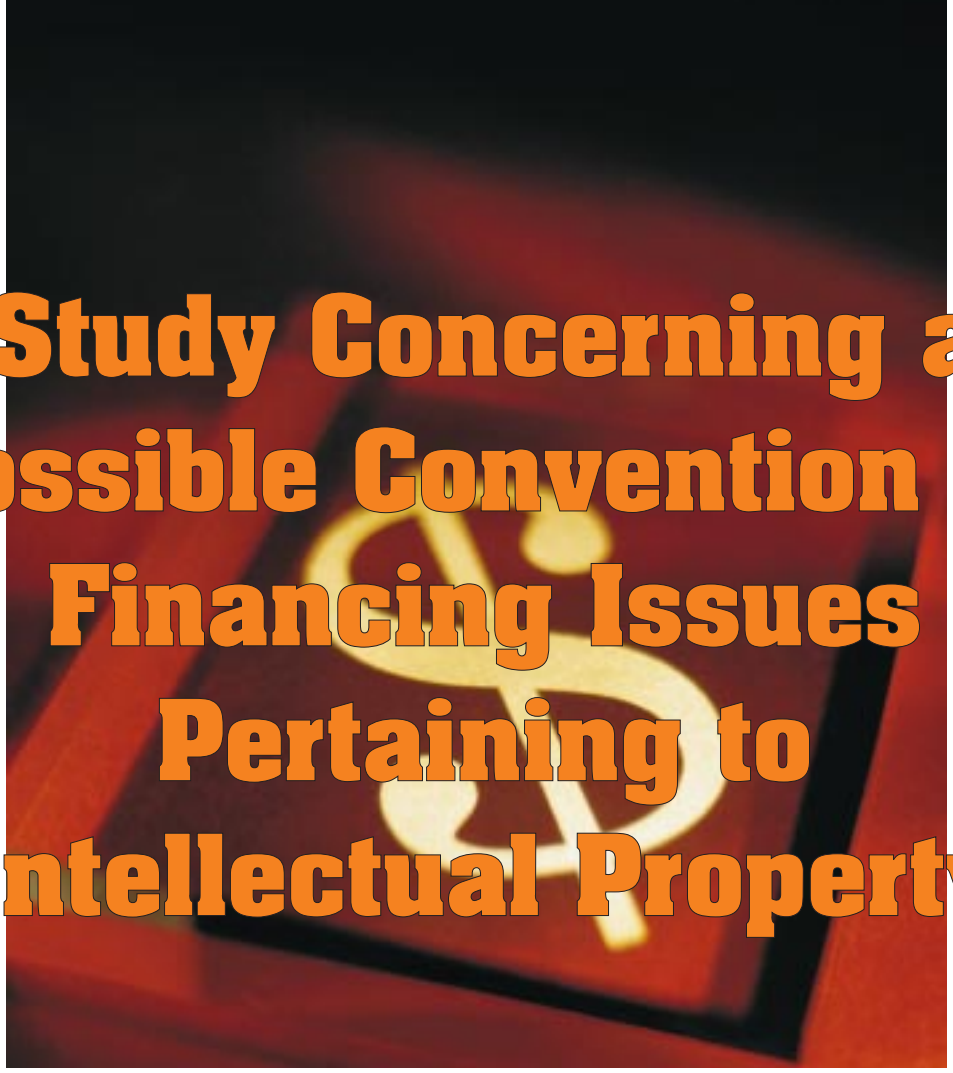

Study Concerning a Possible Convention on Financing Issues Pertaining to Intellectual Property

For the past five years CFA has been actively involved with the United Nations Commission on International Trade Law (UNCITRAL) in the development of the Convention on Assignment of Receivables in International Trade. Now that work on this convention is almost complete (a final draft is expected in July 2001), UNCITRAL has begun work on a new project: the study of the desirability of developing model legislation concerning security interests in collateral other than receivables.

To that end, UNCITRAL invited various experts in finance, including CFA, to submit papers on three specific types of collateral — inventory, intellectual property and investment securities — which would identify issues (and propose solutions) relating to cross-border loans secured by these types of collateral which might be considered in connection with the study. UNCITRAL also convened a meeting at its headquarters in Vienna on January 30-31, 2001 to discuss the papers.

CFA submitted papers on all three types of collateral. The papers were prepared by a working group consisting of Keith Karako, chairperson, CFA International Trade Services Committee, and managing director, Citibank, N.A.; Richard Palmieri, CFA vice president-finance, and managing director, Credit Suisse First Boston; Michael Sharkey, CFA vice president, and president & CEO, LaSalle Business Credit, Inc.; Michael Carsella, chairperson, CFA House Counsel Committee, and first vice president, LaSalle Business Credit, Inc.; Richard Kohn, CFA associate general counsel, and partner, Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd.; Jonathan Cooper, Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd.; Oscar Alcantara, partner, Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd.; Edwin Smith, UNCITRAL delegate, and partner, Bingham Dana, LLP; Marsha Simms, partner, Weil Gotshal & Manges LLP; Ronald F. Daitz, partner, Weil Gotshal & Manges LLP; Michael Crosby, associate, Weil Gotshal & Manges LLP; Jeffrey Turner, counsel, Kaye Scholer Fierman Hays & Handler, LLP; and Chris Teano, vice president and senior counsel, Citibank, N.A., with different members of the group taking the primary role on each paper.

