

Information Feudalism: Who Owns the Knowledge Economy?

by Peter Drahos with John Braithwaite

Earthscan, UK, 2002; New Press, New York, 2003, 253 pp.



We need more books like *Information Feudalism*. This important review of the history of intellectual property rights (IPRs) puts into perspective the pressure that we are all being subjected to by the push for stronger and stronger property rights over intangible assets. By “*information feudalism*” the authors refer to a project of visionaries that is currently being contested. This is a project to control the “*knowledge economy*”, which is organised into vast fiefs and held up by an unjust property system. While all of us are cast as serfs in this growing net of domination, the book’s message is that we can and must fight back.

The main thesis of the book is that IPRs facilitate cartelism² and cartelism is bad for society. Examples of what this cartelism amounts to – monopolies, higher prices, rigged trade rules – are plucked mainly from the chemical, pharmaceutical, seed, software and entertainment industries, with an emphasis on the first two. We read unsavoury accounts of how the industrial economy was built around guilds and power-sharing deals between major corporate players. We read stories of price-jacking schemes and product pipelines through tax havens to squeeze enormous profits from drugs. We are reminded of the sheer monopolies companies have been able to exercise on antibiotics, synthetic hormones, quinine – monopolies which the authors

blame for countless deaths – and, today, genetically modified seeds. The authors describe an ugly history of maximising profits at the expense of the public interest, and methodically twisting people’s minds in the process.

As Drahos and Braithwaite make clear, the hidden (or not so hidden) agenda of the IPR system is controlling markets and restraining competition. Experience bears this out: offer money to those who rely on the IPR system for their return on investment – for example, by subsidising inventors 100% or limiting IPRs to a mere financial payback – and they say no. It is not enough. IPRs are about more than money.

The pro-regulation and anti-competition agenda of the IPR system has now reached such heights that it is threatening basic freedoms (or civil liberties as they are called in some places), such as the right to enjoy, produce and reproduce creative works. This situation is particularly extreme in the information technology sector, with the expansion of the copyright regime through both law and technology: from internal locks (encryption) to prevent the viewing of DVDs from one country to another, to lawsuits against students for participating in peer-to-peer networks over the internet. At the rate we are going, it will soon be a crime to walk down the road singing John Lennon’s “*Imagine*” without a license from Capitol Records.

Money is only a surface issue. Deep down, the IPR-clad economy is about controlling people, controlling society. We are all competitors and criminals now. The competition lockout through IPRs used to be more restricted. The targets used to be farmers, for example, who were prime time competitors for the seed industry because thanks to Mother Nature they could replant patented seeds. Other targets were the entrepreneurial companies that could produce generic copies of branded drugs thanks to governments which were careful about using patent laws to public advantage. Now we are all *de facto* blacklisted, because we can read and write and think – and sing. And governments are more and more privy to the lockout process, to the extent that they are doing all they can to facilitate the enforcement of IPRs. IPRs are now even part of George W Bush’s “*war on terror*”. He’s got US Congress to agree that the lack of strong patent regimes in foreign countries is a subterfuge for criminal syndicates to launder ill-gotten funds (read: misappropriated royalties) to support ‘terrorist’ groups.¹

The TRIPS tale

While the cartel picture is well depicted, it is not at all new. What is more interesting in the book is the insider glimpse, based on interviews conducted by the authors in the mid-1990s. Here the authors show how the major players of the knowledge economy – the



Pfizers and IBMs, DuPonts and Intels – manipulated governments to impose their perverse property system on a planetary scale. For this story alone, the book is worth the read.

Drahos and Braithwaite give a detailed account of how essentially American corporations, led by Pfizer, chose to link IPRs to investment and trade policy as a means of securing their market lead in a globalising economy. They convinced the US government through one simple word: piracy. Overnight, somewhere in the early 1980s, piracy – a clever word to describe the lack of protection for US trademarks, copyrights and patents in foreign countries, especially the developing world – was made responsible for the loss of jobs, decline in competitiveness and the growing economic insecurity the US was facing. (This, as mentioned above, was later linked to national security at large.) With huge resources under their wings, they mobilised an intense campaign to convert the world into a captive market for their intellectual property claims. As the authors put it, *“Old protectionism was about keeping your rival’s goods out of your domestic market. New protectionism in the knowledge economy was about securing a monopoly privilege in an intangible asset and keeping your rival out of world markets. But that meant persuading your rival to play by rules recognising your ‘right’ to the asset.”* The persuasion game meant making strong IPR regimes a top objective of US foreign policy and trade negotiations. And it worked. Through a series of quick-handed moves, the US corporate giants got the US government, together with Europe and Japan, to slide the Trade Related Intellectual Property Rights Agreement (TRIPS) into the Uruguay Round of the General Agreement on Tariffs and Trade negotiations. They also got the US and Europe to implement a complex strategy of multilateral forum shifting, bilateral carrot-and-

stick treaty making, and unilateral trade retaliation to the same end.

The corporations’ single goal was worldwide subservience to their property regime governing the main assets of the new economy: intangible information. The long term objective, according to the book, is a set of multilateral rules casting this in stone. The bilateral game, which Drahos and Braithwaite rightly draw attention to, is one tool to reach that goal. In the wake of the collapse of the recent World Trade Organisation (WTO) Ministerial in Cancun, bilaterals are on everyone’s minds. The US is proffering new deals left and right, and working to conclude old ones, with the message, ‘You protect US corporate interests through IPRs or there is no welcome mat to peddle your wares to the American public.’ Enforcement of US IPRs has become central to bilateral trade and investment talks. It was the reason the US recently called off its talks with Taiwan and Pakistan, and it was the condition for launching negotiations with Thailand. These countries depend, to varying degrees, on selling to the US market. Favourable terms of access to that market through bilateral treaties mean a lot to them. But it is all contingent on paying up monopoly rents to the lords of the knowledge market: the mega-corporations financing the US electoral system.

