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ADVANCING THE BUSINESS OF INTELLECTUAL PROPERTY GLOBALLY

## Advancing The Business Of Intellectual Property Globally

By Fiona Nicolson,  
President, LES International



Dear All,

I hope that you enjoy this bumper edition of *LES Global News*, which includes our two special March features. First, our Gold Medal Winner Yvonne's Chua's reflections on her time as an LES member and leader, which makes fascinating reading. And, second, our new feature focusing on LES members from industry who—in their own words—share the reasons they are part of and contribute to LES around the world in so many ways. We are very grateful to all for their contributions.

As we all know, our LESI strap line is “Advancing the BUSINESS of Intellectual Property Globally,” and this year my focus as President has been to continue to encourage our industry committees and appeal to everyone whose day job involves the business of IP to join their local LES society, local industry committees—and of course our LESI industry committees. Our High Tech, Life Sciences and Chemical Committees each enjoy excellent leadership and are having a very busy year.

The latest news from the High Tech Committee is that under its auspices, an Automotive Industry Advisory Board has just been set up, thanks to the efforts of John Carney. The group is progressing well, with more than half of new board members confirmed, including representatives from Nissan, Avanci, Delphi and the

President, continued on Page 2

## LESI Golden Reflections

### The Business Of IP As A Career— An Interview With Yvonne Chua



Yvonne Chua,  
LESI President  
in 2014.

**Q: When and why did you get involved in the business of IP as a career?**

**A: Yvonne:** As a second-year law student at Hong Kong University (HKU), I chose IP as the optional course, which was introduced into the curriculum for the first time, and I became much attracted by IP's international embodiments of creativity as property. I envisioned IP's importance to businesses would grow tremendously in the future and was eager to play a role in such development. I thus boldly decided to specialize in IP for my legal career and joined Wilkinson & Grist, which was then one of the few law firms that had an established IP practice. My practice—encompassing protection, management, exploitation and enforcement of IP rights, not only in HK but also China, Asia and globally—has happily continued for 40 years and is still thriving.

**Q: What are your career highlights?**

**A: Yvonne:** Since being admitted as one of the youngest partners in the firm, I have focused on advancing my firm's IP practice, particularly in China. Excitingly, in 2004, the Chinese government approved our Beijing IP agency as the first wholly foreign-owned IP agency for doing direct filings in China. Through the years, with the opportunities of handling cases involving complex cross-jurisdictional issues, on joint efforts with colleagues, I was thrilled to have attained many notable—even unprecedented—successes that have heightened IP setting. Blessedly also, I have received continual international recognitions as a leading and influential IP expert.

Simultaneous with my practice, I am always keen to drive IP enhancement and also to be at the forefront of legislative changes. In addition to my advisory roles for, *inter alia*, the Hong Kong Trade Development Council and my service in the IP Committee of the Law Society of Hong Kong, I was privileged to have been appointed by the HK government to the Special Working Group on IP Trading to work on the important task of promoting HK as the IP trading hub.

My 40 years of passionate IP journey, including being entrusted to

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## Quick Links:

[www.lesi.org](http://www.lesi.org)

[www.lesi.org/les-nouvelles](http://www.lesi.org/les-nouvelles)

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[www.les-asiapacific.org](http://www.les-asiapacific.org)

## Call For Content

We request contributions from all societies and individuals about important events, changes in the law in your country or region, conferences, annual meetings, board changes, and the like from your society. You can submit articles or announcements to the editor or use the form on the website at the following address: [www.lesi.org/les-societies/les-global-news/submission-form](http://www.lesi.org/les-societies/les-global-news/submission-form).

Deadlines: January 15, April 15, July 15 and October 15

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**President**, continued from Page 1

Connected Vehicle Trade Association. As we know the automotive sector is a very dynamic sector at the moment, and we are delighted to announce this new group.

Work is also progressing well on our three “primers”—short guides for business people on licensing, IP Management and IP Valuation, which we are hoping to launch in Berlin.

Lastly, on this “business” topic as part of the discussion in Phoenix about our new strategic plan for LESI, there has been some useful input on what we need to do in order to be more attractive as an organisation to those involved in industry. A small task force has been set up and has been considering what steps we might take. Many thanks to Andre Gorius, Scott Johnstone, Natalie Raffoul and Sun-Pil Hwang for their input. Suggestions include changing the composition of our LESI board to include more corporate representation and creating and deploying IP Value training for business people in conjunction with our Education Committee. These ideas are currently being discussed by the LESI Board, so watch this space!

