

Expanding Role Of Licensing In World

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Technology licensing is playing major role in changing geo-political picture in today's world

The disappearance of the USSR as a major military and political force in the world has also affected an economic revolution that has dramatically changed the world of international licensing. The ramifications are only beginning to be felt. The long-term results will dictate the history of the 21st Century.

A SNAPSHOT OF THE WORLD OF LICENSING, CIRCA 1982

The so-called "old order" existed on the basis of the Cold War, which started shortly after the victory of World War II. Three institutions existed — and to some extent functioned — over the passage of time. In order to appreciate the true dimensions of the changes taking place, it is useful to catalogue the realities of the international licensing scene, circa 1982.

• The U.S. and the Eastern Bloc, composed of the USSR and the Communist countries, were enjoying a large percentage of their capital and industrial resources on military occupancy. In the U.S., the Strategic Defense Initiative ("Star Wars") was just getting under way, and President Reagan had already embarked on an ambitious program to upgrade the U.S. armed forces.

• The United Nations and its Specialized Agencies were seriously limited in the political arena by the combination of the two superpowers. This element of competition spilled over to the economic sphere, particularly technical assistance with the Third World, where the Soviets tended to inhibit the U.N. efforts by attempting to tailor them to Soviet objectives. Nevertheless, the U.N. did promote

certain positive achievements, such as intensive programs to control malaria.

• The so-called North-South divide between the advanced and "less-developed countries" had bogged down to a stalemate over the issue of controlling the policies of multinationals or transnational corporations and their activities in the Third World. This situation persists today.

• Progress toward the integration of Europe had slowed to a crawl, although Greece had just been admitted as the tenth EC member state. Much uncertainty still existed about the treatment of international licensors under Article 83 of the Rome Treaty and some of the block exemption regulations had yet issued. New U.S. investments in Europe were slowest, and a return flow of acquisitions of U.S. companies by European interests was beginning.

• The effects of the OPEC cartel had been particularly dramatic in Latin America, forcing most of these nations into heavy borrowings that distorted many of their economies. As a result, there was a marked reduction in licensing activities in Latin America, and many companies diverted their attention to other parts of the world.

• Decision No. 24 of the Asamblea de Cartagena, setting up the Andean Pact, established criteria and reporting requirements for foreign licenses negotiated with companies in Colombia, Ecuador, Peru, and Venezuela. These controls tended to discourage international licensing to these countries.

• The People's Republic of China was beginning to liberalize its economy and was entering into a series of major long-term relationships with large western and Japanese corporations. Various light

industries, particularly textiles and garments, were increasingly considering to use the PRC as a cheap labor production source.

• Japan enjoyed a special, protected position in the eyes of the United States, and was exploiting clear advantages with a high degree of skill. Because Japan is geographically located off the west coast of Siberia, its total loyalty to the West, in opposition to the Soviet Union, was a linchpin of United States foreign policy. As part of the terms of the World War II armistice, Japan was spared the huge costs of its own military establishment. Instead, the United States undertook to shield Japan from outside aggression, in return for access to Japanese facilities as a military staging area, if needed, as was the case in the Korean campaign in the 1950s, and the Viet Nam War in the late 1960s and early 1970s.

• An important facet of Japan's favorable situation was that its companies were given ready access to the North American market without any requirement for reciprocity. It is essential to an understanding of Japanese businessmen that they are not imbued with the "not-invented-here" syndrome. Starting in the late 1950s, Japanese industry had begun to invest in the "coasts" of western technology and then diligently to improve its practical applications. With the active support of the Japanese government, particularly the Ministry of International Trade and Industry, extensive R&D efforts were focused on certain industries considered to be

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key — initially steel and shipbuilding, but later consumer electronics, automobiles, semiconductors, computers, and now aerospace and biotechnology. By 1982, Japan had already emerged as a world industrial leader in many of those fields, and was poised to play an equally significant role in banking, real estate and finance.

• **Elsewhere on the Pacific Rim,** things were also on the move. The four so-called "little tigers," South Korea, Taiwan, Singapore and Hong Kong, had achieved important niches in the world economy, greatly aided by the learning process. Each became pre-eminent in electronic manufacture, because of the natural diversity, work ethic and modest wage rates demanded by their work force. Various special strengths were also becoming apparent. The South Koreans, whose economy had been nurtured by the West to become a competitive challenger to North Korea, were imbued by a nationalism whose ardorities a rafting effort of outdoing their former Japanese conquerors. They already excelled in shipbuilding and steelmaking. Their efficient construction activities won several major projects in the wealthy oil states of the Middle East, and their automakers were about to make their presence felt on the world scene.

