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INTRODUCTION:

CONSTRUCTING INTERNATIONAL INTELLECTUAL PROPERTY LAW: THE ROLE OF NATIONAL COURTS

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The Symposium hosted by the Chicago-Kent Law Review and the Chicago-Kent Program in Intellectual Property Law in October 2001 brought together leading scholars, policymakers, and practitioners from the fields of intellectual property and private international law. A rich debate ensued, canvassing numerous topics. But discussion centered on two concrete proposals, namely, the draft Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters (the "Hague Convention") and the Draft Convention on Jurisdiction and Recognition of Judgments in Intellectual Property Matters authored by Rochelle Dreyfuss and Jane Ginsburg (the "Dreyfuss-Ginsburg proposal"). These proposals were analyzed and debated not only on their own terms, but also in the broader context of how the systems that each proposal would establish might affect the role of national courts in the construction of international intellectual property law.

Since the on-site Symposium, the Hague Conference on Private International Law has met again to consider further the fate of the proposed Hague Convention. And, as was noted by Symposium participants intimately involved in the Hague process, further deliberation among Hague Conference participants may continue for some time yet, even as to such basic questions as the scope of any convention. However, the most recent text considered by the Hague conference remains the June 2001 draft that was the subject of discussion at the Symposium. That draft of the Hague Convention is reproduced in this law review issue along with the articles and commentaries presented at the Symposium. Many of the provisions in the June 2001 draft contain bracketed language and numerous footnotes, which Hague Conference participants included to identify the range of al-

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ternative provisions being debated. Jeff Kovar, head of the US delegation to the Hague Conference, has described the June 2001 text as "more honest" than the prior (September 1999) draft. That earlier version was a simpler, skeletal document that arguably masked the wide difference of opinion that existed on several key provisions. At the very least, the June 2001 draft candidly reveals the spectrum of possibilities on questions of jurisdiction and recognition of judgments (if, perhaps, at the cost of immediate comprehension).

The draft standalone treaty on jurisdiction and recognition of judgments in intellectual property matters authored by Professors Dreyfuss and Ginsburg is also reproduced in its entirety herein, along with an extensive commentary by its authors. Like the Hague Conference proposal, the Dreyfuss-Ginsburg proposal is a work in progress. The American Law Institute has recently undertaken a project to develop principles concerning jurisdiction and recognition of judgments in intellectual property matters, and that project will build upon the draft provisions of the Dreyfuss-Ginsburg proposal and accompanying commentary published in this issue.

Although the outcome of the deliberations taking place both at the Hague Conference and under the aegis of the American Law Institute should represent an evolution beyond the texts that formed the basis for discussion at the October 2001 Symposium—both in content, and perhaps in form and scope—we have published both the Hague and Dreyfuss-Ginsburg proposals as they stood at the end of 2001. They represent and record a moment in the process by which potentially important advances in international intellectual property law and private international law were pursued. As such, these documents offer insights into the substantive debate as well as the lawmaking process. And both proposals make important contributions to these fields that will be of great value regardless of any evolutions that occur. Finally, and perhaps most practically, they provide a reference for the accompanying articles in this issue that seek to provide insight into broader thematic questions of international intellectual property law with which the Symposium was concerned: the role of national courts in the construction of international intellectual property law.