Law and works with the administration and faculty when things get out of alignment, the curriculum can easily disintegrate into a frustrating hodgepodge from the students' perspective.

E. Mixing LL.M. and J.D. Students in the IP Program

IP Programs bring international students to the law school with varying degrees of legal education and English language skills. Some international students come with extensive practice experience; some with very little. The U.S. students also come with a variety of profiles. Some are experienced "practice switchers" and some are newly minted J.D. "resume enhancers" with no experience. Serving all these constituencies, plus the law school's J.D. students, presents challenges. [FN104] Some law ***1180** schools respond to these challenges by providing LL.M.-specific courses or grading at least with respect to international students. [FN105]

As a general rule, we make no distinction between IP courses for J.D. and LL.M. students. [FN106] J.D. and LL.M. students can and do take the same classes. We believe, and experience bears out, that the educational experience is enhanced significantly when LL.M. students (who often have practice experience) interact with J.D. students (who often have significant post-graduate education). We emphasize to students that they can learn from one another by sharing perspectives from their diverse backgrounds. [FN107] Arguably, discussion of intellectual property with students from all over the world better represents the real world of IP law than an experience that includes only American J.D. students.

F. Spillover Benefits

The reform of the IP law curriculum at the birth of the University of Washington School of Law Intellectual Property Law & Policy Graduate Program resulted in many spillovers to the IP-related J.D. curriculum and general law curriculum. The spillovers are listed in the bullet points below:

- IP Law Core course (began with IP LL.M. students; later added to curriculum for J.D. students);
- Richer set of IP law courses available to J.D. students (e.g., more advanced, industry specific, and practice-oriented courses);
- Entrepreneurial Law Clinic; [FN108]
- Expanded use of Tutorials;
- Cultivation of a wider range of externships/internships in IP law;
- Modeling the inclusion of a global focus in law courses;
- Modeling effective team teaching (the size and complexity of IP Law Core necessitates a team approach);
- Modeling effective course planning between faculty members (the following courses are all planned essentially as a coordinated unit: IP Law Core; Legal Systems and Skills for IP Law; IP Innovations in Science and Technology; Advanced Research and Writing for IP Law);
- Modeling effective use of in-class problem sets (we began using in-class problems because we knew IP LL.M. students wanted to see practical applications of legal theories and case law).

***1181** G. Taking IP Legal Education to the Next Level

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1. Phases I and II of IP Legal Education

Writing prior to the "big bang" in IP Programs, Professor Kwall observed that law schools had begun to add basic IP courses to their curriculums. [FN109] We can think of this as the first phase of IP legal education. Writing after the "big bang," Professor Port reported that many law schools had significantly enriched their IP course offerings in the six years since Professor Kwall's article. [FN110] Today, the IP law courses described supra in Parts V.A-B can be found in the course catalogs of many law schools, particularly those with IP Programs. We can think of this addition of an array of advanced courses to the IP law curriculum as the second phase of IP legal education.

For law schools with a multitude of IP law courses, is there more work to be done? [FN111] Is there more for a law school to do than simply offer diversity and choice to law students? [FN112] The answer is "yes" if we take seriously the recommendations of the Carnegie Foundation Report on Educating Lawyers (Carnegie Report). [FN113] The Carnegie Report recommends that law school education should cover three areas: legal analysis and the acquisition of knowledge; practical skill; and professional identity. [FN114] As explained in the report: "We are convinced that this is a propitious moment for uniting, in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice. We therefore attempt in this report to imagine a more capacious, yet more integrated, legal education." [FN115] Indeed, an IP Program has a unique opportunity and compelling need to offer a "capacious" and "integrated" education in the mold of the Carnegie Report. To do so, however, IP Programs need to enter a third phase of IP legal education, as described below.

2. Phases III of IP Legal Education

If Phase I in IP legal education was the introduction of IP law foundational courses, and Phase II was the introduction of an array of advanced ***1182** IP courses, then Phase III should consist of two elements. The first element involves the intelligent shaping and delivery of IP courses to optimize the acquisition of knowledge and the development of expertise and professional identity. [FN116] In other words, in Phase III, the focus should shift from the quantity of course offerings [FN117] to the quality of curriculum design and course delivery. Just offering courses is not enough--as the Carnegie Report puts it, legal education should be both "more capacious" and "more integrated." [FN118]

The "integration" recommended by the Carnegie Report operates at several levels. [FN119] At the level of individual courses, instructors in the IP Program should strive to teach courses to emphasize both theory and the application of theory in practice. At its best, the IP law curriculum should be both deeply theoretical and deeply practical. At the level of integrating between the foundational courses and advanced IP courses, instructors should work together to make sure that concepts introduced in the foundational courses are built upon and extended in advanced courses. [FN120] Without this integration, there is often a disconnect--sometimes there is unneeded repetition, sometimes lack of foundation laid. Finally, at the level of integration between advanced theoretical courses and "in context" and "in practice" courses, instructors should coordinate to avoid duplication and take advantage of the foundation that has been laid elsewhere. [FN121]

Several factors make an IP Program an ideal vehicle to deliver on the Carnegie Report's recommendations. First, due to the nature of IP Program faculty and students, IP Programs typically emphasize both doctrinal and practice-based approaches [FN122] to legal education. [FN123] Externships, clinics, and simulation-based courses make good sense for LL.M. students.***1183** [FN124] For instance, most IP Programs offer not only a doctrinal patent law course but also a course in patent prosecution, litigation, and/or license drafting. [FN125] IP Programs have long understood "professional practice as judgment in action." [FN126] Second and related, a primary goal of many IP Programs is to prepare students to practice law--not simply learn to "think like a lawyer." Indeed, many IP LL.M. students have already spent three years

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learning to think like a lawyer and are ready to learn more about applying IP law--or, as the Carnegie Report puts it, using law practice as the "pivot" of legal education. [FN127] Third, IP Programs have administrative leadership who can take an active and attentive role in curriculum design and delivery. [FN128]

The second element of Phase III relates to academic advising--an IP Program should counsel students on the most intelligent way to take courses so they can benefit from the curriculum design. Even a rich, well-sequenced, integrated curriculum will not deliver the best possible educational experience unless, through academic advising, students can choose a package of courses that allows them to optimize their acquisition of knowledge, skill, and professionalism. Each individual student's slate of courses in an IP Program will vary with the student's particular interests, but the fundamental nature of the educational experience should nonetheless deliver knowledge, skill, and a sense of what it means to be a professional in the practice of IP law. [FN129]

At the end of the day, a state-of-the-art IP legal education works according to the following formula: Offer excellent foundational IP courses; offer an array of advanced IP law courses; intelligently sequence the courses; integrate theoretical and practical learning within and between the courses; and advise students about the optimal way to take courses to maximize learning.