• The Taiwanese, no longer burdened with the threat of invasion from mainland China, turned their prodigious energies to a variety of light industries, especially plastics and composites.

• Singapore enjoyed the security of an enlightened, if authoritarian, government that stressed 100% literacy and a sound level of education for the entire population. It was already an established financial and shipping center and was actively encouraging establishment of subsidiaries of western high-tech companies that would be more significant than mere production facilities.

• Hong Kong had become an international metropolis that also served as a gateway to the awakening Chinese mainland. It was marvellously entrepreneurial and an efficient producer in several light industries, such as toys, in which it

became the world leader. Hong Kong's status as a British Crown Colony was anticipated to come to an end in 1997, and this reality was already beginning to affect its mentality.

• Other Asian economies were also progressing toward industrialization although at differing paces. Malaysia and Thailand were becoming sources of natural manufacturing for the West, and also increasingly for Japan, whose export rates were already substantially higher than anywhere else in the region. Indonesia, with a population exceeding 150 million, and a major oil producer in its own right, certainly had industrial potential but was not a player in the technology arena other than being essentially a Japanese satellite. The Philippines suffered from poor government under the Marcos regime, remained largely agricultural, but supported a variety of light industry, notably in the field of rayon furniture.

• Australia and New Zealand were good learning jurisdictions, but with relatively small market size. Both countries were in the throes of adjustments from the Commonwealth preference they had enjoyed with the United Kingdom, which was forced to phase them-out as a condition for entry as a Member State in the European Community.

• India continued to develop industrial resources, despite the many unnecessary delays in granting approvals to (temporarily) worth-while learning and joint venture projects. It was also concerned for its literacy, essentially without success, with liberal arts degrees who had little understanding of technological alternatives, needed to inhibit the growth of an economy if it was to be used to produce. Bureaucratic agriculture made its way to still largely agrarian India, however, with dramatically improved crop yields, especially wheat. Because of tensions between the USSR and the People's Republic of China, India enjoyed a favorable economic relationship with the Soviet Union, and sold substantial quantities of industrial equipment in the USSR, many of which designs had origin-

ally come to India under licensing arrangements.

Because its population is the second largest in the world, and taking into account India's military capabilities, inspired by its proximity with neighboring Pakistan, India was considered by many to be an unpredictable region on the learning scene. During this period, India also suffered a continuing "brain drain" of many of its most creative scientific minds who were opting to seek technical and industrial careers in North America and the United Kingdom.

• The Muslim Middle East could roughly be divided between two groups, those who were wealthy because of indigenous petroleum resources from Iraq, Saudi Arabia, Kuwait and the other Persian Gulf sheikhdoms and the poorer but politically active others (Egypt, Syria, Jordan and Lebanon). All were caught in their own regional feud, which was also the only serious source and user in the region of a broad range of modern technology.

Prior to the fall of the Shah in the late 1970s, Iran had been a favorite trading and investment "blood" of American interests. In 1982, the fruits of these activities were being expended in a bloody war with Iraq. We now know that, at the same time, Iraq was purchasing substantial amounts of western and Soviet military and industrial technology with the principal objective of building up a powerful war machine. Both countries had the capability to master many of the essentials of western high technology, but they were essentially mostly consumers rather than active contributors to the technological scene.

• A comment about the Republic of South Africa is also relevant to this worldwide snapshot. As of 1982, South Africa was still locked into the policy of apartheid imposed by the dominant faction of its white minority, and was something of an international pariah. Because the country is extraordinarily rich in precious resources, and also in view of various measures that tended to make the national economy essentially self-sufficient, South Africa

had witnessed the pressures of widespread disapproval of its policies. Nevertheless, this failure inhibited the growth and development of important innovations in South Africa during the 1950s and 1960s.

In sum, the world of entrepreneurial technology forming in 1962 was largely confined to North America, western Europe, Japan and the Pacific Rim. Many large, multi-national companies continued to do business with their subsidiaries, with established joint ventures and pre-existing licenses in all areas of the world, in order to maintain and build upon existing investments. Several major international corporations also undertook new initiatives at this time in the PRC. By and large, however, smaller enterprises involved with state-of-the-art technologies tended to limit their business to the most advanced western economies and the Pacific Rim. Furthermore, American companies also had special problems when attempting to deal actively with the so-called Communist bloc nations because they could be inhibited from doing so by export regulations imposed by the U.S. Government.

Against the background of this 30-year-old "tour de monde," the current perspectives and challenges to the learning process from the viewpoint of North Americans are dramatically changed. Many new opportunities and problems of enormous dimensions are now visible.