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Keith Karako and Richard Kohn attended the Vienna meeting on behalf of CFA. Other attendees included Professor Dr. Ulbrich Drobnig of the Max-Plank-Institut für Ausländisches und Internationales Privatrecht in Hamburg, Germany; Nicholas From of Lovells in London, England; Guy Morton of Freshfields Bruckhaus Deringer in London, England; Richard Potok of Potok & Co. in London, England; Professor Catherine Walsh of University of Brunswick in Fredericton N.B., Canada (currently at McGill University School of Law in Montreal, Quebec, Canada); and Professor Peter Winship of Southern Methodist University School of Law in Dallas, Texas. The meeting was chaired by Franco Ferrari, legal officer at the United Nations Office of Legal Affairs, and was also attended by Jernej Sekolec, secretary of UNCITRAL and Spiros Bazinas, legal officer of UNCITRAL.

At this point, it remains unclear whether UNCITRAL will undertake the project and, if it does, whether the project will focus on one or more of the three specific types of collateral mentioned above or on security interests in general. However, ***The Secured Lender*** felt that the three papers submitted by CFA are of interest in their own right insofar as they discuss particular issues and concerns inherent in cross-border commercial finance transactions under the current laws of various countries, and is therefore reprinting them, in full, in three issues of this magazine. Reprinted below is the paper on intellectual property, the primary authors of which were Oscar Alcantara, partner, Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd., and Jeff Turner, counsel, Kaye Scholer Fierman Hays & Handler, LLP. The papers on inventory financing and investment securities will be reprinted in future issues.

I. Introduction

The Commercial Finance Association (CFA) is pleased to submit this Memorandum to the United Nations Commission on International Trade Law (UNCITRAL) in connection with a study being conducted by UNCITRAL concerning the desirability of developing conventions pertaining to various forms of secured financing, with the goal of promoting such forms of financing in States that become parties to the conventions.[1]

This Memorandum focuses on forms of financing in which intellectual property owned by the borrower[2] represents an important component of the collateral package (for convenience, these forms of financing are collectively referred to as "intellectual property financing"). For purposes of this Memorandum, the term "intellectual property" is used generally to refer to patents, trademarks, copyrights, customer lists, know-how, trade secrets and other similar rights.[3]

Intellectual property financing represents a major form of financing for commercial enterprises located in North America. Unfortunately, lenders attempting to provide intellectual property financing in other jurisdictions are frequently confronted with legal obstacles that make such financing impractical or cost-prohibitive to borrowers, thereby depriving borrowers of access to a highly effective form of financing. CFA strongly believes that a properly constructed convention on intellectual property financing (referred to for convenience as an "Intellectual Property Convention") could effectively address these legal obstacles, thereby dramatically enhancing the flow of low-cost credit to jurisdictions governed by the convention from lenders throughout the world.

This paper first presents a brief overview of the role of intellectual property in financings provided by CFA members and other lenders, and then discusses those characteristics of an Intellectual Property Convention that would, in the opinion of CFA, significantly promote the availability of intellectual property financing to borrowers located within jurisdictions governed by the convention.

By way of background, CFA is a trade association for financial institutions that provide asset-based commercial financing and factoring to business borrowers. Although most of the members of CFA are headquartered in North America, many are located, or have affiliates or branches, in other countries, or are owned by entities headquartered in other countries. Among the nearly 300 members of CFA are substantially all of the major money center and important regional banks and other large and small commercial lenders in North America. CFA members provide financing to businesses on an international, national, regional and local scale. Most of the borrowers served by CFA members depend on secured financing to operate and grow. Although much of this financing is used by businesses for working capital purposes, a substantial amount of it is used to finance the acquisition of other companies. Financing provided by CFA members is generally secured by various forms of property owned by the borrowers, including accounts receivable, inventory, equipment, real estate,

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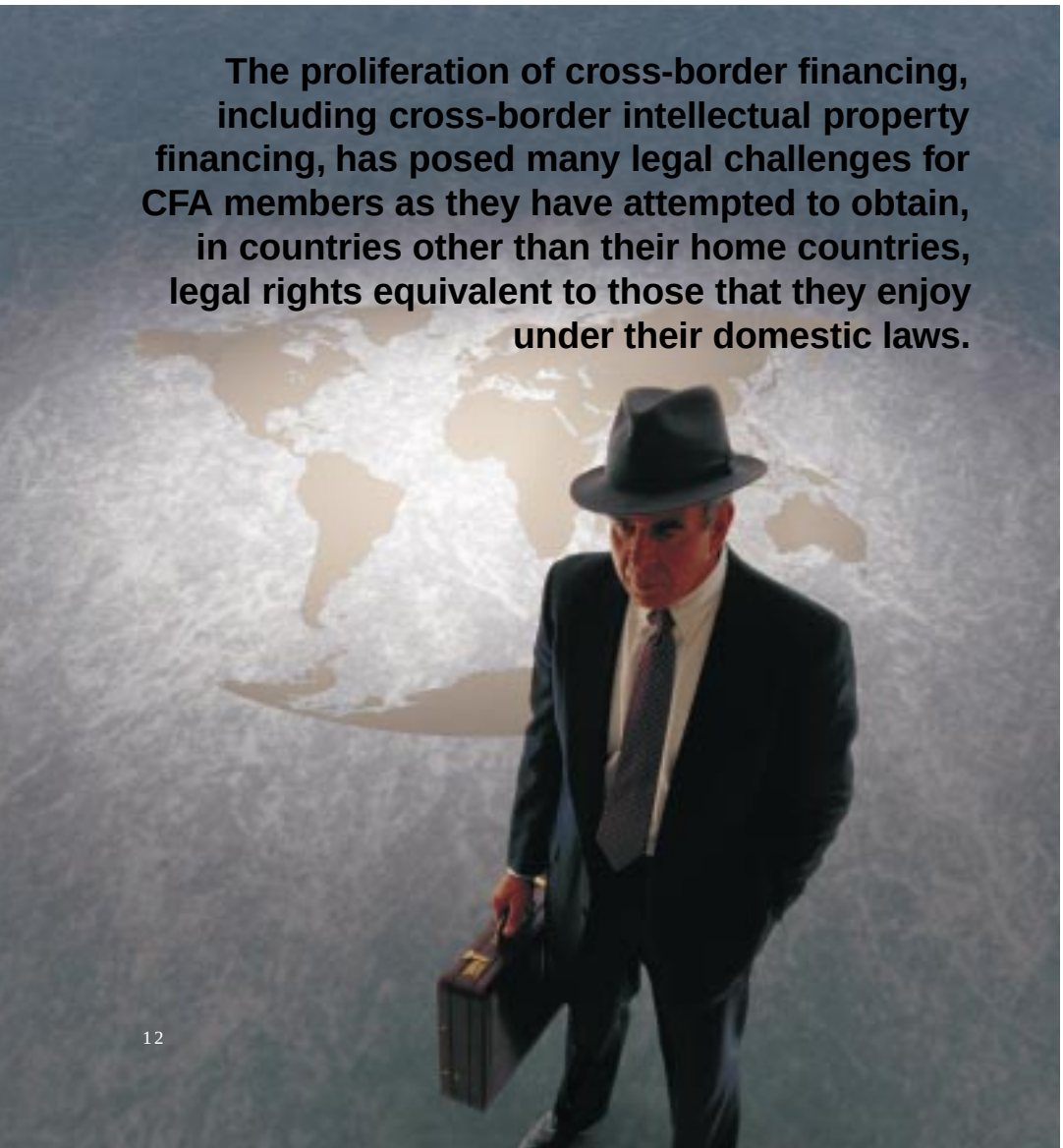
intellectual property and investment securities. In 1999, secured financing provided by CFA members totaled almost USD 300 billion.

