

Freedom from IPR

Towards a convergence of movements?

GRAIN

There has never been a time of more centralised power and control. The free space in which we can create, co-operate, learn and share with other people is diminishing by the day as we lose our ability to think and live outside the reach of transnational corporations. They own the water, they control the media and they dominate our food supply. At the core of this control is the whole system of intellectual property rights (IPR) – copyrights, patents, trademarks, broadcasters rights and so on.

IPR are now the central source of profits in the so-called “knowledge economy”, making their expansion crucial for corporations investing in new technologies and new markets across the planet. But they are killing innovation, freedom and access to essential things like culture, health and education – *our* innovations, *our* freedom, *our* education. Farmers can’t save seeds. Sick

people can’t afford drugs. Computer programmers can’t modify software. Librarians won’t let you photocopy a magazine article. Students can’t afford textbooks. Why? Because of myriad IPR laws being strengthened every day to stop you from doing things with someone else’s “creative work”. Over the past decades, the drive to privatise and criminalise everything in the name of a few companies’ supposed genius has gone too far. The backlash is inevitable.

New social spaces

Where there is oppression there is always resistance. Today, people are using all kinds of creative means to organise and push back the IPR onslaught. The free software and open source movements are directly challenging Microsoft’s monopoly practices, dodgy products and sloppy standards through their own approaches to programme development and distribution. Music enthusiasts have set up peer-to-peer networks on the internet,



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like Napster and Kazaa, to share digital recordings. The creative commons community is promoting alternative forms of copyright to let authors put their works in the public domain and minimise restrictions on what readers can do. Librarians are campaigning hard to save "fair use" principles in the US and Europe, while AIDS activists

throughout the world are demanding that medicine serve the health of people, not the advertising budgets of mega-drug firms. Farmers are ripping up fields of genetically modified (GM) crops, hitting back at

Monsanto's efforts to patent, contaminate and take over the seed supply that farmers themselves developed over generations. And indigenous peoples continue to fight against the intensifying theft and destruction of their knowledge.

When you put all these pieces together, it's astounding to see how many people are saying "Enough!" to the excesses of IPR laws and the ever-encroaching practices of large companies to make us pay for essential things underpinning our health, work, food, education and leisure. And a lot of that effort is not just about saying no, but developing new and often community-based means to produce and disseminate books, music, films, software, agricultural innovations and the like. Until recently, however, many of these initiatives have been growing in isolation.

People from different sectors are now realising that the new social spaces they are creating have a lot

in common, and efforts are underway to bring the various struggles together. Some people are looking at applying "open source" models – where people are free to access, modify and disseminate a product, as long as they *keep* it free – to seeds, music and even wheelchairs. Free software works, and the community of users and developers is growing by the day, so why not free the seeds? One Linux enthusiast recently mused, "Will José Bové become the Richard Stallman of the peasant sector?"¹ Vice-versa, there's talk of applying the strategy of GM-free zones to software – imagine Microsoft-free offices everywhere!

In the past few years, the potential synergy in the battle against patents on seeds and drugs has grown clear, particularly around the Trade Related Intellectual Property Rights Agreement of the World Trade Organisation. Activists have forced the issue of access to essential medicines high on the agenda of anyone discussing patent law these days. So why not forge closer links with food and seeds, as well as with traditional medicine and traditional knowledge? Consumers movements are also starting to draw the links between these different elements. Many have been fighting drug patents for a while. But software patents and digital rights are a new problem, biopiracy is hitting the radar as a threat to food security and traditional knowledge is also coming into the picture. In September 2004, the Trans Atlantic Consumer Dialogue, which is coordinated by the NGO Consumers International, held a large two-day meeting in Geneva on all of these questions, focusing on the role of World Intellectual Property Organisation.

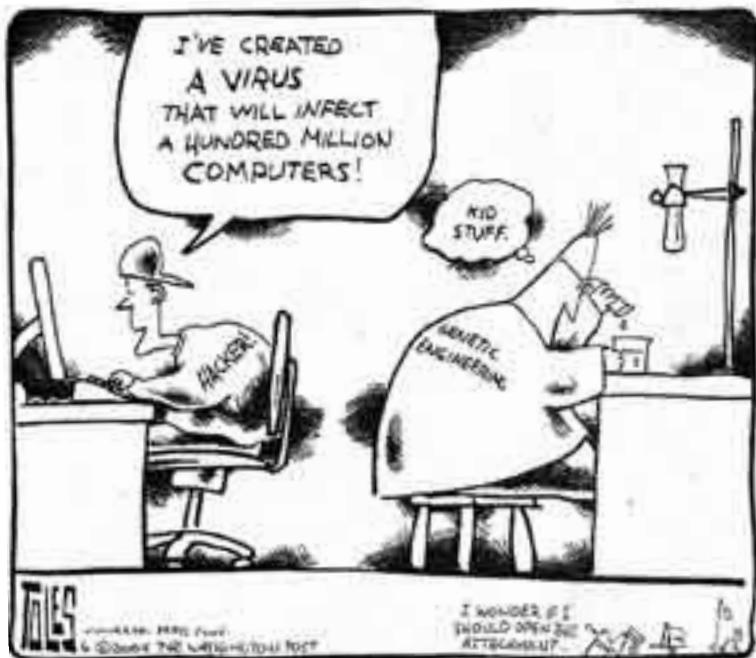
Finally, copyright activists and the digital rights community are also seeing connections between their arenas of struggle – both are concerned with promoting sharing and protecting the public domain – and what is happening with the patent clampdown on software, seeds and medicine.