The bloodless political revolutions that swept aside the entire political and economic institutions of the Second World have revealed roads that must rapidly be allocated. The opportunities presented can become future nightmares unless wisely handled. Newly heightened technological division manifested by the current North American recession can easily escalate into ugly confrontations. The rapid pace of change being dictated by current insecurities contributes to a sense of sober concern. What follows is this writer's assessment of the current climate of technology licensing and its potential in today's world.

CONTEMPORARY CONDITIONS IN INTERNATIONAL LICENSING

The Western European Scene

After years of professional wrangling, a series of regulations issued from the Commission of the European Communities. These greatly clarified the guidelines to be followed with regard to technology transfers within the context of Articles 40 and 86 of the Rome Treaty and the Common Market rules of competition. The first two of these are the Exclusive Distribution Regulation¹ and the Exclusive Purchasing Regulation² which were issued on June 22, 1960. These were followed by the Block Exemption Regulation relating to Patent Licensing Agreements,³ the Joint Research and Development Regulation,⁴ and the Block Exemption Regulation relating to Know-How Agreements.⁵ In particular, these official pronouncements helped delineate the interplay between intellectual property rights and the antitrust issue in controlling the flow of goods and services throughout the territory of the Common Market.

Several other events resulted to the revival of the European spirit and the increasing strength of the EC institutions. The European Patent Convention, which makes it possible for an inventor to obtain a bundle of up to 21 national patents on the basis of a single initial process was made toward the adoption of conventions covering the issuance of Common Market Patents and Trademarks.

The membership of the European Communities also grew from 10 to 12 with the formal admission of Spain and Portugal in 1986. Perhaps even more significant is the fact that several additional countries, including some that were traditionally neutral between East and West, made moves to become involved in varying ways with the institutions of the EC. The commitment of the Member States to remove all restrictions to the in-

ternal circulation of goods by the end of 1992 has also had a profound effect on the attitudes and strategies of entities interested in such business on a continuing basis in Europe.

The past decade has witnessed a marked strengthening of the European currencies against the American and Canadian dollars. This has helped inspire a wave of acquisitions of American businesses by European interests, many of whom had previously been strengthened by intra-European acquisitions originally inspired by the expanded market opportunities provided by the EC. In short, Europe had solidified its position as a formidable financial and industrial counterweight to North America during the earlier years of the past decade. The recent events in Eastern Europe have served to buttress that position even further.

The Disappearance of Germany

No one, not even the most pro-void of parallels, predicted the revolutionary events in Eastern Europe since Mikhail Gorbachev opened the Pandora's Box that had been the Soviet empire. The pervasive industrial and technological dry rot that existed after more than 40 years of bureaucratic Communism in Eastern Europe has exposed investment and licensing opportunities that are both exhilarating and sobering. Here are some of my thoughts on the subject, on a country-by-country basis, from an American point of view.

Germany

If all the Eastern European Soviet satellites, the German Democratic Republic ("DDR") was the most advanced industrially. Its citizens retained the legendary German work ethic, its physical proximity, common cultural heritage and language with the Federal Republic of Germany made it a prime candidate for rehabilitation. The Federal Republic already housed the strongest economy and currency of the EC Member States. By combining politically with the DDR, the latter is now officially inside the Common Market and can also benefit from the economic resources that its fellow German

1. No. 1960/12.
2. No. 1960/13.
3. No. 1960/16.
4. No. 1960/17.
5. No. 1960/18.

countries can bring to bear.

The German Government has established an agency, the *Technobank*, that has taken title to the thousands of enterprises owned by the old regime and is now auctioning them off at an active pace. The strains of transferring these institutions, which were usually grossly overstaffed with antiquated capital equipment and limited marketing capability into competitive units, are enormous. One revelation gets the impression that the continuation of forces involved will result in an enlarged, vigorous and integrated German economy within seven to 10 years. While certain foreign interests have taken initiatives in the former GDR, the overwhelming presence is that of West German companies moving into this underdeveloped region of their newly-expanded territory.

The realizations of this potential new colossus in the west of Europe, and an Europe further to the east, which has traditionally been an area of strong German trading influence, are impressive.

Czechoslovakia, Hungary and Poland

These three nations are often considered in the same context, although their histories, sciences and prospects differ widely. They each had market-oriented economies prior to World War II, and therefore have certain residual experience in the free systems they are attempting to forge in today's world. They also share a common desire to participate actively in the affairs of Europe, and eventually to become Member States of the EC. They are also heavily industrialized (especially the Czechs and Hungarians), although their plants are generally obsolete by modern standards. Indeed, recent visits to many of their facilities have been described in exercises in "industrial archeology, circa 1940".