***1184** VI. COMMENTS ON THE FUTURE OF IP PROGRAMS: A TRENDY FASHION OR A MAINSTAY?

The LL.M. in tax law represents the gold standard in LL.M. programs. An LL.M. in tax has become a well-respected, valuable credential for lawyers who specialize in the practice of tax law. [FN130] Will an LL.M. in IP law ever become as venerable as an LL.M. in tax? Here are several reflections.

IP Programs will demonstrate their value when significant numbers of high quality students graduate from the programs and become successful IP lawyers and academics. As that happens, both IP Program graduates and those who hire IP lawyers will see the value that the programs can provide. For this success story to fully unfold and take root, IP Programs must provide an excellent legal education through a well-designed and delivered curriculum with effective academic advising. [FN131] As IP Program graduates show their mettle in all sectors and move into positions where they hire other IP lawyers, the IP LL.M. degree should move from relative obscurity to a well-respected mainstream credential. Ideally, an IP LL.M. would become the sort of "capstone" experience suggested in the Carnegie Report. [FN132]

Those who consider taking an IP Program should carefully consider its worth. From the student's point of view, the value of the LL.M. degree is a relevant question to be sure, but the critical question is what will the LL.M. program offer? Has the IP Program moved into Phase III of IP legal education? And beyond that, has the IP Program taken steps to serve as a useful platform to pursue a career in IP law by exposing students to the IP legal community in a multitude of helpful ways? [FN133]

Future success for IP Programs at American law schools is by no means assured. Law schools in other nations now compete for international LL.M. students. [FN134] Many of these non-U.S. programs are less expensive and closer to home. Some are offered in collaboration with an American law school. [FN135] Will these programs displace the IP Programs in the United States? To the extent that the United States remains a world leader in the creation of IP and IP law, there will be a reason to study in the United States for some students. However, if other nations erode America's leadership role, perhaps the attraction of IP Programs at U.S. law schools will erode as well. U.S. IP Programs' salvation, however, could be the delivery of the world's best IP legal education.

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***1185** VII. EMBRACING THE ROLE OF GATHERING PLACE

American law schools have become a gathering place for the new global leaders in intellectual property law by attracting scores of international students to their IP Programs. Most IP Programs have not grasped this role; fewer have thoughtfully embraced it. At best, today's IP Programs strive to provide LL.M. students with an excellent education and, at worst, they view them primarily as a revenue source.

However, if IP Programs thoughtfully embrace their role as a gathering place, they can make a positive impact at many levels. We know that these new leaders in IP law will sit down across from one another at the bargaining table and the counsel table. Knowing this, IP Programs should ask how their educational experience can promote understanding for these future interactions. How can programs effectively present questions and foster insightful dialog about the productive and just use of intellectual property while parties from all sides are gathered together under one roof? How can they frame the inquiry into the "progress" [FN136] that intellectual property hopes to foster to focus not only on greater efficiency, higher productivity, and more satisfying recreation but on clean water and air and healthier people? [FN137] How can they train students not just as lawyers but as leaders in intellectual property law? [FN138]

Embracing the role of gathering place includes providing opportunities for international students to provide their diverse perspectives on the creation and use of intellectual property. This can occur in class--in formal presentations--and informally. There is great poignancy, for example, in a discussion about pharmaceutical patents between students from Germany, India, Indonesia, South Africa, and the United States. In a discussion such as this, all teach and all learn. Getting student participation will take planning and care because many international students feel shy and reticent due to language barriers and cultural norms. It's challenging but rewarding and important work. [FN139]

***1186** VIII. CONCLUSION

The year 2000 marked the "big bang" in the creation of IP Programs in the United States. This phenomenon arose out of the critical role that intellectual property now plays in the world economy. As intellectual property has moved to the forefront, authors, inventors, and governments need lawyers to assist in the creation, protection, and enforcement of intellectual property rights. America's leadership in intellectual property has made American law schools popular places to study IP law. Many law schools have capitalized on this opportunity to create IP Programs. To the extent the attractiveness of these IP Programs rests primarily on America's present leadership in the creation of intellectual property, American law schools should not rest on their laurels but instead should build IP Programs that are truly world leaders in IP teaching. Beyond that, American law schools should embrace their role as a gathering place for the new global leaders in intellectual property law, using it as an opportunity to foster the productive and just use of intellectual property now and in the future.

[FNa1]. Professor of Law; Chair and Director for Academics of the Law, Technology & Arts Group, University of Washington School of Law. This Article began with a presentation that I gave on June 15, 2006, at an Association of American Law Schools workshop on intellectual property. Special thanks to Bill Snyder for his research and useful discussions regarding the AALS presentation and this Article. Thanks also to Steve Calandrillo, Jay Kanassatega, Signe Naeve, Xuan-Thao Nguyen, and Kellye Testy who provided valuable feedback on various drafts of the Article and to Arnold Jin, Cheryl Nyberg, and Mary Whisner for research assistance.

[FN1]. See generally World Intell. Prop. Org., World Intellectual Property Indicators (2009), http://

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www.wipo.int/export/sites/www/ipstats/en/statistics/patents/pdf/wipo_pub_ 941.pdf.