One other topic I wanted to mention is how well our new LESI Executive Director Dana Colarulli is settling into his new role, having started with us at the end of September. Dana is making a great contribution, and we are all benefiting from his substantial expertise, connections and experience in our IP world.

In addition to supporting our committees and national presidents, Dana is helping us to build relationships with other IP organisations, including the IPO, APAA and AIPLA.

I look forward to seeing many of you in Berlin! By the time this issue of *Global News* is available, we will be just two months from our LESI Annual Meeting in Berlin. Please register if you haven’t done so already. The very informative website can be found here [LESI2020.de](http://LESI2020.de).

Fiona



Fiona Nicolson visits the China National Intellectual Property Administration (CNIPA). From the left: Ms. HE Jiahui (Interpreter of Department of Commercialization and Promotion of IP of CNIPA), JIANG Haifei (Director Department of Commercialization and Promotion of IP of CNIPA), Chris Shaowei, Mr. Zhou Zhongqi (President of LES China), Zhao Meisheng (Deputy Director General of Department of Commercialization and Promotion of IP of CNIPA), Fiona Nicolson, Ningling Wang, Natalie Raffoul and Simon Chalkley. More on Pages 10-13.

## Golden Reflections, continued from Page 1

be the firm's senior partner and head of IP Practice, as well as President of LESI, has been most bountiful.

### **Q: When and how did you first get involved in LES?**

**A: Yvonne:** I had actively taken part in various international IP organisations since I qualified as a lawyer in 1980. But as I embarked on establishing LES China HK Sub-chapter in 2001, as encouraged by Heinz Goddar, and following my first LESI encounter at the 2002 conference in Osaka, I found my targeted organisation should be LES as it focused on global IP commercialization with participation of professionals from many diverse sectors. My passion for LES soon attracted me to serve in the leadership of LES China HK, LESI Committees and then on the LESI board.

### **Q: In what way do you think you have benefited most from being involved in LES over the years?**

**A: Yvonne:** My biggest benefit from LES involvement is “learning and enjoying” with my LES friends. Through the remarkable intellectual program of each LES conference and the work of the LESI Committees and national societies, we have together explored how businesses would move forward in the IP world and how innovation and technology would influence and lead the world's development. My dream of experiencing and contributing to IP advancement has beautifully come true through LES and more, with friendships being built with many LES members across multiple sectors.

For every key vision of mine, I have encountered wonderful LES members who shared the same vision and joined hands with me with enthusiasm. Being fascinated by the Pan European conferences that I had attended, I hoped to set up similar regional conference in the Asia Pacific. As the first venture, in 2006, being Chairman of LESCHK, I initiated the inaugural Joint Meeting of LES China, LES Chinese Taipei and LESCHK. Following other joint meetings between different societies in Asia, with the support and dedication of my LES friends at the Asia Pacific Committee—in particular Patricia Bunye, Junko Sugimura, Audrey Yap, and Ningling Wang—the LES AP regional meeting has become a regular forum since 2010, with each meeting at a different society gaining recognition. The 2013 meeting in Hangzhou, as perfectly organized by my mother society, LES China, was special. Last year LES India was awarded the “2019 LESI Most Promising Society” for organizing the successful 2018 AP Meeting in New Delhi and thereby doubling its membership.

Another dream of mine had been to gear our next generation towards innovation. I was impressed with the Student Business Plan Competition as held by LES Foundation

with LES US and Canada and LESI, but noted that always very few student teams were nominated from Asia, mainly due to language barrier. I thus worked on setting up a similar competition in our region. I then realized Ichiro Nakatomi had the same vision and spearheaded by him with the support of LES Japan, the first Asian Business Plan Competition was successfully held in 2012 at the Asia Pacific Regional Conference in Tokyo. Since then the Competition has been held at every AP regional meeting.

Further, I gained immense joy from being the mother of LES Thailand, which was formed in 2015, as the 33rd society of LESI, pursuant to my special project, started in 2012. I am grateful for unwavering support of Heinz, Patricia, LES Japan, and the LESI Membership Committee, and to Wilaiporn Chetanachan and her team, who dedicated over three years to accomplishing the wonderful work of bringing Thailand into the LES family.