In the present time, Hungary has made the most progress in dis-

mantling the old regime. It had actually been pursuing a more liberal line than its communist neighbors for several years. This, a certain native business acumen, as well as strength in the pharmaceutical and chemical industries, have accounted for many of the achievements that have already occurred.

Poland, inspired by the Solidarity movement, had been making gestures toward political independence from the Soviet Union for several years. It also rapidly — possibly prematurely — created legislation removing price controls over basic commodities and other measures to accelerate the privatization of industry. Poland had also contracted substantial debt to western banks during the 1970s and 1980s, which add to its problems. The population appears to be united in its desire to achieve a market-driven economy along western lines, but the ultimate solutions are still unclear.

Czechoslovakia — or more precisely the Czech and Slovak Republics — has many assets favoring conversion to a market economy. One negative legacy is the nationalized movement of the most agrarian Slovaks, who wish to retain a significant degree of independence from the Czechs, who have tended to dominate the economic life of this country lopped from the old Austro-Hungarian Empire by the Treaty of Versailles in 1919.

During the period between the two World Wars, Czechoslovakia enjoyed one of the highest standards of living in the world, combined with a vigorous appreciation of democracy and a lively artistic tradition. It was a leader in mechanical engineering, including automotive and machine tools, in glass and shoe manufacture, among others. Its labor force has a work ethic comparable to the Germans, and it emerged from its interwar communist purgatory relatively debt free. More cautious by nature than either the Hungarians or the Poles, it is expected that the Czechs eventually will eventually emerge as viable and effective, although the transition period will be relatively slow and arduous. Whether the nation will survive initial current be-

predicted with confidence. This constitutes a bright target for North American investors, however, because of the industrial and technological talents of the Czechs, combined with their understandable historical aversion to the Germans.

Belgium

This national complement of modest nationalities, also welded together by the Treaty of Versailles, has already collected Civil War and disorder, with the accession of Croatia and Slovenia, with more likely to follow. The newly mandated firmness with which Germany directed European conferees that led to the confirmation of these accords should be noted with interest.

This is a semi-industrialized area that can benefit from modernization and development. Its economy has been strongly influenced from outside — principally Germany, and to some extent Italy as well as the old Soviet Union. Certain ethnic ties exist with the U.S. and Canada, because of immigration within the past 70 years. This might provide the basis for certain limited financing opportunities, including joint ventures.

Other Eastern European Countries

The Baltic States of Estonia, Latvia and Lithuania have successfully regained their independence from the Soviet Union and also have had historical experience in multi-ethnic business. Their traditional ties with their Baltic neighbors, Poland, Sweden and Denmark, all of whom are highly skilled in the licensing process, would appear to give the Scandinavians the inside track in serving the bi-lingual needs and trading opportunities of these countries.

Belgium provides an interesting exception. Its emergence from communist domination appears to have been relatively orderly. It does not appear to be distracted by strident internal ethnic strife, and it possesses a certain industrial base, although one that was largely installed during the communist era. It also possesses a climate, landscape and beaches that trace the

© 1991 USA, Inc. Canada based a firm, *Technobank*, to facilitate the development of technology in Germany. *Technobank*, in turn, provides loans to help companies take technical expertise to the east.

further development of tourism. Bulgaria could thus provide an intriguing target for carefully considered licensing initiatives, with the overall objective of having it export to neighboring countries. European tourists would undoubtedly enjoy advantages in negotiating such deals over North Americans, however, because of geographic closeness as well as an absence of a major trading tradition between Bulgaria and North America.

Romania has apparently not emerged successfully from its recent past and faces serious internal political as well as ethnic problems. This instability is discouraging to market-oriented licensing activity. While local conditions improve, Romania should be able to benefit and learn from the current experiences of neighbors. Hungary, with its own industrial and commercial traditions, as well as its natural resources, including a native petroleum industry, Romania should become a viable player in the international licensing arena once it puts its domestic house in correct order.