In recent years, CFA members have become increasingly active in making cross-border loans, including loans predicated on the value of collateral located in other jurisdictions and denominated in local currencies. This increased activity in cross-border lending flows naturally from the increased globalization of borrowers that has occurred during recent years, fueled by reductions in trade barriers, a robust world economy and explosive developments in technology.

The proliferation of cross-border financing, including cross-border intellectual property financing, has posed many legal challenges for CFA members as they have attempted to obtain, in countries other than their home countries, legal rights equivalent to those that they enjoy under their domestic laws. In some countries, obtaining such rights is a relatively easy matter. In others, it is difficult or impossible under the current legal regimes. In still others, although the legal regimes may be conducive to secured lending, the judicial systems do not provide a level of predictability sufficient to attract foreign lenders.



Several additional preliminary points should be made. First, this Memorandum does not purport to be comprehensive; rather, it seeks only to highlight some of the legal issues encountered by CFA members in cross-border intellectual property financing, and to suggest ways in which an Intellectual Property Convention might address those issues and thereby promote cross-border intellectual property financing.

Second, this Memorandum does not presume that favorable legal systems in other countries must be mirror images of the legal systems in those countries in which CFA members have a significant presence, in order to attract intellectual property financing from CFA members. On the contrary, in recent years many CFA members and other lenders have shown a strong willingness to adapt to the legal systems of various other countries that lack some of the basic attributes of their own legal systems, and to respect the cultural differences that have given rise to such legal systems. Moreover, in some instances, the laws of other countries are more favorable to lenders than are the laws of their home countries.

Finally, CFA believes that the proposals set forth in this paper will promote intellectual property financing, not only by CFA members, but by all lenders, wherever located.

II.The Role of Intellectual Property in Financing Transactions

In both domestic and cross-border transactions, intellectual property represents an extremely important class of collateral for CFA members and other lenders. Because of the rapid progress of technology and the heightened value of information to companies in this "information age," patents, trademarks, copyrights, customer lists, know-how, trade secrets and other forms of intellectual property represent, for many companies, an increasingly important component of the value of such companies. Often, a company's intellectual property is its only significant asset or its most valuable asset. Given this circumstance, and the fact that the importance of intellectual property will undoubtedly continue to grow, it is critical that companies be able to obtain financing based on the value of their intellectual property.

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CFA members typically utilize intellectual property as collateral in a variety of ways. First, intellectual property often has sufficient independent value to qualify it as primary collateral for a loan, especially for the growing number of companies in the technology sector. For example, a lender may make a loan to a borrower predicated solely on the value of the borrower's patents or trademarks. The basic principle with respect to this type of financing is that a lender will only provide such financing to the extent it determines that, if the borrower fails to repay the loan, the lender may look to the intellectual property for repayment. Clear and predictable secured lending laws are critical to enable the lender to make this determination.

Second, a borrower's intellectual property rights frequently represent an intrinsic component of the value of other property of the borrower, such as equipment that has been specially tooled for the production of a patented product, or inventory that has been branded with one of the borrower's trademarks. Such property may be of little or no value to a lender as collateral, or to a subsequent purchaser of the borrower's business, unless the lender or purchaser is able to obtain rights in the associated intellectual property. Secured lending laws that are structured to enable lenders and subsequent purchasers to obtain rights in the related intellectual property in an efficient and cost-effective manner would, in the view of CFA, encourage lenders to make loans predicated upon the full value of the borrower's property.

III. Characteristics of an Intellectual Property Convention

In light of the importance of intellectual property in financing transactions, this Memorandum suggests various characteristics of an Intellectual Property Convention which would, in CFA's opinion, encourage lenders to make loans secured by intellectual property owned by borrowers located in contracting States.[4] This would not only provide greater access to credit for such borrowers, but would also reduce the cost of credit to such borrowers by stimulating competition among lenders located throughout the world.