Elephant and rabbit stew

While bilateralism is the name of the game for the moment, as governments try to figure what to do with WTO (including its stalled TRIPS Agreement), it is only part a multi-tiered strategy. Drahos and Braithwaite are smart to point out that over-reliance on bilateral deal-making can be dangerous. It is just not credible for a US president to decline a cosy trade partnership with a specific country because it won’t honour Mickey Mouse. *“Bilateralism is like cooking an elephant and rabbit stew,”* the authors write. *“However you mix the ingredients, it ends up tasting like elephant.”* Some people will tire of eating elephant and rebel.

What is most striking in this account are the contradictions and manipulations through which this game has been won. These contradictions underscore the fragility of this campaign. For example, according to the book, the US double crossed developing countries by convincing Korea, Singapore and Hong Kong to independently jack-up their IPR regimes on the grounds that India and Brazil are not interested in creating an investment climate. But then the US worked India hard, saying it had all to gain from a strong IPR system because of its powerful domestic software, drug and film industries. The point was to divide the South by playing individual



countries against each other. The same goes for patent offices, which the authors interviewed. These guys run the day-to-day IPR business in a setting that hinges on contradictions. To paraphrase Drahos and Braithewaite, when NGOs complain about the patent system commodifying nature, the patent offices retort that patents are not rights to commercialise anything, only to exclude people from doing something. But when others complain about the expansion of the IPR system, the patent offices say that patents are crucial for the commercialisation of new and useful technologies. Or when patent offices need to classify patented genes, the fact that they are 'engineered' and not natural (to enhance the perception that they are inventions, not discoveries) is the key issue. But whether it comes to disclosing (describing) gene inventions, as any patent must do, all of a sudden their 'living' nature becomes the key issue and full disclosure can be shortcut by depositing a sample. And then there are the contradictions that industry has had to rely on. Here, one quote about the corporate campaign to get IPRs into the multilateral trade system will suffice: *"It was important to define TRIPS as a matter of simple justice [stopping the pirates] because the fact is it is a matter of complex injustice [extracting profits from the poor to further enrich the rich]."*

This is elephant stew, with a lot of rabbits involved. The IPR system only works the way it does today because of the scale of the massive ideological war that has been waged against us for the past two decades.

Tearing down the castle walls

The authors give two recommendations to NGOs and people's movements. First they suggest we engage with government and industry to rewrite the rules of the IPR system. The reason they suggest this is sensible: because those rules were not democratically written. But whether social groups

will want to engage is not at all clear right now. Great disgust is expressed toward the tight web of control that has been set up so far: on farmers, on all of us who use computers, on indigenous peoples' rights, and so on. This atmosphere is not conducive to positive reform.

The authors also suggest that, come what may, there remains a real need to take the upper hand to manage the economy of what they call *"global public goods"*. This is an interesting idea, although the notion of global public goods is by no means clear or consensual. The argument is that despite the current set-up, there are whole sectors left out of the purview, or the complete control, of the feudal barons. Poor people's diseases, small farmers' seeds, traditional knowledge: these can be dealt with by volunteer efforts to do something about them. And those volunteer efforts could be more viable and have greater impact if they involved consortia of community organisations, donors, NGOs, scientists, etc. What they are saying is that the poor need reliable and quality food systems, research and support to meet health needs, and alternative media and communication systems – outside the walls of IPR monopoly controls – and that there is space for people to contribute to this as part of the fight against this feudal empire.

This is not a bad idea. But we still need to break down the walls of the information fiefdom, not just live part of our lives outside them.

Endnotes

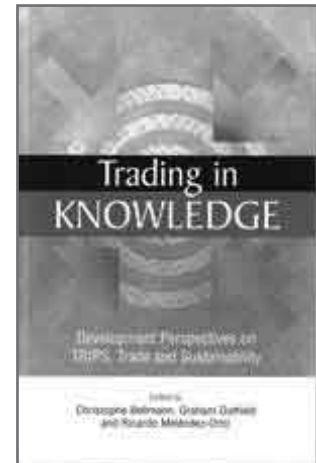
¹ The knowledge economy might be better referred to as an *"information economy"* given our lack of knowledge in many of its corners like genetic engineering.

² Cartelism is a centralised system of collective bargaining by a group of large corporations that effectively control marketing, prices and so on.

Price: £35 (hardback), £10.80 (paperback). See next column for ordering details.

Trading in Knowledge: Development Perspectives on TRIPS, Trade and Sustainability

Edited by Christophe Bellmann, Graham Duffield and Ricardo Meléndez-Ortiz, Earthscan 2003, 358 pages.



This book, edited by International Centre for Trade and Sustainable Development (ICTSD), pulls together the papers commissioned by ICTSD for a series of dialogues it sponsored in 2001-2002. The dialogues brought TRIPS negotiators from Geneva, Asia, Africa and Latin America to discuss key issues in the intellectual property debate with different *"stakeholders"* in the regions. The issues largely revolve around biodiversity, traditional knowledge, public health, international instruments outside the WTO and general directions of the patent system. The papers contained in the book are also available on the internet: www.ictsd.org/dlogue/index.htm

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