The Commonwealth of Independent States (Formerly the Soviet Union)

As this is written, the dissolution of the old Soviet Union represents one of the most important phenomena of our time. My choice of the adjective "impressive" was deliberate, because it encompasses many more vital issues that are directly applicable — gigantic, mind-boggling, challenging, awe-inspiring and, even, terrifying. Here was:

- A considerable size;
- Banding together more than 200 million people;
- With divisions of ethnic origins;
- Spread over the largest contiguous land mass on Earth;
- Dominated by a well entrenched party apparatus and bureaucracy to which market forces were hostile;
- Supporting one of the two most powerful military establishments in the world, with a full arsenal of thermonuclear weapons; and
- Possessing a huge, essentially obsolete and inefficient production

and distribution capability that has come apart at the seams. Combine these realities with the following, and the dimensions of the situation begin to take form:

- The population is intelligent, highly literate, tough, and capable of great efforts and sacrifices of property motivated.
- The land has areas of great fertility and possesses rich mineral deposits and petroleum reserves.
- The associated States lack democratic and commercial traditions, having been transformed under Sovietist authoritarian pressure from a feudal economy to an industrial power totally dominated by the central government.
- Seventy years of Communism failed to erase ethnic roots and many traditional values.
- Virtually no hard currency is presently available to finance the acquisition of new technology under license.
- The old central government has been replaced by a loosely defined confederation that has not demonstrated the authority to provide direction to a collection of sovereign States whose own national interests tend to be described as being in a state of flux.

Opportunities and problems abound. Emergency aid, medicine, and long-term investments are needed and appropriate. The dismantling of the military demands the highest degree of sensitivity and skill. Technology transfers of all types, including joint ventures, factor arrangements and buybacks, are urgently required. Strategic and management skills relating to industrial operations and distribution in many sectors are also badly needed.

Nothing short of an international concert effort from the leading industrial countries of the world, on a scale that would dwarf the Marshall Plan, is what appears to be needed. It is still too early to assess the most appropriate initiatives that should be undertaken, but also to consider their effectiveness. Indeed, the four dimensions of the problem requiring solutions are certainly not known at this time. It is clear, however, that very prompt and resolute action is needed and the

adroit employment of technology will be one of the keys to satisfactory results.

Japan

As noted, the removal of the Soviet ceiling thus fundamentally changes the U.S. relationship with Japan. Smoldering rivalries and resentments that have been developing during the past decade have now subsided. This appears to be only the beginning of a period of serious dialogues between the two nations.¹

By dint of discipline, diligence and brilliance in applying and improving many of the technologies licensed or otherwise legitimately acquired from the West, "Japan, Inc." has achieved world pre-eminence in many important sectors of high technology. There is every indication that this trend will continue for years to come.

If this results in the erection of anti-Japanese tariff walls or other forms of "Japan bashing," the results can be seriously harmful to all concerned. The main complaint of the Americans has been that the Japanese unfairly limit access to their home market. There have been abuses of this type in the past — originally ignored by the Americans because of their own sense of invulnerability and also because of the strategic importance of Japan since the USMC. Certainly, the balance of payments between the U.S. and Japan could be improved if the Japanese would freely import their needs of cigarettes, citrus fruits and other agricultural commodities from the U.S.

But does this truly address the problem? Massive sales of Japanese automobile vehicles in the United States — widely recognized as being superior in many ways to Detroit's products — is by far the largest source of the current trade imbalances. Even if the Japanese market were wide open to American imports, it is unlikely that more than a token amount of North American

¹ "Wanted: American Technology Exported and Reimported to Help Alleviate Trade Problems," *US & Canada Business*, issue 1, December 15, March 1990 on the topic "Technology Rivalries and Foreign Influence from America and Japan."

can would be sold, especially when one considers that the Japanese price for lead is \$4 per gallon, most American cars are too wide for Japanese roads, and no American models are equipped with right side steering wheels, which are normal in nations like Japan, which drive on the opposite side of the road from the U.S.

It would seem that other factors have a much more significant influence over the comparative performance of American and Japanese companies. Some of these are:

1. Lower cost of capital in Japan

— The prodigious savings habits of Japanese people, which have swelled the size of Japanese banking institutions to become the largest in the world, makes it possible for Japanese companies to borrow much more cheaply for capital investments and improvements than their American counterparts.

2. Active government direction and support

— The various ministries of the Central Government, especially MITI focused on industrial growth goals and created favorable conditions for coordinated national efforts on several major projects.

3. Greater freedom to plan long term

— Japanese executives are spared the frequent pressure on American public companies to report steadily increasing quarterly sales and earnings to their shareholders.

4. Rigorous educational standards in Japan

not only result in the average Japanese having higher reading and math skills, but also emphasize the national characteristics of discipline and tireless teamwork that often produces good results in industrial environments.