[FN2]. "[T]he modifier 'advanced' refers to formal law-school-based education beyond the first degree in law," usually leading to the award of an LL.M. degree. Jeffrey E. Lewis, "Advanced" Legal Education in the Twenty-First Century: A Prediction of Change, 31 U. Tol. L. Rev. 655, 655 (2000). While this Article may touch on intellectual property law certificate programs and concentration tracks from time to time, the focus will be on LL.M. programs. "LL.M." stands for the Latin term Legum Magister which translates into Master of Laws. The double "LL" reflects the Latin rule that plurals are formed by repeating the letter.

[FN3]. In more recent history, Washington, D.C., has also become home to the Court of Appeals for the Federal Circuit.

[FN4]. LL.M. in Intellectual Property Law, George Washington Univ. Sch. of Law, http://www.law.gwu.edu/ACADEMICS/FOCUSAREAS/IP/Pages/LLM.aspx (last visited Feb. 1, 2011).

[FN5]. American Bar Association acquiescence data from David Rosenlieb, Am. Bar Ass'n (on file with author) [hereinafter ABA data].

[FN6]. Id.

[FN7]. By the year 2000, commentators had already noted the marked increase in LL.M. programs in general and specialty programs in particular. See Lewis, supra note 2, at 655.

[FN8]. ABA data, supra note 5. See generally Karen Sloan, Law Schools Add LL.M. Programs, but Their Value May Be Limited, Nat'l L.J., Sept. 20, 2010, at 1 (describing 65% growth in LL.M. degrees awarded between 1999 and 2009 at ABA approved law schools). Ironically, on the cusp of the big bang, Dean Jeffrey E. Lewis argued that certificate programs likely would "replace and render obsolete" LL.M. programs. Lewis, supra note 2, at 658.

[FN9]. Counting the number of IP Programs can be challenging. The American Bar Association lists twenty-two Intellectual Property LL.M. programs on its website. Post JD/Non JD Programs at Law Schools, Am. Bar Ass'n, http://www.abanet.org/legaled/postjdprograms/postjdc.html (last visited Feb. 1, 2011). On top of that, however, the ABA lists five Law & Technology programs and four Information Technology programs for a total of thirty-one. If one counts the number of law schools offering programs in these three categories (i.e., adjusting for schools offering multiple programs), then the total number of law schools with IP Programs equals twenty-five. For comparison, The National Jurist's website lists twenty-four LL.M. programs under the heading "Intellectual Property, Info Technology." LL.M. Programs, The Nat'l Jurist, http://www.nationaljurist.com/?q=content/llm-programs (last visited Feb. 1, 2011). This number includes Suffolk's "Global Law and Technology" Program but does not include Arizona State's "Biotechnology and Genomics" Program, listed under "Biotechnology," and Chicago-Kent's LL.M. in international IP which is listed in the "International Law" category.

[FN10]. The ABA lists thirty-one programs in tax, thirty-two in international/comparative law, and forty-four general LL.M. programs. Post JD/Non JD Programs at Law Schools, supra note 9. The National Jurist lists twenty-seven tax and forty-eight international and comparative law LL.M. Programs. If a law school has more than one discrete Program in the international and comparative category, all are listed (e.g., both University of Washington programs are listed). Sloan, supra note 8; see also Lewis, supra note 2, at 655 (referring to the "most popular" LL.M. programs as taxation and international and comparative Law).

[FN11]. E.g., Albany, Hamline, and Pennsylvania Law Schools.

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[FN12]. See generally Carl Shapiro & Hal R. Varian, Information Rules: A Strategic Guide to the Network Economy (1999).

[FN13]. See 3 Dale W. Jorgenson et al., Productivity: Information Technology and the American Growth Resurgence 59-60 (2005).

[FN14]. This is reflected in casebooks which focus on international intellectual property. See, e.g., Frederick M. Abbott et al., International Intellectual Property in an Integrated World Economy (Aspen Publishers 2007); Martin J. Adelman et al., Global Issues in Patent Law (West 2011); Daniel C.K. Chow & Edward Lee, International Intellectual Property: Problems, Cases, and Materials (West 2006); Graeme B. Dinwoodie et al., International Intellectual Property Law and Policy (LexisNexis 2d ed. 2008); Paul Goldstein, International Intellectual Property Law: Cases and Materials (Foundation Press 2001); Mary LaFrance, Global Issues in Copyright Law (West 2009); see also Peter K. Yu, Teaching International Intellectual Property Law, 52 St. Louis U. L.J. 923 (2008).

[FN15]. See Toshiko Takenaka, Success or Failure? Japan's National Strategy on Intellectual Property and Evaluation of its Impact from the Comparative Law Perspective, 8 Wash. U. Glob. Stud. L. Rev. 379, 379 (2009).

[FN16]. World Intell. Prop. Org., supra note 1, at 32.

[FN17]. This demand parallels the increased need for legal advice that grew out of the industrial revolution. See John O. Sonsteng et al., A Legal Education Renaissance: A Practical Approach for the Twenty-First Century, 34 Wm. Mitchell L. Rev. 303, 323 (2007).

[FN18]. The nonprofit sector's interest in intellectual property ranges from university technology transfer departments to the Software Freedom Law Center. See Robert W. Gomulkiewicz, Open Source License Proliferation: Helpful Diversity or Hopeless Confusion?, 30 Wash. U. J.L. & Pol'y 261, 290 (2009) (describing need for pro bono services for open source software programmers). The largest private philanthropic foundation in the world, the Bill and Melinda Gates Foundation, routinely attaches access requirements to its grants through which grantees agree to negotiated limits on their exclusive rights if intellectual property results from a grant. See Clay Holtzman, Gates Foundation Global Access Requirement Gives Researchers a Boost and a Burden, Puget Sound Bus. J., Mar. 16, 2009, available at http:// bizjournals.com/seattle/stories/2009/03/16/focus4.html.

[FN19]. Nike, Inc.'s brands and the names and likenesses of the athletes who endorse its products are integral to Nike's success.

[FN20]. Starbucks Coffee Co.'s brands and patented coffee-related inventions (e.g., the process for its new instant coffee) are integral to its success.

[FN21]. See George E. Edwards, LL.M. Roadmap: Foreign Student Admission to and Success in Master of Laws & Other U.S. Law School Programs (forthcoming 2011) [hereinafter LL.M. Roadmap].

