

IPR epicentres

A geography of intellectual property

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Where is intellectual property policy made? Governments make intellectual property law, but where does the policy thinking that lies behind the law come from? More than a decade ago I, along with my colleague John Braithwaite, set out to answer this question. At that time we were struck by the fact that during the late 1980s and into the 1990s governments all over the world were busily introducing or reforming their national systems of intellectual property protection. Countries such as Singapore and South Korea were passing laws on copyright and patents. This was even more puzzling because imitative production was important to these economies just as it had been a century earlier to European states and the US.¹

We approached our study using the methods of historians and anthropologists, reading documents and laws and interviewing and observing individuals who were key players in the domains we were trying to understand. In the case of intellectual property our fieldwork kept taking us back to the same four cities; Washington, New York, Brussels and Geneva. There were other places we went to such as Munich to speak to people in the

European Patent Office, Seattle to see Microsoft, London to see the International Federation of the Phonographic Industry and so on. But over time we realised that it was mainly in four cities that the tribe of intellectual property met and planned.

Other cities turned out to be places of non-planning. So in an interview in Seoul in 1994 I asked a senior official why Korea had agreed to Trade Related Intellectual Property Rights (TRIPS) being part of the World Trade Organisation (WTO). "Because we were ignorant" came back the reply. Two years later I visited New Delhi where I saw the same non-planning. There was a lot of fine speech-making from Indian parliamentarians about the inequity of TRIPS, the new imperialism of knowledge as well as complaints by the generic pharmaceutical industry about the impact of TRIPS on prices of medicines. But there were no real plans or strategies of resistance. In any case Indian political elites had quietly decided to hitch their cart to the glowing star of US hegemony. As part of the price they had to swallow its neo-liberal fundamentalism, which they did, telling themselves that it didn't taste so bad after all. Ghandi may have kicked out the British Raj, but the politicians of the 1990s led India back into the role of the servant who fades



¹"Imitative production" (ie copying) is a critical stage of industrial development that all industrial countries have been through in developing their inventive and creative capacities. Without the space for imitative production that the US and Europe enjoyed last century, their industrial bases would not have developed so rapidly and successfully.

into an unnoticed background. Today there are thousands of call centres in India politely attending to the faults and troubles to be found in the rich consumer markets of the North. The intellectual property rights that introduce what the economist calls “demand inelasticities” into markets, thereby helping to generate supra normal profits remain in the firm grip of US and European companies.

There are some obvious reasons why Washington, New York, Geneva and Brussels are the dream-time places for new ideas about intellectual property. Washington is the seat of US political power, Brussels is the home of Europe’s super bureaucracy, the European Commission, Geneva has organisational behemoths like the World Intellectual Property Organisation and the WTO, and New York has business organisations, company headquarters and

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Wall Street where rock stars can turn the intellectual property in their music into a tradeable security. But more important are the networks thick with lobbyists, the company men and the expert consultants that

snake their way through the corridors of power. These networks hum with ideas about the future of intellectual property protection for multinationals. Big ideas, like linking intellectual property protection to the trade regime, get put down on paper by technical experts and sent to committees on which big business sits. Those committees send out recommendations, which are more like marching orders, to government. The private hands of command turn the wheels of executive power to their purpose. Trade laws get amended to make them a weapon of economic war in the fight to control a resource even more important than oil – knowledge.

Teams of lobbyists go to work on Congressional representatives. Access is easy because generous campaign contributions have bought the lobbyists and company men meeting time. Congressmen want to be responsive to inventing new intellectual property laws for the US and rest of the world. After all, there will be new elections to contest. Congress passes more and more intellectual property law. An American public, perpetually distracted by a media that sates it with images but no news, hardly notices. Copying is criminalised, copyright terms extended to make the rich even richer and patent laws strengthened. When American citizens ask questions about patents and the price of medicines they get told that soon the rest of the world will also be paying these high prices so the system will be once again be equitable.

Intellectual property laws, with their epicenter in Washington, New York, Brussels and Geneva, travel like invisible tsunamis to developing countries. There they turn the national innovation systems of those countries into so much debris. New laws to serve old masters have to be quickly enacted. There is also loss of life. The patent provisions of free trade agreements complicate access to life-saving medicines. The pharmaceutical company men on the ground in these countries hiss about what will happen to foreign investment if developing countries do not follow the new order of intellectual property. Threats are not always needed. Rewards, including travel to the cities of the epicenter are offered to developing country officials if they toe the line on US intellectual property ideology. Minor acts of betrayal by locals iterated many times over produce in developing countries a culture of compliance with the new order. Some officials even deceive themselves into believing that this new enslavement serves the national interest.

Life for poor people in the cities of non-planning remains the same. They continue to suffer ill health and lack of treatment. Western patent systems have never serviced their needs and never will. For all the prattle that comes out of the West about patent reform the truth is simple. Knowledge capitalism cares more about its mode of production and monopoly profits than it does about producing low cost medicines for the poor in developing countries. Their informal economies are swept away as their cities rezone and rebuild to become protected sites of production for investors rich in intellectual property. City planners pave the way with factories and malls that will deliver the brands for which consumers with bulging wallets and bulging waistlines will pay a premium.

The poor end up being pushed closer to another edge. But then they do what they have always done. They innovate. Whether it is in the form of music that has emerged from the ghettos and slavery of the centuries or in the diverse seeds of life that indigenous farmers have bequeathed us from living in the harshest climates, they innovate. They do so without intellectual property protection, for intellectual property exists to protect what rich imitators have stolen from those innovators that work on the periphery of survival and creativity.

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