All of these various movements are supported and sustained by grassroots activism in the broad but critical area of information technology, communications and media, where people are claiming and building the space, capacity and freedom to share information outside of the mainstream sources that are monopolised by a few multimedia giants. Community radio networks like AMARC and alternative media movements like Indymedia, for instance, are breaking important ground in this direction for the benefit of social movements across the planet. In the face of intellectual property rights, they

¹ Bové is a peasant leader with La Confédération Paysanne: www.confederationpaysanne.fr. Stallman is the founder of the free software movement: www.gnu.org.

² For a more detailed discussion on the commonalities and differences between public domain and the commons, see Brewster Kneen, "Redefining 'property': Private property, the commons and the public domain", *Seedling*, January 2004, p1. www.grain.org/seedling/?id=258

³ Martin Khor, "Hue and Cry Over Copyrights", *The Star Online*, September 27, 2004, <http://202.186.86.35/news/story.asp?file=/2004/9/27/focus/8986541>



are campaigning for “communication rights” as a human right threatened by corporate interests, privatisation and monopoly control through both technology and law.

These are all very encouraging signs that point to a possible convergence of movements. If activists, campaigners, and innovators working on free software, no-patents-on-life, access to generic drugs, traditional medicine, digital rights, peer-to-peer networking and “fair use” came together and formulated one common platform to rein in the IPR system, the effect could be explosive. For sure, the pieces would not fit perfectly together. There are differences driving these different sectors and their struggles that need to be properly understood and respected. But if these differences are handled well, a powerful mass movement could emerge.

Differences we may face

One warning flag might crop up around the notion of “public domain” or “commons”. Some people assume that both are inherently good. There is a tendency to use the terms interchangeably and see them as the answer to privatisation.² But many indigenous peoples have serious problems with these concepts for historical and ongoing reasons. And it’s not clear for many people what these concepts mean and who defines them. It’s one thing if putting a book in the public domain means anyone can use or print it. It’s quite another if putting seeds in the public domain means Monsanto can inject them with Terminator genes to destroy peasant agriculture.

Another warning flag might be on the issue of using licenses as a tool to protect cultures of sharing. Open source licensing tries to articulate permissions (what you can do), rather than prohibitions (what you can’t do). Still, some people might find it hard to see what licensing – whether a set of do’s or don’ts – has to do with freedom.

Others might ask whether it doesn’t actually reinforce the system that it is meant to challenge. For example, an open source type of license may be non-monopolistic but still express ownership, when ownership may not be the point for some people (e.g. small farmers), or it may be something that others really want to avoid (e.g. indigenous peoples). It can also be impractical. Imagine a typical farmer in Mali using a license to protect her seeds when bioprospectors come around!

In the same way, there are flags of caution already draping the word “open” as in open source, open education or even open agriculture. Openness

English Nursery Rhyme - circa 1764

They hang the man and flog the woman
That steal the goose from off the common,
But let the greater villain loose
That steals the common from the goose.

The law demands that we atone
When we take things we do not own,
But leaves the lords and ladies fine
Who take things that are yours and mine.

Jargon Buster

Copyright protects the concrete expression of an idea and not the idea itself. It protects musical, literary, scientific works, computer software, plays, lectures, etc. that are fixed in tangible or material form. It also gives protection to dance moves, riffs, html coding recorded in any given medium. Copyright has its origins in the late 16th century and gives authors rights over their creation for a limited period of time, after which the work becomes part of the public domain. Today, copyright functions mainly as a tool for securing the property interests of corporations. In the US the term for copyright has been extended on eleven occasions since 1960. Today the basic copyright term in Europe and the US is the life of the author plus 70 years, but – thanks to a 1998 extension – works belonging to corporations are protected for 95 years.