[FN22]. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 108 Stat. 4809, 869 U.N.T.S. 299.

[FN23]. In fact, intellectual property is now such an important area that several “top tier” law schools such as Columbia, New York University, and Michigan recently have bolstered their ranks by recruiting prominent IP faculty to their institution.

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[FN24]. Indeed, often the faculty are funded in whole or in part by revenues (tuition or donations) generated by the IP Program.

[FN25]. The National Jurist's website includes a section titled “LL.M. News” which discusses “Top 10 Reasons to Get an LL.M.,” “How Valuable is an LL.M. Degree?” and “When an LL.M. is Worth It?” See LL.M. News, The Nat'l Jurist, http://www.nationaljurist.com/content/llm-news (last visited Feb. 1, 2011).

[FN26]. I created these categories to illustrate various characteristics and motivations of students. In reality, a given student will fit into more than one category.

[FN27]. See generally University Students Abroad: And Is There Honey Still for Tea?, The Economist, Nov. 21, 2009, at 20 (reporting on the large number of foreign students who study in the United States); Foreign University Students: Will They Still Come?, The Economist, Aug. 7, 2010, at 18; LL.M. Roadmap, supra note 21 (reporting that of the more than 6,000 students enrolled in non-J.D. programs in 2008, a significant number were foreign students representing close to 200 nationalities); Colloquy, Translating the U.S. LLM Experience: The Need for a Comprehensive Examination, 101 Nw. U. L. Rev. 23 (2006) (“According to the ABA, 41 U.S. law schools awarded the LLM degree to 1047 foreign national students in 1996. By 2005, more than twice as many law schools awarded LLM degrees to more than twice as many foreign nationals.”) [hereinafter Translating the U.S. LLM Experience].

[FN28]. But see Lewis, supra note 2, at 655 (“While the number of LL.M. programs tailored for foreign lawyers continues to grow, the principle growth of LL.M. programs is in specialized areas of American law, and the students are American lawyers.”).

[FN29]. Cf. Foreign University Students: Will They Still Come?, supra note 27 (United States is the world leader in higher education).

[FN30]. To use University of Washington School of Law's Japanese IP LL.M. students as an example, our students come from the Japanese Patent Office and the Ministry of Economics, Industry and Trade, leading Japanese law firms, and the corporate legal departments of large firms such as Toshiba, Sony, and Yamaha.

[FN31]. See Translating the U.S. LLM Experience, supra note 27; Michael D. Goldhaber, They Rule the World: One-Year LLM Programs at U.S. Law Schools on the Rise Again, Attracting Fledgling Power Brokers from Around the World, Am. Lawyer, Sept. 2005, at 91.

[FN32]. See infra for the implications this has on IP Programs, including support for taking a U.S. bar exam and career services. A recent AALS program explored the challenges facing non-U.S. LL.M. graduates. See Transformative Law: Annual Meeting Program (Ass'n of Am. Law schools), Jan. 6-12, 2010, at 42 (reporting on joint program of Sections on Graduate Programs for Foreign Lawyers and International Legal Exchange titled “Hard Sell: Job Search Strategies for Non U.S. LL.M. Graduates and for J.D. Graduates Wanting to Practice International Law in Local/Regional Job Markets”).

[FN33]. See Translating the U.S. LLM Experience, supra note 27; Sloan, supra note 8 (“The programs are often sold as a good way for foreign attorneys to get a foot in the door at U.S. firms.”).

[FN34]. Some students stay to earn a second LL.M. Others enter a Ph.D. program or seek a J.D. or S.J.D. In certain countries, such as Thailand, two advanced degrees in law are required to become a judge. LL.M. Roadmap, supra note 21.

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[FN35]. See Michael Ariens, Law School Branding and the Future of Legal Education, 34 St. Mary's L.J. 301, 329 (2003) (law students select schools based on access to professional markets).

[FN36]. Contacts are often made by taking courses from adjunct faculty or through externships.

[FN37]. Predictably, large major law firms remain focused on "work experience, good grades and a good law school." Sloan, supra note 8 (quoting a partner from DLA Piper and reporting the same sentiment from a partner at Jones Day).

[FN38]. See id. (quoting a successfully employed George Washington IP Program graduate: "My LL.M. demonstrates my dedication to the field I have chosen. It signifies to colleagues and clients my expertise in a complex area of practice").

[FN39]. In the same fashion, students use J.D. program concentration tracks and certificates to demonstrate to potential employers their interest and skill in IP law.

[FN40]. Good marks may especially resonate for a graduate of a lower-tier law school who does well at a tier-one law school.

[FN41]. Neither sole practitioners nor small firms have the resources to administer in-house skills training. See Sonsteng et al., supra note 17, at 341.

[FN42]. In reality, students tend to be both skill builders and resume enhancers.

[FN43]. The University of Washington School of Law offers a concurrent J.D./ IP LL.M. degree.

[FN44]. See Sean M. O'Connor, Teaching IP from an Entrepreneurial Counseling and Transactional Perspective, 52 St. Louis U. L.J. 877, 888 (2008). See generally Kelly S. Terry, Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose, 59 J. Legal Educ. 240 (2009) (describing the value of externships).

[FN45]. But see School Welcomes New Professors, Gonzaga Univ. Sch. of Law, http://www.law.gonzaga.edu/Faculty/Faculty_watch/new_professors.asp (last visited Jan. 20, 2011) (reporting that Gonzaga's new Fredrick N. and Barbara T. Curley Chair in Commercial Law, Scott Burnham, and its John J. Hemmingson Chair in Civil Rights, Jason A. Gillmer, both have LL.M. degrees).

[FN46]. See, e.g., Faculty Appointments & Honors, Univ. of Ga. Sch. of Law (2009), http://www.law.uga.edu/sites/default/files/faculty_appts_brochure_ 0.pdf (4 of 7 visiting professors have an LL.M. degree); Full Time Faculty, W. Va. Univ. Coll. of Law, http://law.wvu.edu/faculty/full_time_faculty (last visited Feb. 2, 2011) (2 of 3 new faculty have LL.M. degrees).