This is not at all to say that Americans should make themselves over to a Japanese image. Unlike Japan, a crowded island nation devoid of most natural resources, the United States and Canada are huge, richly endowed and beautiful countries that can support a spectrum of rewarding lifestyles. Unlike Japan, which has no ethnic diversity, the Americans have citizens with many national, social and cultural backgrounds. These differences have traditionally been a source of strength and inspiration to the

American fabric, although they also create a number of problems.

Indeed, the Japanese people have long appreciated and been eager to enjoy the fruits of American culture, ranging from baseball, blue jeans and jazz to McDonald's® hamburgers. Much as they have learned from us — whether in the form of technology or culture — so too can Americans learn useful lessons from them. It would seem that the concepts of thrift, social responsibility and serious attention to the education of our children deserve renewed emphasis, particularly in view of the reduced need for massive military expenditures.

In the field of science and technology it should not be forgotten that very few of the world's seminal inventions originated in Japan. The genius of American and British creativity was basic to many of the significant achievements realized by the Japanese. The Japanese talents in maintaining these technologies is now being manifested in large numbers of patent applications being filed on behalf of Japanese inventors around the world.

Japan prospered in the postwar years by ignoring the not-invented-here syndrome. American industry should perhaps rethink on an active program to license-in these recent fruits of Japanese innovation, or consider more active cross-licensing. Both nations could benefit if their companies would be encouraged to engage more actively in bi-directional technology transfers and 50/50 joint ventures. This could help to diffuse existing tensions that might possibly escalate to ugly and counterproductive dimensions.

The Pacific Rim

A dialogue is in its very earliest stages between North Korea and South Korea. Aside from an apparent military balance of power between the two, the disparity in their relative technological developments, standards of living and economic strengths is probably even greater than that which existed between the Federal Republic of Germany and the DDR. Perhaps the German experience will inspire these hostile Asian neighbors to emulate the Germans. This cannot presently be pre-

dicted, but extended thinking is not entirely unwarranted.

Taiwan has entered the big leagues of technology, when one considers that in late 1991, McDonnell Douglas entered into a joint venture with a Taiwanese company, essentially as a last resort to salvage its commercial airplane business. There is perhaps a reflection of the Taiwanese prowess in the field of computers. Another is the fact that virtually 100% of the tennis rackets and golf club shafts sold in the world today are fabricated in Taiwan. They are all made of advanced composites.

The economy has undergone the stage of being essentially a low labor cost producer to become wealthy, high quality manufacturers of sophisticated products. Combine these attributes with the Chinese bias for commerce, and one can confidently predict a growing role for Taiwan in the international technological arena.

Singapore has inherited a major share of Hong Kong's banking business as the end of the British leasehold draws near. It remains a serious player from which a serious multinational corporation can conduct its Asian operations, but it does not appear that it has yet spawned an indigenous industrial power of the first magnitude.

Malaysia and Thailand have prospered in the past decade and have increasingly been employed by foreign companies, particularly from Japan and the United States, as low labor cost production sources for textile garments, automotive components and electronic assemblies. From a farming standpoint, the situation in Indonesia and in the Philippines do not seem to have improved markedly during the past decade.

It should be noted that Singapore, Indonesia, Malaysia, the Philippines, Thailand and Hawaii have formed an Association of Southeast Asian Nations. They recently took the first step toward creating a common market, expressly in response to economic ailments observed in Europe and, more recently, in North America. This is the creation of the Asian Free Trade Area, an attempt to integrate these fast-growing n-

concerns by eliminating tariffs on nonagricultural goods within 15 years. Among the groups of products that will be immediately selected for tariff cuts include textiles, electronics, chemicals, plastics, pharmaceuticals, ceramics, metals, furniture and jewelry. The establishment of this regional market of more than 200 million people is expected to spur investments and learning into the area.

The People's Republic of China

According to a recent story in *The New York Times*,

"There is a country in East Asia that imprisons and tortures dissidents, that sells missiles and nuclear technology to unstable third-world regimes, that exports prison-made products, that flies an Buddhist monks who demonstrate to demand freedom from Tibet.

"There is also a country in East Asia that has modernized its economy along market lines, that provides free parental checkups for expectant mothers, that is rapidly extending the web of roads and electricity lines to remote villages, that provides education and other help to the disabled, that offers doctors and other urban resources preferential university admission — that, in short, is raising standards of living of most inhabitants about as fast as any society in the world.

"The gap between those two faces of China is vast, and the question seems to be: Which is the real China?"

"The problem, though, is that both descriptions capture part of the Chinese reality in the 1980s. Some academics and business executives warn that the West risks misreading itself by focusing on the negative side today — just as the West misled itself by focusing on the successes of economic and political liberalization before the crackdowns two years ago in Tiananmen Square."