A. The Creation and Priority of Security Interests in Intellectual Property.

1. Recognizing True Security Interests in Intellectual Property.

One of the major obstacles to intellectual property financing in some jurisdictions is the unavailability, under the legal regimes of those jurisdictions, of a true security interest[5] in intellectual property assets. In such jurisdictions, in order to approximate the effect of a security interest, lenders must take assignments of a borrower's intellectual property, thereby becoming the record owner of the property, and must then license the intellectual property back to the borrower so that the borrower can continue using the intellectual property. This approach has several unfortunate side-effects. First, the lender, as the record owner, might be required to comply with a wide array of filing obligations in order to maintain the existence of the assigned intellectual property. For example, in the case of trademarks, the lender might periodically be required to file documents attesting to a trademark's continued use, even though it is unlikely that the lender would have first-hand knowledge of such use. Additionally, the lender, as record owner, may be required to protect or defend intellectual property interests in

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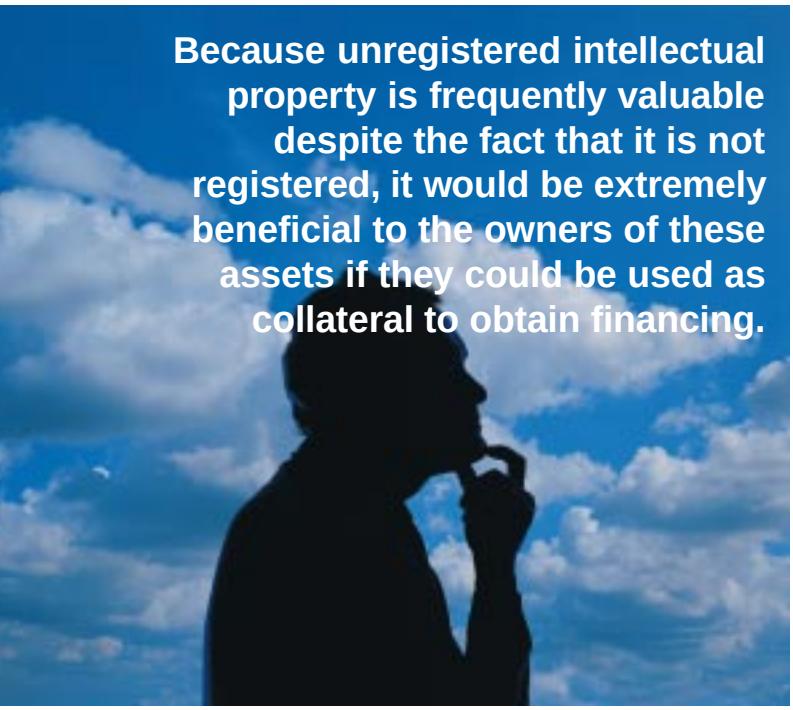
infringement proceedings involving the property. These side-effects can deter lenders from providing intellectual property financing.

Accordingly, CFA suggests that an Intellectual Property Convention should begin with the proposition that all contracting States should recognize the concept of a true security interest in intellectual property, so that borrowers would no longer be required to assign ownership of their intellectual property to lenders in order to realize the value of that property in financing transactions.[6]

2. Unregistered intellectual property.

Unlike most categories of commercial property, rights in intellectual property have traditionally been the subject of specialized registration offices within the jurisdiction where protection and enforcement rights are desired. Some of these offices are chartered to create and grant property rights, while others serve only as registries within which property owners give notice of their rights to the rest of the world. In either case, business persons, intellectual property owners and the legal community at large already have become accustomed to using these registration bodies as a source of information concerning intellectual property assets of companies and individuals.



However, a wide variety of intellectual property assets that constitute valuable commercial property are not registered by their owners with any registration office. Under most current legal regimes, it is not possible for lenders to obtain security interests in such unregistered intellectual property that are enforceable against third parties and, therefore, lenders are often unwilling to assign value to such property as collateral.

There are many valid reasons why intellectual property may remain unregistered. In the case of copyrights, some of the reasons are as follows:

- ➤ Software developers may be in the continual process of revising their products and developing new versions and sub-versions of valuable software, thus making registration impractical and costly.
- ➤ Some companies' inventory of consumer products is only made salable by the inclusion of product packaging and owner's manuals, even though many companies do not rigorously register labeling and manuals.
- ➤ Internal documents such as the memoranda, manuals, policies, and records that represent a company's institutional memory and may be essential to its value as a going concern are rarely registered even though they are protected by copyright.
- ➤ Blueprints and other technical drawings that keep factory floors operating are frequently overlooked as assets that might be the subject of copyright registration.

In recognition of this, States party to the Berne Convention for the Protection of Literary and Artistic Works agreed that copyright owners need not register their copyright assets in order to own and exploit them.[7]

With respect to patents, concern for the confidentiality of new inventions dictates that not all information regarding applications for patents be searchable by the general public. Moreover, many valuable inventions may simply never become the subject of a fully issued patent. For example, if an otherwise patentable invention is disclosed in a nonconfidential manner prior to the filing of a patent application, that disclosure may result in the failure of a patent application in most jurisdictions. However, the technology underlying that invention, which may well be considered to be "know-how," may still be extremely valuable to the owner.

Trade secrets such as customer lists, secret formulae and marketing plans may in some instances be the most valuable intangible assets that a company owns. However, because of obvious concerns for confidentiality, such assets are not typically registered with any government office.

With respect to trademarks, some jurisdictions recognize trademark rights from the moment a trademark is used by exposure to the consuming public, whether or not the mark is registered. Even in countries where registration (in contrast to use) is the benchmark of trademark ownership, "well-known" marks that are not registered may still receive some level of protection.

Because unregistered intellectual property is frequently valuable despite the fact that it is not registered, it would be extremely beneficial to the owners of these assets if they could be used as collateral to obtain financing. CFA

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suggests that an Intellectual Property Convention should address this issue by providing a way in which a lender may obtain a security interest in all of a borrower's intellectual property, whether or not the intellectual property is registered. CFA believes that the most effective way to achieve this result would be for an Intellectual Property Convention to provide that all intellectual property, whether or not registered, be recognized as a class of property in which a security interest may be granted.