[FN47]. See Translating the U.S. LLM Experience, supra note 27 (prior to 1990s, most foreign law graduates used a U.S. LL.M. as a pathway to a career in academia).

[FN48]. See LL.M. Roadmap, supra note 21.

[FN49]. Cf. LL.M. Roadmap, supra note 21 (noting that specialty LL.M.s can have advantages over general LL.M.s).

[FN50]. There are a few exceptions. See, e.g., Harry First, Competition in the Legal Education Industry (pt. 1), 53 N.Y.U. L. Rev. 311, 341, 397 (1978).

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[FN51]. See Ariens, supra note 35, at 325 (discussing business advantage of offering LL.M. program). See generally Foreign University Students: Will They Still Come?, supra note 27 (describing the importance of international students to the financial health of British and other universities).

[FN52]. See Lewis, supra note 2, at 655-56 (“Law schools are looking for new market niches as they continue to cope with the dramatic drop in applicants that occurred during much of the 1990s.” “The advanced degree in legal education has become the market phenomenon in legal education.”); Ariens, supra note 35, at 325.

[FN53]. J.D. programs are longer (three years versus one year) and admission is typically more rigorous and competitive (LSAT required, higher TOEFL scores) than LL.M. programs. See generally LL.M. Roadmap, supra note 21.

[FN54]. This is not always the case. For example, University of Virginia School of Law runs like a private institution. As state government support becomes less stable, more law schools will contemplate moving to a model like Virginia's; however, for the majority of law schools there is not enough private money available to make this approach feasible.

[FN55]. See Bruce Ramsey, Editorial, UW Needs More Latitude to Manage its Business, Seattle Times (Dec. 22, 2009, 6:01 PM), available at http:// seattletimes.nwsource.com/html/opinion/2010571250_bruce23.html.

[FN56]. The University of Washington School of Law's Intellectual Property Law & Policy Graduate Program runs in this fashion.

[FN57]. This includes paying the salaries and benefits of faculty and administrative staff who directly support the program, as well as a fee to the university to cover overhead items such as the use of computer services, office space, and staff in the business and academic services offices.

[FN58]. See LL.M. Roadmap, supra note 21 (reporting that some LL.M. programs admit more than 90% of applicants so long as they meet minimum criteria and pay tuition).

[FN59]. See Translating the U.S. LLM Experience, supra note 27 (“[F]or most [foreign law] LLM graduates, a job in the U.S. is extraordinarily difficult to secure.”); Sloan, supra note 8 (describing the difficulty of quantifying the employment benefits of an LL.M. degree but noting the value of some specialty LL.M. programs); Elie Mystal, What is the Value of an LLM Degree?, Above the Law: A Legal Tabloid (Sept. 22, 2010, 10:07 AM), http://abovethelaw.com//2010/09/what-is-the-value-of-an-llm-degree/ (harshly criticizing law schools for taking money from LL.M. students and providing uncertain value). But see The LL.M. Path: Where Are They Now?, The Nat'l Jurist (Nov. 9, 2010, 11:52 AM), http://www.nationaljurist.com/content/llm-path-where-are-they-now (describing how LL.M. degrees had paid off for several students).

[FN60]. It does not have to be that way, of course. By giving strong support to its international LL.M. students, the University of Washington Law School's IP Program has turned this into a comparative advantage. Cf. Ariens, supra note 35, at 348 (describing attempts to market and distinguish law school as “student friendly”).

[FN61]. See Sloan, supra note 8 (describing LL.M. programs as “cash cow [s]”).

[FN62]. See id. (describing debate at University of Colorado School of Law).

[FN63]. See Lewis, supra note 2 (“Specialty LL.M. programs are perceived to be a useful competitive tool.”); Ariens, supra note 35, at 305 (“The conscious use of ‘branding’ in legal education will utterly transform it.”).

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[FN64]. Dean John Sexton at NYU Law School may have been one of the first to use print advertising in the form of a "jaw-droppingly thick alumni magazine" to market his law school to other academics in an attempt to improve NYU's U.S. News & World Report ranking. See Ariens, supra note 35, at 336.

[FN65]. See Michael Sauder & Wendy Espeland, Fear of Falling: The Effects of U.S. News & World Report Rankings on U.S. Law Schools 10-11 (2009) (discussing the proliferation of marketing materials aimed at influencing U.S. News & World Report rankings).

[FN66]. See Ariens, supra note 35, at 305-07, 349-50 ("Although a law school may brand itself by claiming it delivers an excellent legal education, branding is about distinctiveness, not quality.").

[FN67]. Some law schools use their IP Program to distinguish their law school and give them grounds to compete against higher ranked law schools. See id. at 349-50.

[FN68]. See id. at 318-23 (discussing U.S. News & World Report rankings). See generally Sauder & Espeland, supra note 65.

[FN69]. For a critique of the U.S. News & World Report IP-law specialty ranking, see Thomas G. Field, Jr., Ranking Law Schools' Special Programs, 50 IDEA 335, 337 (2010).

[FN70]. See, e.g., IP Programs at Stanford, Santa Clara, and University of Washington.

[FN71]. See, e.g., IP Programs at Cardozo and Columbia. See Matthew Goldstein, Graduate Intellectual Property Program Seen For Cardozo Law, N.Y. L.J., Nov. 12, 1997, at 1.

[FN72]. See Kate Schott, Proposed LLM Would Be First of Its Kind, Chi. Daily L. Bull., Dec. 13, 2002, at 3; see, e.g., Intellectual Property Law, IIT Chicago-Kent Coll. of Law, http://www.kentlaw.edu/depts/ipp (last visited Oct. 21, 2010).

[FN73]. See Boston University School of Law, B informed, Intellectual Property Law 2009, at 9 (2009), available at http:// www.bu.edu/law/communications/documents/IPNewsletter2009.pdf (last visited Feb. 4, 2011) (describing its LL.M. in Intellectual Property Law: "BU Law is proud to offer a very select group of lawyers the opportunity to pursue an advanced degree in one of the most dynamic fields of legal practice today: intellectual property").