Copyleft describes the deliberate attempt to create the space for and the use of non-proprietary software through the sharing of software programmes and its codes, and the collaborative development of software. It recognises the centrality of prior ideas as the basis for all creativity. Copyleft gives users the freedom to redistribute software and alter/improve its codes as long as the freedom to copy and change is passed on to every user. The GNU Project is one of the better examples of the copyleft movement.

Fair Use is the right to use a copyrighted work for educational, academic, or research purposes. The Fair Use doctrine has come under serious threat in the USA as a result of the Digital Millennium Copyright Act (2000), which includes a swathe of restrictive clauses related to the use of copyrighted material with major consequences for public libraries, educational institutions and home use.

Open Source is an approach to developing collaborative, non-proprietary software based on the non-exclusive appropriation of source code.

Public Domain refers to the social and cultural space that is commonly shared by communities throughout the world, and the ideas, principles, artefacts and applications that belong to this space. Today, it also refers to virtual spaces and digital media environments where people freely create, appropriate, interact. The public domain used to be the space for non-copyrighted works like Shakespeare and the Koran, for those works that were no longer copyright and for traditional knowledge that was orally transmitted and not fixed in a tangible form. This space is rapidly shrinking today.

Source: Pradip Thomas, *Intellectual Property Rights (IPR) and Communication: A glossary of terms*, WACC, Jan 1, 2004. www.wacc.org.uk/modules.php?name=News&file=article&sid=808



provides access, but it doesn't necessarily provide power or choice or control. In short, open may not mean free. The question of property is also tricky. Most movements would probably all agree on the fight against monopolies, but what about property? Who will cling to it as necessary, who will give it up and who is not interested in it to begin with? And then there is the question of whether the IPR and non-IPR worlds can live together in the different sectors: whether free software or free seeds can co-exist with their patented versions. For

instance, IPR in crop development has brought us genetic erosion and genetic contamination, physically undermining the future for *any* kind of breeding, free or unfree. Yet we haven't lost words because of copyright. And neither the existence nor dominance of Microsoft's proprietary code is stopping Mozilla.

Towards a convergence of movements

These are just warning flags – differences to be aware of – not walls. They should not let us lose sight of the enormous potential of bringing the various movements together. Wherever and whenever possible, efforts in this direction should be supported. We need to reach out to each other, build bridges, discuss mutual commonalities and differences and build joint strategies. Too many basic acts of every day life – sharing and saving seeds, finding affordable health treatment and education, copying books, swapping CDs, watching television, improving computer programmes, etc are either becoming really expensive or outlawed and controlled by a smaller and smaller number of conglomerates trying to secure a captive world market.

The words common to our various struggles might be: community, sharing, freedom, collaboration, choice, diversity. Those are definitely not the words of the IPR emperors, the Microsofts, Monsantos and IBMs. And we may find that, if we build a strong enough movement to reject their monopoly claims across the board – whether patents on rice or trademarks on the colour purple – the emperors have no clothes. For their demands are only as good as we accept them. If we stand together, their chains of monopoly control would fall apart.

GRAIN is starting to look more closely at the potential for "convergence" between these different struggles against IPR. We aim to publish more analysis, viewpoints and strategy ideas about it in future issues of Seedling. If you have materials to contribute, proposals to share or want to get involved in any other way, please contact us.

Going further

Organisations

Creative Commons: www.creativecommons.org
Promoting alternatives to copyright

Electronic Frontiers Foundation: www.eff.org
Protecting people's digital rights.

Free Software Foundation: www.gnu.org
Home of the free software movement and the original General Public License ('copyleft')

Open Source Initiative: www.opensource.org
A centralised approach to defining and certifying 'open source'

Union for the Public Domain: www.public-domain.org
Protecting and enhancing the public domain in matters concerning intellectual property

Information Commons: www.info-commons.org/
Has excellent links on its Resources page

Readings, viewings and initiatives

Lawrence Lessig's blogs: www.lessig.org
Speaking up against copyright

Free culture: <http://randomfoo.net/freeculture>
Lessig's Flash presentation on the history and ills of modern copyright

Freeculture.org: www.freeculture.org
An international student movement to free culture

Wikipedia: www.wikipedia.org
An example of open source collaboration at work

Firefox: www.mozilla.org/products/firefox/
Mozilla's Firefox web browser is another example of open source collaboration at work

BioLinux: www.sarai.net/journal/02PDF/10infopol/09biolinux.pdf

Linux and seeds, geeks and farmers: a spiritual link: <http://www.a42.com/node/view/343>

Open source seeds? www.a42.com/node/view/308

Open source life: <http://mind-brain.com/forum/index.php?s=2e65f0f33e314ac32c2b34d9a180712b&showtopic=6351&st=0&#entry27591>

What is OSS? <http://advocacydev.blueoxen.net/cgi-bin/wiki.pl?WhatIsOSS>