3. After-acquired intellectual property.

Many companies are constantly engaged in the development of new technologies, brands and other intellectual property (referred to, for convenience, as "after-acquired" intellectual property). However, under the laws of most jurisdictions, a security interest affecting a given item of intellectual property must refer specifically to that item, referencing a unique registration or application number. This poses a serious problem for lenders engaged in intellectual property financing, because their collateral could diminish in value, or fail to include valuable intellectual property, unless the lenders continually update their security documents to cover each new item of intellectual property which the borrower develops, even though it may not be known for some time whether the new intellectual property will have commercial value (and therefore value as collateral). However, it often would be cost-prohibitive and administratively difficult for a lender to continually update its security documents with sufficient frequency to assure that, at any given time, its security interest extends to all of its borrower's intellectual property.

In response to this problem, the laws of some jurisdictions permit a lender to obtain, in the case of certain types of intellectual property, a security interest in a borrower's existing and after-acquired intellectual property, so that the security interest automatically extends to each new item of intellectual property developed by the borrower without the need for any additional documentation or action. These laws also permit a lender to obtain the requisite priority for such security interest simply by a filing in the public notice filing system stating that its security interest extends to after-acquired intellectual property.[8] CFA recommends the adoption of this approach in an Intellectual Property Convention.

4. Multiple jurisdictions.

Many companies engage in aggressive filing practices with respect to their intellectual property, especially for key intellectual properties. For example, if a trademark owner develops a new flagship brand, it may decide to file trademark applications, all covering the same mark, in many jurisdictions worldwide, including jurisdictions where the owner has no physical assets and jurisdictions where it has no current plans for wide distribution of its products. The same aggressive approach to worldwide filings is often taken with respect to key patents. If a lender is granted a security interest in such a borrower's intellectual property, the lender may feel obliged, under current practices, to file a notice of the security interest in each and every office in which the borrower has filed an application. These multiple filings can significantly drive up the costs of intellectual property financings.

CFA respectfully suggests that UNCITRAL consider an Intellectual Property Convention which would recognize that all intellectual property, no matter where or whether registered, be treated as an asset having, as its locus, the domicile of its owner. To obtain priority over other creditors of the borrower and insolvency administrators, the convention could require that the lender need only file a notice of its security interest in a single filing office located in the domicile of the borrower rather than in multiple intellectual property registries worldwide. In CFA's view, such a system would greatly facilitate a borrower's ability to

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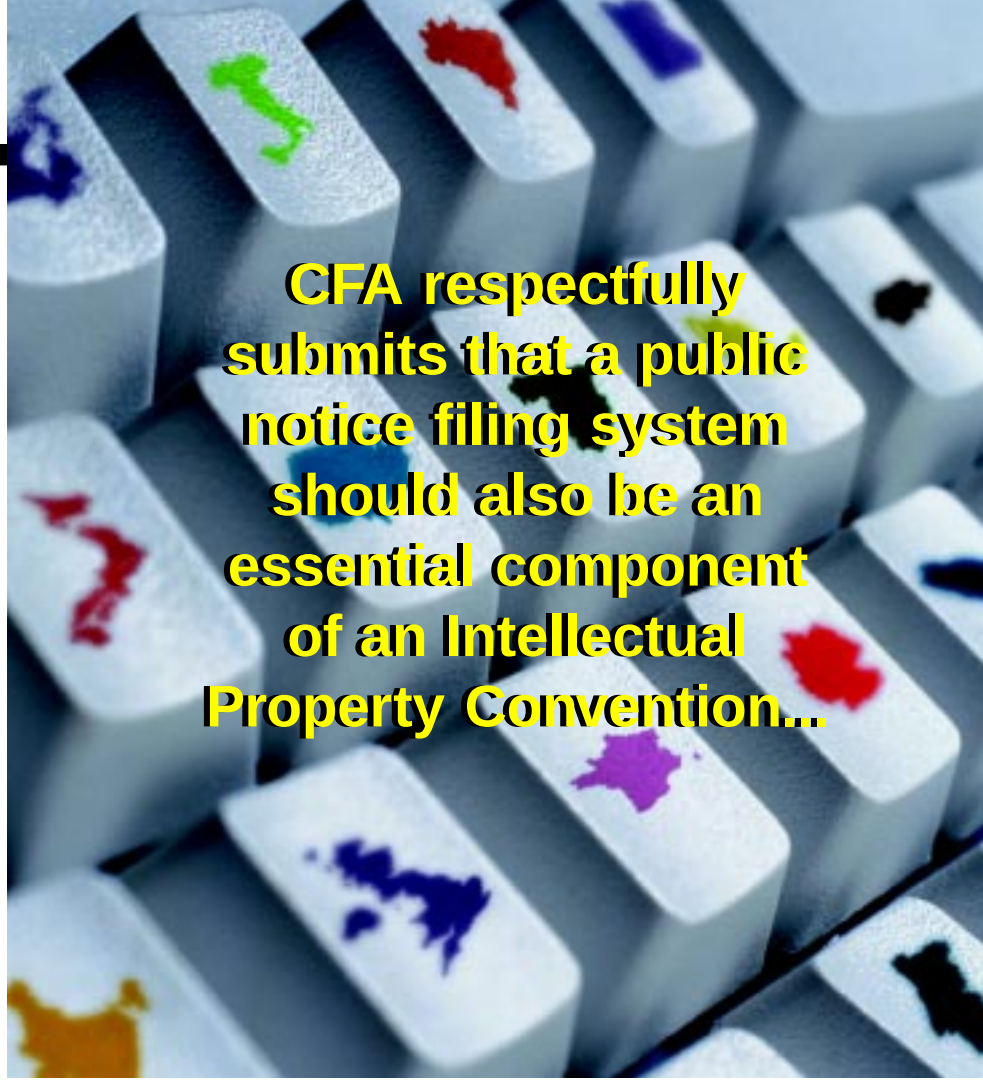
obtain financing based upon the value of its portfolio of international intellectual property. Moreover, CFA submits that the simplicity of the system and its certainty would outweigh any burden imposed upon potential buyers or competing creditors to search the borrower's domicile for potential security interests.