[FN74]. Chicago-Kent College of Law reported in a brochure that in 2009 it welcomes "7 international IP LL.M. candidates." Chicago-Kent Coll. of Law, Program in Intellectual Property Law (2009).

[FN75]. See Sauder & Espeland, supra note 65 (schools in the third or fourth tier of U.S. News & World Report rankings sometimes concentrate resources in specialty programs such as IP Programs to attract top students).

[FN76]. Use of part-time faculty gives the law school a natural way to connect with the local bar. These connections often open up employment opportunities for students (either directly or indirectly).

[FN77]. The University of Washington is a good example because of its role as a major research university.

[FN78]. See generally Roberta Rosenthal Kwall, The Intellectual Property Curriculum: Findings of Professor and Practitioner Surveys, 49 J. Legal Educ. 203 (1999) (describing the process leading to enhancements of DePaul's IP curriculum).

[FN79]. For a general discussion of teaching IP law, see Ann Bartow, When Bias is Bipartisan: Teaching About the

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Democratic Process in an Intellectual Property Law Republic, 52 St. Louis U. L.J. 715 (2008).

[FN80]. For example, we have students who have practiced patent law in the Japanese Patent Office for several years and students from the United States who graduated from university with a liberal arts degree and went straight on to law school.

[FN81]. See Kwall, supra note 78, at 215-17.

[FN82]. Another downside to the silo method is the tendency to diminish or simply ignore trade secret law.

[FN83]. There are now a large number of casebooks to choose from, including multiple books from the same publisher. See, e.g., Robert P. Merges et al., Intellectual Property in the New Technological Age (Aspen 5th ed. 2009); Craig Allen Nard et al., The Law of Intellectual Property (Aspen 2d ed. 2008); Margreth Barrett, Intellectual Property: Cases and Materials (West 2d ed. 2001); Shubha Ghosh, Intellectual Property: Private Rights, the Public Interest, and the Regulation of Creative Activity (West 2007); David Lange et al., Intellectual Property: Cases and Materials (West 3d ed. 2007); Rochelle Cooper Dreyfuss & Roberta Rosenthal Kwall, Intellectual Property: Trademark, Copyright, and Patent Law: Cases and Materials (Foundation Press 2d ed. 2004).

[FN84]. Another factor is that copyright or trademark specialists may be shy about teaching patent law, and vice versa.

[FN85]. Our IP Law Core course is six credits which is about half of a term's normal credit load for a student. Note that University of Washington School of Law is on the quarter system.

[FN86]. The University of Washington School of Law now offers both a hefty IP survey for LL.M. students and J.D. students who want a large dose of IP law, and a light survey for those students who want only a general introduction.

[FN87]. Our light survey course also appeals to non-law students such as MBA, Computer Science, and Information School students.

[FN88]. See supra note 30.

[FN89]. See, e.g., Nadia E. Nedzel, Legal Reasoning, Research, and Writing for International Graduate Students (Aspen Publishers 2d ed. 2008); Gerald Paul McAlinn, Daniel Allan Rosen & John Peter Stern, An Introduction to American Law (2005).

[FN90]. The course description is as follows: “This course is for international students in the Intellectual Property Law & Policy Graduate Program. In coordination with Intellectual Property Law Core and Intellectual Property Innovations courses, the course will introduce students to the United States system of state and federal courts in the context of intellectual property law. It will address how intellectual property laws come from the common law as well as state and federal statutes and regulations. The course will also teach students basic legal research, writing, case briefing, and analysis skills that are necessary for their graduate studies in intellectual property law and policy.” Intro to Legal Systems & Skills For Intel Prop Law (Course Description), Univ. of Wash. Sch. of Law, http://www.law.washington.edu/CourseCatalog/Course.aspx?ID=P503 (last visited Feb. 3, 2011).

[FN91]. The basic objective of IP Innovations is to delve deeper into hot IP topics and show how technological change pushes IP law in various directions. In winter and spring quarters, the course focuses on one or two topics in depth. Recent examples include: the role of technology in creativity; video games; university technology transfer; and developing a model licensing law statute.

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[FN92]. Students in our IP Program are required to write a major research paper of 30-40 pages. See infra Part V.B.3-5 and note 97 (discussion of thesis or major research paper requirements).

[FN93]. In fact, we have found it very useful for the Associate Director of our IP Program to teach the course to further integrate student support with the academic program.

[FN94]. IP Core and IP Innovations are planned together so the two classes work in tandem. When students study patent law in IP Core, they study advanced topics in IP Innovations (and so on for the other types of IP).

[FN95]. A course on taxation of IP can be offered in collaboration with a tax LL.M. program.

[FN96]. See generally Neil Netanel, The Development Agenda: Global Intellectual Property and Developing Countries (2009).

[FN97]. Courses focused on intellectual property licensing have become very useful and popular. See, e.g., Robert W. Gomulkiewicz et al., Licensing Intellectual Property: Law & Application (Aspen 2d ed. 2011); Raymond T. Nimmer, Licensing of Intellectual Property and Other Information Assets (LexisNexis 2d ed. 2007); Jay Dratler et al., Licensing Intellectual Property in the Information Age (Kenneth L. Port ed., Carolina Academic Press 2d ed. 2005).