### **Q: Do you have a “best” LES memory or favorite LES meeting you can share with us?**

**A: Yvonne:** The 2014 Moscow Conference is my best LES memory—a celebration of the fulfillment of my joining hands vision and mission as LES International president, and a historic event being the first large-scale international IP conference held in Russia. Particularly memorable was the extraordinary amount of effort that LES Russia expended in organising the conference, when there was serious concern two months prior to the conference date on whether the conference could proceed due to the political instability in the region. I was also touched by all the words and acts of assurance from many LES members and member societies of their unwavering support to the conference. Eventually an outstanding success was achieved amidst the challenges, with participation from top leaders in the global IP arena, outstanding presentations and social programs on all three days, and a music performance at the Final Gala Dinner by the then-Honorable Chief Judge Randall Rader of the U.S. Court of Appeals. As the old saying goes, “In difficult times, we witness true friendship.” It is the strong community amongst LES members that makes LES so special. Seeing the passionate sharing and the friendship building up all around the conference in the beautiful city of Moscow really warmed my heart.

Lastly and importantly, my deep gratitude to LES for having amazingly enriched my IP path in contributing to global IP commercialization. The LESI Gold Medal, as specially awarded to me, belongs to all who have joined hands with me in the LES family, which I will always cherish. ■

# What LES Means to Me— A View from our Global Industry Members

As we all know, our LESI strap line is “Advancing the BUSINESS of Intellectual Property Globally,” and this year the President has been continuing to encourage our industry committees and appeal to everyone whose day job involves the business of IP to join their local LES Society, local industry committees and of course, our LESI industry committees. The following are comments from industry members who have benefitted from their involvement in LES Societies and LESI.

## Bill Elkington—Collins Aerospace, LES (U.S.A. and Canada)

LES has been my professional home for close to 20 years. LES meetings, education, and task and affinity groups of various kinds provide me with professional knowledge and personal relationships that have been the wellspring of my professional life. When I have encountered questions and issues in my work that required an informed and well-reasoned response, my friends in LES have helped me arrive at good answers. Because of my involvement in LES, my credibility with my employer has benefited significantly. LES has within it a diversity of expertise one can find nowhere else, and I have been able to bring that diversity of knowledge and understanding to my work. I've built friendships in LES that have proved both durable and fun. And LES has provided me with another dimension of purpose in my life: by contributing to LES and the profession of intellectual capital management, I know that I am helping to build something meaningful and helpful for future members. In other words, it is an honor to serve, and professional service provides a pleasure unique and worthy in itself.



## Scott Johnstone—Benenox, LES Britain and Ireland

I've known about LES for a long time but I've only just been able to understand the full benefit available to companies. At Benenox we have reviewed and improved the way we handle our IP, and this has enabled us to have strong commercial claims in countries where we didn't think we could get any commercial claims. We also have a much better relationship with our new in-country patent council which works for us and the council. As well as stronger IP, we've also licensed out technology to a great partner, which has enabled us to get Benenox to market sooner and to expand into other territories. This has happened over a period of months and not the years it takes to do it on your own. Using LESI members to help us through the process helped speed up the deal. It would be great if we could meet more corporate members at meetings, and I hope the future direction of LESI will take this into account.



## Matteo Sabattini—Ericsson, LES (U.S.A. and Canada)

The licensing community plays a vital role in the innovation ecosystem by enhancing and facilitating the transfer of knowledge. Progress and welfare advance through the sharing of ideas and human interactions. LESI has been a beacon to catalyze those interactions among licensing professionals, while facilitating professional growth.



As a long-standing LES member, I greatly value the resources and expertise that are available through LESI. Beyond networking with my peers, LESI provides access to relevant information through publications, web resources, and access to taught leaders in my field and beyond.

The structure of LESI, with national societies and local chapters, leverages locality, cultural and geographical diversity, and personal connections. I am grateful for a local chapter—the DC chapter—which is one of the most active chapters globally, thanks to the wisdom and engagement of its leadership.