5. An effective public notice filing system. As a general matter, in order for a lender to achieve the requisite level of certainty to induce it to engage in secured financing, it is not sufficient that the lender be able merely to obtain a security interest in the collateral that is enforceable against the borrower as a matter of contract. The lender must also be able to determine that its security interest has priority over competing security interests, or at least that its security interest is subject only to other security interests that are quantifiable in an acceptable amount.

In some countries, the most important tool for making this analysis is the notice filing system, under which public notice of security interests must be given and priority is based, with some exceptions, on the earliest filing. CFA respectfully submits that a public notice filing system should also be an essential component of an Intellectual Property Convention, not only because of the attributes of fairness, efficiency and consistency that are inherent in a properly constructed notice filing system, but also because, as discussed in Section 2 above, much of the world has already become accustomed to using registration offices with respect to intellectual property.



A critical issue concerning the establishment of a notice filing system for security interests in intellectual property is whether to utilize the existing intellectual property registration systems in contracting States (with appropriate modifications to conform to the Intellectual Property Convention), or to establish a new notice filing system, either in each contracting State or in a central location for all contracting States. The use of existing registration offices may initially seem appealing. However, there may be difficulties with this approach. In order to enable these offices to address the issues of unregistered intellectual property and after-acquired intellectual property discussed above, the registration systems employed by these offices would have to undergo substantial modifications that may be difficult or impossible to achieve. For example, it may be that no amount of modification to existing patent registration systems could fully solve the problem of security interests in unpatentable inventions and general know-how. Also, most existing intellectual property registration offices are not set up to accept filings that cover after-acquired intellectual property. Moreover, it may be difficult to craft provisions that apply to the vast array of registration offices existing in States which become parties to an Intellectual Property Convention, each of which undoubtedly has its own unique characteristics.

A more effective approach may well be to consider creating a new notice filing system that would apply only to security interests in intellectual property, and not to other substantive matters such as the issuance of patents and registered trademarks. These matters would remain the province of the existing registration systems.

Whichever approach is used, CFA strongly believes that the establishment of an effective notice filing system as described above, coupled with the other proposals made by CFA in Sections 1 through 4 above, would significantly promote cross-border intellectual property financing. Under such a system, all intellectual property, whether registered or unregistered, and whether existing or after-acquired, would be recognized as a distinct class of property having, as its sole locus, the domicile of its owner. A borrower would be able to grant a true security interest in all or any portion of its intellectual property, and a lender would be able to obtain the requisite degree of priority for such

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security interest with a single filing in the domicile of the borrower. CFA respectfully submits that a convention incorporating these concepts would dramatically enhance the availability of low-cost intellectual property financing to borrowers located in contracting States.

B. Enforcing Security Interests Pertaining to Intellectual Property.

1. Appropriate non-judicial procedures for enforcing security interests.

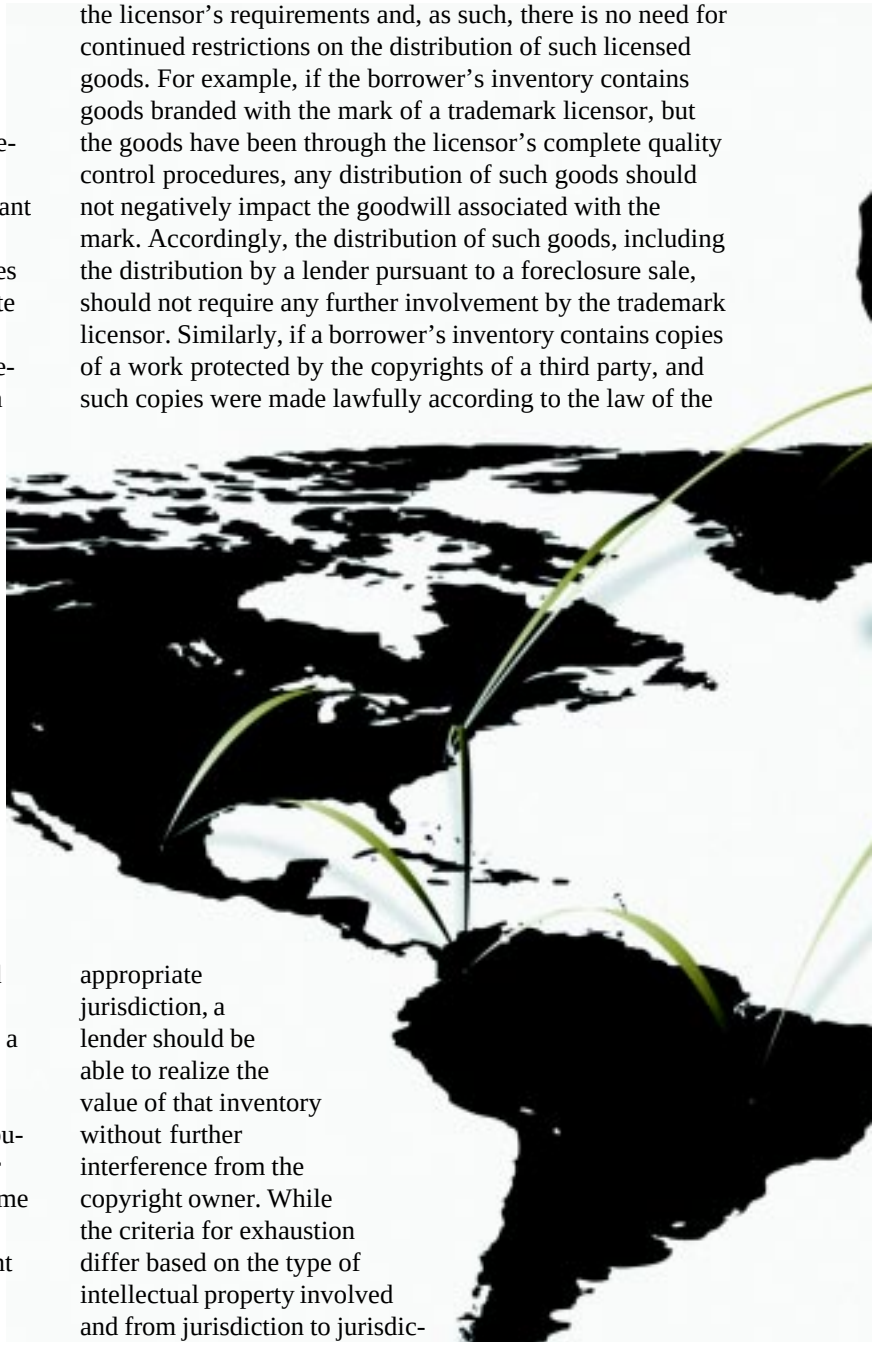
In order to be willing to provide intellectual property financing in a given country, lenders must be convinced that reliable and efficient procedures exist for enforcing their security interests. Although the laws of some countries provide for non-judicial procedures for enforcing such security interests, in many countries resort to a judicial proceeding is required, which often can be costly and time-consuming. In these countries, the establishment of non-judicial enforcement procedures would provide an important incentive to secured lenders. CFA recommends that an Intellectual Property Convention include self-help remedies such as the right to conduct a non-judicial public or private sale or other disposition of intellectual property with appropriate safeguards for the borrower, such as a requirement that the lender exercise all non-judicial remedies in a manner that is commercially reasonable.