[FN98]. See, e.g., Jacob J. Carroll, Note, Federal and California Criminal Violations for Distributed Denial-of-Service Transmissions, 2003 UCLA J.L. & Tech. 6 (2003); Paul A. Mathew, The Next Wave: Federal Regulatory, Intellectual Property, and Tort Liability Considerations for Medical Device Software, 2 J. Marshall Rev. Intell. Prop. L. 259 (2003); Rebekah O'Hara, You Say You Want a Revolution: Music & Technology--Evolution or Destruction?, 39 Gonz. L. Rev. 247 (2004); Woodrow Barfield, Commercial Speech, Intellectual Property Rights, and Advertising Using Virtual Images Inserted in TV, Film, and the Real World, 13 UCLA Ent. L. Rev. 153 (2006); Woodrow Barfield, Intellectual Property Rights in Virtual Environments: Considering the Rights of Owners, Programmers and Virtual Avatars, 39 Akron L. Rev. 649 (2006); Laura R. Ford, Alchemy and Patentability: Technology, “Useful Arts,” and the Chimerical Mind-Machine, 42 Cal. W. L. Rev. 49 (2005); Alfredo De La Rosa, A Hard Pill to Swallow: Does Schering v. Geneva Endanger Innovation Within the Pharmaceutical Industry?, 8 Colum. Sci. & Tech. L. Rev. 37 (2007); Yasuo Ohkuma, Miyuki Sahashi, Hui-Wen Hsueh & Joe Brennan, Patent Trolls in the U.S., Japan, Taiwan and Europe, 13 CASRIP Newsl. 2 (2006); Laura Ford, Monopoly as Rhetoric: The Case of Letters Patent, 12 CASRIP Newsl. 1 (2005); Yukio Ono, “Ichitaro” Case in Japan IP High Court Applied Two New Patent Provisions to Software Related Patents: Indirect Infringement and the Limitation of Exercising an Invalid Patent, 12 CASRIP Newsl. 1 (2005); Matsuo Nonaka, Recent Debate over Patent Protection for Medical Related Activities in Japan, 11 CASRIP Newsl. 3 (2004); E.M. Snijders, Wanted: The Medical Exemption, 11 CASRIP Newsl. 2 (2004); Takamitsu Shigetomi, Two Judgments on Japanese Patent Law Article 35 Amazed Industry All Over the World, 11 CASRIP Newsl. 1 (2004); Kosaku Tamura, Quick Review of Systems for Challenging Validity of a Granted Patent before Patent Offices, 11 CASRIP Newsl. 1 (2004); Tsunashige Shirotori, Japan's Supreme Court Decision on the Sales of Used TV Game Software, 9 CASRIP Newsl. 3 (2002); Paul A. Mathew, Entrepreneurship, Technology, and Law at the University of Washington, 9 CASRIP Newsl. 1 (2002); Fei Jiao, Recommendations on How to Protect Traditional Chinese Medicine Knowledge, 14 CASRIP Newsl. 4 (2007); Brad Riel, The Expanded Jurisdiction for Declaratory Judgments: Sony Electronics Inc. v. Guardian Media Technologies, Ltd., 14 CASRIP Newsl. 4 (2007); Kenji Shimada, Yi-Hsuan Chen, Chi-Yuan Kuo, Alfredo DeLaRosa, & Jeremiah Miller, Patents as Property: International Injunctive Relief, 14 CASRIP Newsl. 3 (2007); Hirohito Nakada, Patent Exhaustion and the Recycling Business in the United States and Japan, 14 CASRIP Newsl. 3 (2007); Samantha Schmidt, What Does YouTube Know?, 14 CASRIP Newsl. 3 (2007); Adam Ake, License or Contract?: GPLv3 and the Persistent Controversy Over GPL Enforceability, 14 CASRIP Newsl. 3 (2007); Frank Shao-Fan Lu, Traditional Knowledge, Genetic Resource, and

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Biotech Patents: The Controversy and Possible Solutions, 14 CASRIP Newsl. 2 (2007); Zhe Peng, The Federal Circuit Clarifies Rules on Damages for Post-verdict Patent Infringement: Amado v. Microsoft Corp., 15 CASRIP Newsl. 1 (2008); Wang Kuan-Hua, Olympic Games and Intellectual Property: China's Chance to Tell the World More..., 15 CASRIP Newsl. 2 (2008); Amanda Carmany-Rampey, Tatsuo Takeshige, Hyung-Geun Ji & Sirimas Rianrungrueng, Non Obviousness and Inventive Step Requirements in the United States, Europe, Japan, Korea, and Thailand (for Combination Inventions), 15 CASRIP Newsl. 2 (2008); David Ray, Fair Use in the Digital Age: Theoretically Sound But Practically Impossible?, 16 CASRIP Newsl. 1 (2009); Tatsuo Takeshige, Correction (Amendment) Practices on Japan Patent Law Must be Changed in Accordance With Three Decisions by the Supreme Court of Japan and the Grand Panel of the Japanese IP High Court in 2008, 16 CASRIP Newsl. 1 (2009); Masako Kikuchi, Patent Eligibility and Patentability of Computer Software Patents in the United States, Europe and Japan, 16 CASRIP Newsl. 3 (2009); Elena Torgan, Willful Infringement and Counsel's Opinion, 16 CASRIP Newsl. 3 (2009); Keiko Tominaga, Does Japanese Law Need Fair Use?, 16 CASRIP Newsl. 3 (2009).

[FN99]. There are over seventy-five intellectual property-related journals based on a search of the subject “Intellectual Property” performed on Washington and Lee School of Law's database of law journals. Law Journals: Submissions and Ranking, Wash. & Lee Univ. Sch. of Law, http:// lawlib.wlu.edu/lj/index.aspx?mainid=1529 (last visited Feb. 3, 2011).

[FN100]. Our instructors can often be found with tutorial students at local coffee shops.

[FN101]. Tutorials that we offer include: video games; protection of indigenous rights; first amendment and IP; software license drafting; advanced patent litigation; and advanced trademark practice.

[FN102]. The New York bar is especially popular with international students because it accepts international applicants with a first degree in law plus an LL.M. degree. See Foreign Legal Education, N.Y. State Board of Law Exam'rs, http://www.nybarexam.org/foreign/foreignlegaleducation.htm (last visited Feb. 3, 2011). International practicing lawyers may also be eligible to take the California bar. See Foreign Legal Consultants (FLC), State Bar of Cal., http://admissions.calbar.ca.gov/Requirements/ForeignLegalConsultantsFLC.aspx (last visited Feb. 3, 2011).

[FN103]. Some students are also taking English language classes.

[FN104]. See Transformative Law: Annual Meeting Program, supra note 32, at 88 (describing session on “LL.M.s and J.D.s Together: Synergies and Problems”).

[FN105]. Sometimes these courses are graded on a different basis than J.D. courses. See generally LL.M. Roadmap, supra note 21.