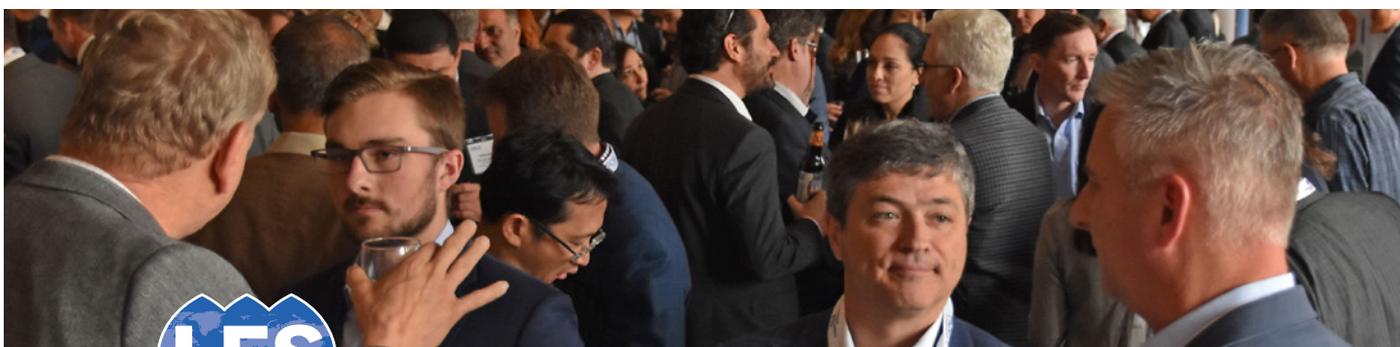
LESI has allowed me the opportunity to grow as a licensing IP professional and, lately, mentor and help grow other professionals. All members should take full advantage of the many resources and mentoring activities that LESI and its national societies offer, and LES should raise awareness of such opportunities across societies and geographical locations.

We live in exciting times of great technological advances that are changing society. Technology convergence across industries, in particular, is reshaping our world. Because of the diversity of backgrounds and industry representation, LESI is perfectly positioned to play a greater role among licensing professionals by recognizing the paradigm shift and the challenges that such convergence will bring to our profession.

## Hemang Shah—Qualcomm Inc., LES India

I have been an active member of LES India since 2016. LES India is a growing organization that is receiving excellent participation for our conferences and workshops. We have a very good sectoral representation from all professionals who work on Intellectual Property matters. The quality of discussions is also very high because everyone is there to share their insights. Our collective expertise has allowed us to expand connections with the growing startup ecosystem in India, R&D professionals, and academia. I cherish the collaboration with other international chapters and members of LES International at conferences and committees. It has been a wonderful experience to learn from so many of you and I look forward to an exciting future of LES.





## LES International Calendar

### Meetings & Events

#### 2020

March 19-20	<b>2020 LES Brazil &amp; Americas Committee— “Licensing For Success In Changing Global Market”</b>	Brazil
April 15-17	<b>2020 LES ANZ Annual Conference</b>	New Zealand
May 12	<b>2020 LES Leading Edge Series</b>	Atlanta
May 15-17	<b>2020 LES International Management &amp; Delegates’ Meeting (IMDM)</b>	Berlin
May 17-19	<b>2020 LES International Annual Conference</b>	Berlin
September 17	<b>LES France’s 50th Anniversary!</b>	Paris
September 22	<b>LES Scandinavia Annual Conference 2020</b>	Helsinki
October 18-21	<b>LES 2020 Annual Meeting</b>	Philadelphia

#### Global Industry Members, continued from Page 4

##### Sonja London—Nokia, LES Scandinavia

For me personally and as a starting point: LES provides access to in-depth knowledge and insight to full spectrum of IP-related matters and a great network of professionals. If I ever had a question or needed help anywhere in the world, I could find a contact I need from LES.



But there is more than that in LES. Over the years I have been serving LES as the board member for LES Scandinavia and as its President. On the international level, I have been serving on the High-Tech Committee. I feel that the more you give, the more you get from LES. I feel passionate about diversity and supporting women in this profession. Within LES International conference I found others who felt the same, and there we were—starting the Women in Licensing Alliance, with the support of LESI board, the President and the office staff. We promote women leadership and role models and women speakers in conferences and are now piloting a mentoring program. Great example for getting involved! LES is a fantastic organization empowering people to contribute and make a difference in their professional lives!