2. Realizing upon licensed inventory.

Frequently, the collateral in a loan transaction includes inventory that has been manufactured under a license from the owner of intellectual property. For example, the borrower's inventory may be branded with the trademarks of a trademark licensor, may incorporate text and graphics protected by the copyright of a copyright licensor, or may have been manufactured under a license of a patented process. When a lender seeks to foreclose on such inventory, a high degree of uncertainty may arise as to when, or whether, the lender may enforce its security interests, or take possession of or dispose of that inventory, without the need of further permission from the third-party licensor. This uncertainty tends to be a major impediment to lenders extending financing based on the value of licensed inventory.

In many countries, these issues can be addressed by a legal concept known as the "exhaustion doctrine." Under this doctrine, at some point in an intellectual property licensee's product distribution chain, any exclusive distribution right granted under a trademark, copyright, patent or other intellectual property license is deemed to have become "exhausted" and, therefore, of no further legal effect with respect to the specific goods being distributed. Subsequent owners of any goods which incorporate that intellectual property (such as branded goods, or goods manufactured with a patented part) are able to redistribute such goods without further permission from the intellectual property licensor, assuming that all of the conditions for "exhaustion" have been met. In these situations, a lender would be able to realize upon its licensed inventory collateral, without any involvement of the licensor, so long as "exhaustion" has occurred.