China is in the same early industrial stage as was the USSR between 1928 and 1940, which justifies the exception of the destruction in the eastern provinces during World

War II enabled Stalin and his immediate successors to promote the rapid expansion of heavy production capability. China also has huge masses of people still prepared to work for very cheap wages. These circumstances provide opportunities for large enterprises prepared to participate in major long-term projects or for smaller companies in light industry (textiles, garment cutting and sewing, toy manufacturing, electronic assemblies and subassemblies) using a low-cost source of production — provided they are able to tolerate the negative politics.

The prodigious energies of the Chinese people have undoubtedly been harnessed toward the goal of advanced industrialization. This reality, the near-term addition of Hong Kong to the nation, and the advanced age of the conservative Communist old guard, mean that China faces clear watching. After years of study and debate, its intellectual property legal system should soon be in operation. These circumstances, individually and in combination, should have enormous impact on the global learning curve.

Australia

There have been no significant changes during the past decade in the laws affecting licensing in Australia and New Zealand, perhaps other than the fact that there is now virtual unity between the two markets. They continue to be good countries to which to license, with many cultural values comparable to those in North America. There has, however, been a definite change in attitude on the part of many local business leaders, who consider their nations to be less an outpost of the British Commonwealth and more as active players in the Asia-Pacific region. Australia has now become Japan's principal source of many minerals, including coal and bauxite. Many Australian companies have established manufacturing and trading subsidiaries and joint ventures in Southeast Asia. Several major law firms have opened branch offices in Hong Kong and Singapore to serve the needs of their clients.

In view of this position, com-

North American and European companies that lack experience in the area are collaborating in various ways with Australians in establishing and managing operations in the Asia-Pacific region. The absence of a language barrier, as well as common culture with the West, help qualify the Australians for this sensitive and important role.

India

This nation's massive experiment with democracy continues. Its economic progress is regularly compared by observers of the Asian region with the other giant, the PRC. India's rate of growth is slower, but it is growth nevertheless. Moving, however, bureaucratic controls over licensing and foreign exchange transactions continue, but one senses a loosening of the doctrinaire socialism that persuaded many of the older members of the ruling Congress Party, who are now in retirement or abroad.

Indian Prime Minister P.V. Narasimha Rao, who became head of the government in 1991, has initiated India's most wide-ranging economic changes since independence in 1947: slacking government controls, rules and subsidies, and undermining the dominance of the public sector. In one such move, the Reserve Bank of India announced that foreign companies will be allowed to buy property and set up direct trading offices, instead of depending on subsidiaries to borrow money and accept deposits from the public. Until recently, foreign companies had been restricted by the Foreign Exchange Regulations Act, which made such transactions virtually impossible. The reforms of this legislation are expected to increase the flow of foreign funds into India.

In January 1992, the government announced that it was dismantling the 18-year-old law that banned major foreign companies from selling products in India under their internationally-known trademarks. This should make foreign products more competitive and alternative in India and, at least theoretically, can enable foreign companies to challenge the country's powerful but largely protected private corporations in almost every sector. In the

1. "Hoping That Heavy but Not So the Best Case," by Nicholas D. Christ, *The New York Times*, January 26, 1992, Section 2, p. 2.

medium term, this could have a stimulating effect upon India's industrial growth.

A development that bears watching is the growing relationship between India and Japan, especially if locality in Japanese economic power and technological leadership grows in North America and Europe. Japan will always have an enormous appetite for both raw materials and markets for its products. India can serve both needs while also being less competitive with Japan in various high-tech fields than the FRG, Taiwan, the Association of South-East Asian Nations and Korea.

The Middle East

In the aftermath of Desert Storm, and with the disappearance of the Soviet challenge to the influence of the United States, this area is in even more of a state of flux than usual. Diplomatic conferences seeking a pragmatic accommodation between the Muslim nations and Israel have gotten underway, but no important results are expected soon. The Israeli population and brain pool is in the process of being substantially reinforced by a large wave of immigration from the former Soviet Union. An apparently serious crisis here in Lebanon might signal the restoration of that country as a regional leading center, after 20 years of chaos.

The Israelis, Saudis and instability that permeate this region continue to inhibit broadly-based industrial development. Great disparities of wealth persist, and this is an additional reason for concern. The widespread dissemination of modern technology throughout this area of contradictions could have many positive effects. Many of the skills and the necessary capital resources are already available in the region. It is nevertheless difficult to be optimistic that this can be accomplished — although no one could have predicted the bloodless demise of the Soviet Union, an event that appeared to be even more unlikely.