##### Hayley French—Apitope Intl., LES Britain and Ireland

LES membership has been and remains one of my best tools in facilitating business development, personal interactions and partnering. I’ve been a member of LES for over 25 years, and it has been invaluable in helping me to develop and forge strong valuable business relationships especially via the LESI directory, networking and education. In my early career I faced the daunting challenges of building a good business network to facilitate collaboration and licensing. The LESI membership directory enabled me to reach out directly to other members from a wide range of life sciences companies around the world, from small biotech to multi-national pharma, all connected by our commitment to explore licensing possibilities. LES made it easy to facilitate such introductions and interactions, as there was mutual recognition and credibility via our membership.



Many years of attending and networking at LESI meetings and local meetings has enabled me to build strong business relationships and be part of a network that facilitates business interaction, growth and deal making. Most importantly my LES membership and meetings attendance has been responsible for some long-lasting, valuable friendships. ■

# Initial Thoughts On A New Approach For FRAND Compliant Licensing Of SEPs: Learning From Copyright Collective Licensing

by Martin Schaefer and Christian Czychowski



Martin Schaefer



Christian Czychowski

## A. Background

Given the intensive discussion on what is FRAND in Patent Law, here are some initial thoughts from Copyright Law that might influence the discussion. We will provide a broader version of this article in a later edition. For the time being this article might provide some food for thought *e.g.* for the panel discussion at the Berlin LESI Conference (see [www.lesi2020.de](http://www.lesi2020.de)) on recent developments on licensing of SEPs.

1. To avoid any misunderstandings: there is no model from the copyright realm which would be directly comparable to FRAND-compliant licensing of standard-essential patents. However, constellations do exist on the copyright side for the uniform licensing of uses, namely where a number of rights have to be licensed under fair and reasonable conditions. In such circumstances, the key focus is on minimising transaction costs both in the acquisition of the rights and in the fair determination of the reasonable (overall) license. It is in this respect that there is potential benefit to be derived from the experience garnered in the copyright arena. This can be seen in the following two examples:

- Since the beginning of the 20th century, the German copyright collecting society, GEMA, has been licensing, on behalf of thousands of rightholders, music authors and music publishers, practically the entire global repertoire of protected music to users, such as phonogram producers or radio broadcasters, and more recently also streaming services and other platform operators.
- Collecting societies in other countries operate in a similar way. The Copyright Clearance Center (CCC) in the USA, for example, is a one stop shop designed for licensing millions of scientific articles and other publications to internationally operating companies for their internal commercial use. The CCC acts on the basis of a non-exclusive mandate. As such, the publishers remain entitled, alongside the collecting society, to conclude contracts themselves with users.

2. The licensing model involving an agency operating under a non-exclusive mandate and the procedure for determining tariffs are both designed with the minimisation of transaction costs in mind.

The approach proposed here differs from patent pools, predominantly in two respects: Patent pools generally manage the rights assigned to them on the basis of an exclusive mandate and do not incorporate the arbitration option through a public body as proposed here.

3. The approach proposed here introduces a third way, between the absolute enforcement of claims for injunctive relief (even in the case of infringements of a disproportionately "small" patent from the list of patents essential for a standard) and the case by case application of the principle of proportionality

## B. Concept

1. The valuation model set out in Sec. 23 German Patent Act (Declaration of willingness to allow anyone to use the invention in return for equitable remuneration) can be used as a suitable starting point for an effective mechanism of satisfying the FRAND objection.
2. The proposed approach is based on an independent, privately operated (albeit not necessarily for-profit) agency tasked, on the basis of a non-exclusive mandate and the granting of non-exclusive licences.
  - Per standard, firstly all possibly affected patents must be determined ("one stop shop"), irrespective of whether the patent holders participate in the agency model or not. On the basis of the patents which are together required for a standard, the agency would then set "tariffs, for each of the different types of use of the standard and the patents attached to it.
  - Ideally, such a system would be created from the outset with the aim of offering a solution that could be applied internationally.
  - The agency must provide a system for distributing the licensing income which (possibly on the basis of empirical data collection) takes into account the relative significance of the individually assigned patents, within the type of use in the standard.
3. Tariffs can also be negotiated with user organisations. The individual companies organised in such organisations benefit by means of rebates granted (as a reward for lowering the transaction costs for generating standard agreements). There are models for this from the area of copyright in this respect also. Of course, individual large users can negotiate directly with the agency.
4. The whole system will only work if it is supported in law. The most important aspect, naturally, is the "reward", in return for participating in the system, of having FRAND-compliance guaranteed, specifically including succession protection. Finally, a method would have to be found for certifying agencies eligible according to the standards described above. Requiring state authorisation and oversight would have to be considered. ■