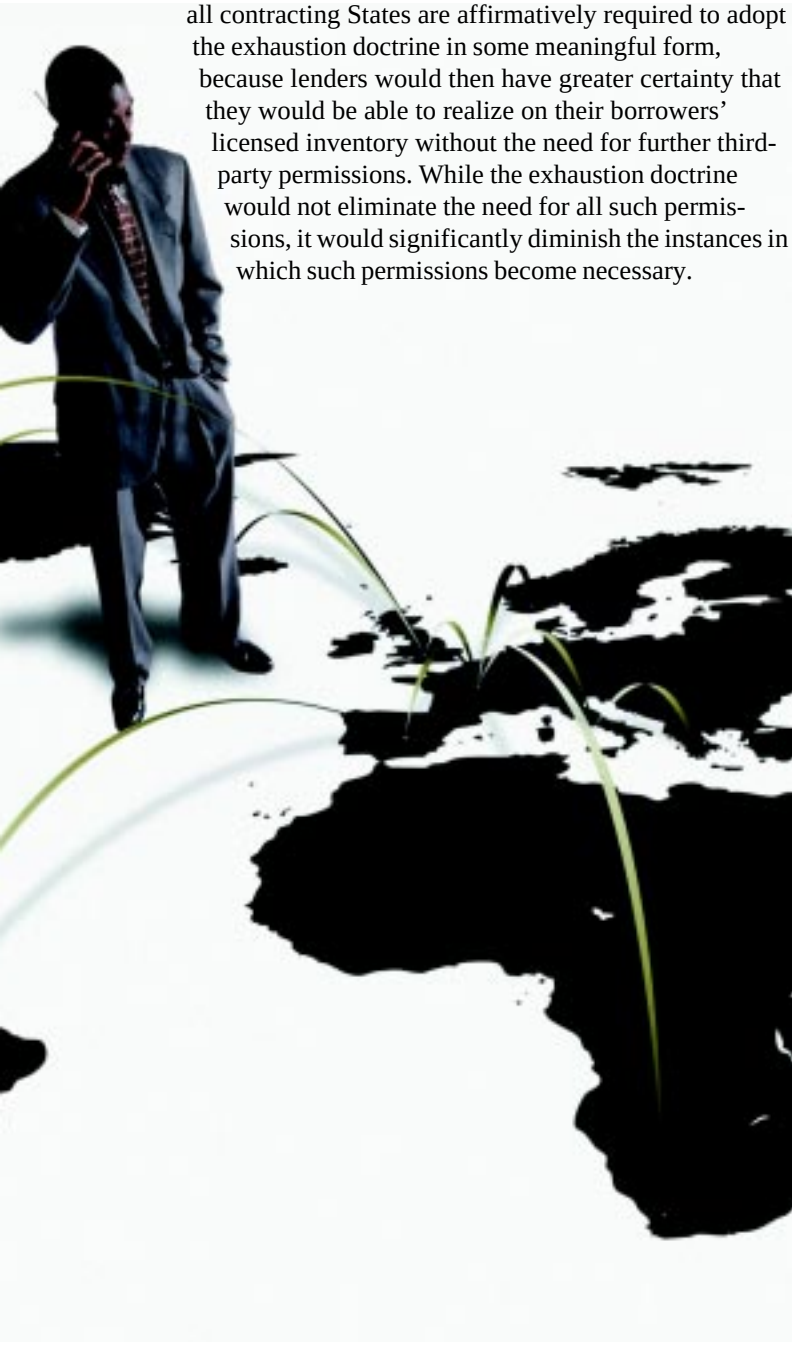
The basic premise of the exhaustion doctrine is that once intellectual property has been fully incorporated into goods in a manner that is consistent with the licensor's requirements, the intellectual property is deemed to be part of the goods. The licensor's interests are protected because the intellectual property has been processed according to the licensor's requirements and, as such, there is no need for continued restrictions on the distribution of such licensed goods. For example, if the borrower's inventory contains goods branded with the mark of a trademark licensor, but the goods have been through the licensor's complete quality control procedures, any distribution of such goods should not negatively impact the goodwill associated with the mark. Accordingly, the distribution of such goods, including the distribution by a lender pursuant to a foreclosure sale, should not require any further involvement by the trademark licensor. Similarly, if a borrower's inventory contains copies of a work protected by the copyrights of a third party, and such copies were made lawfully according to the law of the appropriate jurisdiction, a lender should be able to realize the value of that inventory without further interference from the copyright owner. While the criteria for exhaustion differ based on the type of intellectual property involved and from jurisdiction to jurisdic-



tion, the basic principle underlying all of these criteria is the same: To provide adequate protections to the licensor while at the same time promoting the free flow of commerce.[9]

CFA recognizes that in the above examples, the intellectual property licensor may be owed a royalty payment from its licensee. That claim for payment, however, should not prevent a lender from realizing on its valid security interest in inventory where the licensor's intellectual property rights have not been infringed and the concerns of the intellectual property protection laws have been "exhausted."

CFA suggests that lending on inventory that is affected by intellectual property rights would be promoted if all contracting States are affirmatively required to adopt the exhaustion doctrine in some meaningful form, because lenders would then have greater certainty that they would be able to realize on their borrowers' licensed inventory without the need for further third-party permissions. While the exhaustion doctrine would not eliminate the need for all such permissions, it would significantly diminish the instances in which such permissions become necessary.



IV. Conclusion

CFA believes that an Intellectual Property Convention, which effectively addresses the issues discussed above, would significantly promote the growth of low-cost intellectual property financing to companies domiciled in States which are parties to such convention, and respectfully urges UNCITRAL to undertake the study of such a convention. ▲

Endnotes

(1) This Memorandum is one of three separate papers being submitted by CFA concerning, respectively, (i) financing secured by intellectual property, (ii) financing secured by inventory and (iii) financing secured by investment securities.

(2) In this Memorandum, the term "borrower" is used to refer to the party granting a security interest in intellectual property, regardless of whether such party is the actual borrower under the financing arrangement or a guarantor or other party granting a security interest to secure a loan or extension of credit to the actual borrower.

(3) The term "intellectual property" includes, but is broader than, "industrial property," as that term is generally understood in many countries.

(4) Additionally, certain other important issues pertaining to enforcement of security interests, and non-discrimination against foreign lenders and other matters are discussed in the separate papers pertaining to inventory financing and investment securities financing that CFA has submitted to UNCITRAL concurrently with this Memorandum.

(5) The term "security interest" is used generally in this Memorandum to refer to a consensual security interest or charge granted by a borrower to a lender to secure a loan or other extension of credit. In some countries, the term is used interchangeably with the term "lien," while in other jurisdictions the two terms have different meanings.

(6) True security interests in intellectual property, as opposed to assignments, are familiar to the international legal community. For example, Article 4 of the World Intellectual Property Patent Law Treaty, adopted by the Diplomatic Conference on Patent Law on June 1, 2000, provides that nothing within the text of the treaty or its accompanying regulations "shall limit the freedom of a Contracting Party to take any action it deems necessary for the preservation of essential security interests."

(7) This issue has recently been the subject of attention in the United States, in part because of a series of court decisions to the effect that obtaining a security interest in unregistered copyrights that has priority against third parties is impossible. CFA has been active in working with U.S. legislators to modify existing U.S. law on this point. See House Judiciary Subcommittee on Courts and Intellectual Property Hearing, testimony of Charles Johnson, CFA, "Federal Intellectual Property Security Registration" June 24, 1999.

(8) CFA's proposal concerning the adoption of an effective public notice filing system for intellectual property is discussed in Section III.A.5 below.

(9) The exhaustion doctrine has generally been recognized by the international diplomatic community. Article 6 of the World Intellectual Property Organization Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, December 20, 1996, provides that "[n]othing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of [a copyright owner's distribution] right...applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author."