South Africa

Under the leadership of President FW de Klerk, most of the 40-year-old institutions of apartheid have

been dismantled during the past few years, and the remaining legal vestiges of this old regime are expected to disappear shortly. This achievement has served to restore South Africa as a member in good standing of the international family of nations.

Even at the height of apartheid, black workers in South Africa generally enjoyed the best working conditions on the continent. If the industrial skills and other technologies that have been successfully adapted to local conditions can be made more widely available throughout Africa, that could have many positive effects. Namibia, the South African economy should now be more open to outside investments and financing, as long-standing hard-currency payment restrictions are lifted.

Latin America

Until the early 1990s, Mexico was one of the most liberal nations for foreign investors. With the institution of various government controls over financing — many of which were inappropriately patterned after the Japanese MITI approach — a major portion of this financing stream dried up. There remained a considerable volume of activity along the U.S.-Mexican border, however, where low-labor-cost manufacturing and assembly operations were conducted in duty-free zones with respect to goods exported there, and reexported into the United States for that purpose.

Within the past year, there have been dramatic reductions in the degree of interference by the Mexican Government with financing institutions with Mexico. This, together with progress in establishing free trade throughout North America with the United States and Canada, should herald an important increase in financing activity with Mexico in the near term, especially where low labor costs and local distribution patterns are deemed important.

In many Latin American countries the most important criterion for a national regime to be recognized and supported by the U.S. Government during the past 40 years was its anti-communist policies. Thus, repressive, undemocratic

leaders were often lauded over persons who enjoyed greater support from the native population. With the disappearance of Soviet-inspired agitation, one hopes that there will be a change in U.S. diplomatic policy in the area. If this could also result in a reduction of traditionally high military expenditures in Latin America, such trends could be welcomed toward badly needed social reforms and economic development.

Export initiatives in most Latin American countries, particularly Brazil, has continued to draw many favoring initiatives by high-tech, entrepreneurial businesses to the area. Since his election as Brazil's President in December 1990, Fernando Collor de Mello has made concerted efforts to relax many of the legal restrictions on financing, particularly with regard to the international movement of equities from Brazil. As of January 3, 1992, the New Income Tax Law No. 8085 makes it possible for a Brazilian subsidiary to invest and to take a tax deduction on reinvestment of equity for the use of patents and trademarks to its profit. However, the current Patent and Trademark Law still establishes certain prerequisites for the reinvestment of equities, one of which being the need for the patent and trademark to be filed in Brazil claiming convention priority.

A similar distinction exists in Argentina regarding licenses for foreign related companies and those negotiated at arm's length. The latter are less closely controlled. Licensing restrictions were severe in the 1980s, but starting in 1982, various liberalizing measures have been enacted. There are no Double Taxation treaties in force between Argentina and either the U.S. and Canada, nor have maximum withholding rates been established for either country, as has been the case with Germany, Austria, France, Italy and Sweden. This point should therefore be explored with persons from North America currently negotiating licenses to Argentina.

Some American and European investors, who have been unwilling to subject themselves to the vicissitudes of Latin American economic

conditions, have opted to service these markets indirectly, through their Japanese licensors. Japan has had a long policy of participating in the development of South America, and there are substantial colonies of Japanese engineers in many of these countries. Many Japanese companies have also established technical sites and distribution networks in these countries. By installing sales agents in many countries in agreements with Japanese licensors, some licensors have been able to avoid royalties from sales in Latin America that might otherwise have been foregone.

SUMMARY

It is believed that this current global snapshot of the licensing

scene illustrates the many new and challenging opportunities that have recently opened. A major, relatively bloodless revolution has occurred. One basic factor for these changes is the technological imbalance that had grown between the First and Second Worlds. A more even and equitable distribution of this technology and its fruits around the earth, including the Third World, will go a long way toward relieving many of the political tensions that exist today.

The intellectual property and technology transfer systems we discuss are among the most important vehicles that can enable this to become a reality. Fortunately, there appears to be a worldwide trend supporting this expanded use.

As recently as 20 years ago, licen-

sing remained — whether acting as senior corporate employees, attorneys or consultants — often considered themselves as being professionally acting in a relatively narrow technical discipline. The substance of those activities has become so vital to economic growth and prosperity, however, that licensing has moved toward the center of the stage. The Licensing Executives Society, being the leading organization in the field, is meeting this challenge by broadening the scope of its programs, both substantially and geographically.

We are living through a very exciting time in world history. The realignment deployment of our technological assets and skills by entrepreneurial players can contribute greatly to prosperity and peace.