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# LESANZ 2020

Reinvention: Fresh approaches and new beginnings  
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**Register today** for the LESANZ 2020 annual conference to be held in the recently restored Christchurch Town Hall. The venue sustained significant damage from the 2011 earthquakes and has recently reopened. The surrounding events and entertainment precinct has undergone three years of restoration work.

**The conference, inspired by the rebuilding of Christchurch after the devastating earthquake in 2011, has a theme of:**

**Reinvention** – how businesses are transforming what they do

**Fresh approaches** – new business models, relationships and new ways of doing things

**New beginnings** – impact of new technologies

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Contact: [admin@lesanz.org.au](mailto:admin@lesanz.org.au)  
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Advancing the Business of Intellectual Property Globally

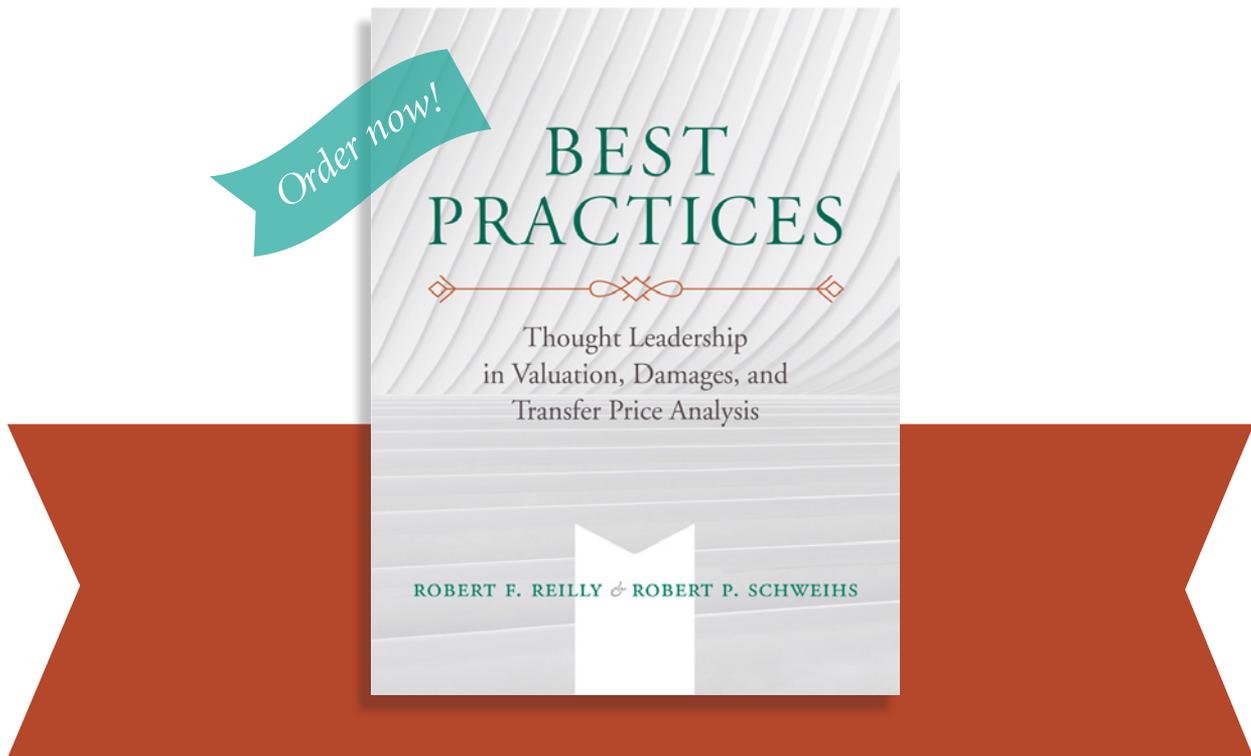
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March 2020



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