

All (Intellectual) Property is Theft?

Let me start off this conference with a provocative suggestion: “All property is theft.” No doubt, many of you in this room object to anarchist Proudhon’s proposition. However, the fact is that large numbers of people across Europe see ‘Property,’ and ‘Intellectual Property’ in particular, as a theft of their longstanding rights. I’m not just talking about downloading music. It’s a much broader issue. For example, they believe that all government-funded research and development paid for with public money is public property – they should not have to pay twice to use the products. They claim that all data produced out of public funds should be freely available to, and useable by the public.

That public is still living in a world long gone. They hark back to 1955. Then Jonas Salk chose NOT to patent his polio vaccine. He said it “would be like patenting the sun.” How the world has changed in fifty years, and many in the general public don’t like it!

Of course the public (and Proudhon) miss the point. Property is not ‘something owned,’ rather a government-sanctioned monopoly right, which is legally enforced through their courts. They can take back that right on a whim. Government can seize assets through the courts at any time, simply by passing laws reclaiming ownership. However, the government cannot behave arbitrarily, because excessive seizure will limit the willingness of individuals to present their assets as property, undermining the viability of the whole economic system – a harsh lesson eventually learned by every socialist state.

For property is used to induce debt in the population, and that debt is the basis of money. It’s a difficult balancing act. Grasp too much of the commons, and you undermine money itself. In countries with a governmental system of the people, by the people, for the people, no democracy can criminalize a large proportion of the population and stay legitimate, no matter what political pressure comes from outside its borders.

The tension won’t dissipate until some notion of fair play is brought to bear on the issue. And yet what we have instead in the current IPR system is complexity and uncertainty. This vastly increases the transaction costs for businesses: there are a dizzying multiplicity of rights and subject matter, none of which are self-evident, or make any intuitive sense; and it is not at all clear who has which rights to what works.

IP sadly lacks a registration system similar to that of land property. It is also not at all clear what the exceptions are, or when they apply, or what their scope and ambit is:

Am I allowed to use 30 seconds of a music track or a film? When is the part I am using 'substantial,' either qualitatively or quantitatively? Where do I go to pay? Why is there a one price fits all regime – just to convenience the owners? Why should I be blocked from non-commercial experimentation.

There is a total lack of flexible, customizable IPR solutions, and of products that suit the needs of the producers of derivative content: for example I, as a lecturer, wanted to use some audiovisual material for a presentation, but to do so I have to pay the same amount of money that a pub owner or a supermarket. Last August I wished to use three music clips totaling 44 seconds in a conference presentation in Las Vegas. It took me two months and three faxes to the American Society of Composers, Authors and Publishers (ASCAP) to get a response to my query; it arrived four days before the conference – did they think I'd been forced into a corner with no plan B? I was quoted \$500 – but I could have played two days of wall-to-wall music for the same fee! And this was in a conference that had already paid for the music playing between presentations; in a hotel that had a music license.

The organizers offered to pay, but my response was "Over my dead body." I gave the talk, without the music, and announced that because of ASCAP I wouldn't be playing forty seconds of Ella Fitzgerald. This was received spontaneously with a hall-full of boos and stamping.

Why should the IPR world care? Because there is a huge pot of money to be had at "the bottom of the pyramid," but only if the pricing regimes are designed to suit small-scale players – at the moment only the big boys can play. IPR is in effect the instrument of an oligarchy.

Access to IP is crucial for research and innovation, and if such access is impossible, then new markets will fail to be created, innovation and creativity will diminish, and business will go elsewhere. Like all forms of prohibition (because like it or not, that's what we have here) ... like all forms of prohibition, the result will be an exodus to alternative markets, boycotting, or far worse the involvement of organized criminal gangs.

There are some regions around the globe that do not fully respect what they see as



Western IPR regulations, rather Western intellectual imperialism, and they follow a more relaxed mode of enforcement. As a result these regions are more likely to innovate than Europe and the US. Unless there is a conscious and explicit policy encouraging the simplification of IPR regimes, and allowing the reuse and sharing of content, Europe will not be able to innovate at the pace that other regions currently do.

The objective should be a reduction of the friction caused by senseless regulations that are still fixated on moribund direct exchange business models. Instead, policy makers should focus on producing policies that allow new business models to be produced, based on open access and the sharing of digital content.

The LSE, and the Information Systems and Innovation Group in the Department of Management, is devoted to researching such new ways in which innovation and creativity may be cultivated and fostered. Hence we are pleased to host today's event, which is an opportunity to bring practitioners, academics and policy makers together in the same room where they can discuss potential solutions to these problems, to suggest best practices, and to highlight success stories. This event constitutes an opportunity not only to explore some of the current trends and policy recommendations, but also to create a more permanent forum for discussing these problems.

There is no single or obvious solution, at least not without cost to some of the stakeholders. Over the next two days we have gathered together top experts in the field, and I for one am looking forward to hearing from them. Enjoy the conference.

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For further clarification of the ideas see:

<http://www.springerlink.com/content/d311575j8102523g/fulltext.html>