[FN106]. The two primary exceptions, for obvious reasons, are: Legal Systems and Skill for IP Law; and Advanced Research and Writing for IP (in our IP Program, this is the IP LL.M. “thesis” preparation class).

[FN107]. A further benefit may be that it gives employers a basis to compare the relative performance of LL.M. students versus J.D. students. Given the lack of other indicia of relative academic excellence, this measure may provide a useful data point. See Translating the U.S. LLM Experience, supra note 27 (discussing challenges in gauging the performance of foreign law LL.M. students and arguing for a comprehensive exam).

[FN108]. See O'Connor, supra note 44.

[FN109]. See generally Kwall, supra note 78.

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[FN110]. See Kenneth L. Port, Intellectual Property Curricula in the United States, 46 IDEA 165 (2005).

[FN111]. Some have pointed out the value of opening up IP legal education to non-lawyers as well. See, e.g., Ruth Soetendorp, Intellectual Property Education--In the Law School and Beyond, Intell. Prop. Q. 1, 82-110 (2005); Monisha Deka, Pre-Professional Intellectual Property Education, 46 IDEA 143 (2005).

[FN112]. For example, Professor Kwall argues for adding IP law to the first year curriculum. See Roberta Rosenthal Kwall, Why Intellectual Property Belongs in the First-Year Property Course, 54 J. Legal Educ. 504 (2004).

[FN113]. See William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (Jossey-Bass 2007) (arguing that law school should better prepare law students for law practice and describing techniques that move legal education in that direction) [hereinafter Carnegie Report].

[FN114]. Id. at 12-14.

[FN115]. Id. at 12.

[FN116]. According to the Carnegie Report, “In most [law] schools, curriculum lacks clear shape or purpose.” Id. at 194.

[FN117]. See Port, supra note 110 (ranking law schools based on number of IP courses offered). Professor Port's methodology and data have been questioned by some commentators. See Field, supra note 69.

[FN118]. Carnegie Report, supra note 113, at 12.

[FN119]. Cf. Larry Cata Backer, Chapter 5: Internationalizing the American Law School Curriculum (In Light of the Carnegie Foundation's Report), 14 IUS Gentium 49 (2008) (describing approaches to integration of international law concepts into law school curriculum).

[FN120]. For example, an IP Program needs to wrestle with how to introduce international IP into the mix. There are many ways to do so but it needs to be done consciously and intelligently.

[FN121]. For example, the instructor in a software or computer law case should know whether and to what extent an advanced copyright course has covered the Digital Millennium Copyright Act (DMCA) or the non-literal infringement cases dealing with software.

[FN122]. “[K]nowledge often comes most fully alive for students when the power of legal analysis is manifest in the experience of legal practice.” Carnegie Report, supra note 113, at 13; see also id. at 197.

[FN123]. Outside of IP Programs, some law schools struggle with this. According to the Carnegie Report: “In its quest for academic respectability, legal education would come to emphasize legal knowledge and reasoning at the expense of attention to practice skills ....” Id. at 7. “[T]hese two aims of induction into the profession (the academic and the more practical) would prove difficult to reunify.” Id. at 6.

[FN124]. See Sonsteng et al., supra note 17, at 396-405 (describing the importance of simulation and experiential-based learning).

[FN125]. IP Programs can readily include transactional courses which often tend to be “marginalized within the legal academy.” See Rachel S. Arnow-Richman, Employment As Transaction, 39 Seton Hall L. Rev. 447, 453 (2009).

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[FN126]. Carnegie Report, supra note 113, at 9. “[C]areful analysis of intelligent practice reveals a more intricate relationship between theory and practice than in the positivist model--an understanding that is still poorly appreciated in the academy as a whole.” Id. at 10.

[FN127]. Id. at 7-12.

[FN128]. An additional reason has to do with resources. Curriculum reform and innovation is costly as both the Carnegie Report and other commentators have noted. See Backer, supra note 119, at 73-74.

[FN129]. By increasing academic advising services, IP Programs could at least begin to address those critics who believe that IP Programs take more than they give to LL.M. students. See LL.M. Roadmap, supra note 21 (describing characteristics of programs that are “cash cows” and “diploma mills”).

[FN130]. Sloan, supra note 8.

[FN131]. That is, an IP Program that has moved to Phase III as described supra Part V.G.2.

[FN132]. Carnegie Report, supra note 113, at 195.

[FN133]. See supra Parts V.B-D; see also Sloan, supra note 8 (for example, George Washington's IP Program enabled a student to extern in an intellectual property boutique and the U.S. Patent and Trademark Office which led to a job in an IP specialty law firm).

[FN134]. LL.M. Roadmap, supra note 21.

[FN135]. See Translating the U.S. LLM Experience, supra note 27 (describing “offshore” LL.M. programs).

[FN136]. The U.S. Constitution makes “progress” the touchstone of its grant to exclusive rights to authors and inventors. U.S. Const. art. I, § 8, cl. 8.

[FN137]. See PTO Seeks to Incentivize Release of Humanitarian Technologies, IPWatchdog.com (Sept. 22, 2010, 6:09 PM), available at http:// ipwatchdog.com/2010/09/22/pto-seeks-to-incentivize-release-of-humanitarian-technologies/id=12589/. The University of Washington School of Law has a course dedicated to this subject called Law, Technology, and Development. PATH, a Seattle-based non-governmental organization (NGO), is dedicated to the use of technology for humanitarian purposes. See PATH: A Catalyst For Global Health, http://www.path.org/about.php (last visited Feb. 3, 2011).

[FN138]. See generally Karen H. Rothenberg, Recalibrating the Moral Compass: Expanding “Thinking Like a Lawyer” Into “Thinking Like a Leader,” 40 U. Tol. L. Rev. 411, 412-13 (2009).

[FN139]. LL.M. Roadmap, supra note 21, at 23 (“Your coming to the U.S. will necessarily result in inter-cultural exchange, dialogue, and mutual understanding, will serve peace and human rights purposes--even if your LL.M. focuses on esoteric and seemingly unrelated topics ....”).
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