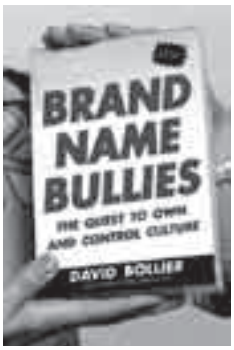

Brand Name Bullies

by David Bollier

John Wiley and Sons, New Jersey, 2005

Arts Under Pressure

by Joost Smiers

Hivos, The Hague, and Zed Books, London, 2003

In *Brand Name Bullies*, David Bollier writes, consciously or not, as an 'American' for an 'American' audience. The consistent use of the term 'America' rather than the term 'United States' reveals an insensitivity not only to the millions of Americans who live in other nation-states of the Americas but also to an assumption of an 'American' monoculture within the USA. Joost Smiers, on the other hand, has written *Arts Under Pressure* from a cosmopolitan Dutch perspective with the diversity of world cultures as the context for his discussion. He describes, for example, the appropriation of art and music from Africa by US media conglomerates, its transformation into "world music" and corporate art, and its marketing in its countries of origin by western transnationals. The analogy with seeds, medicinals, DNA and corporations such as Merck and Monsanto is obvious.

Both Bollier and Smiers write about the excessive applications of copyright and trademark law, primarily in the USA, but Bollier presents his book as a collection of entertaining stories about these excesses of ownership claims to elicit from the reader a "You gotta be kidding!" response. This might be a good starting point for a critique of copyright itself, as well as the insidious corrosion of the public domain, but unfortunately Bollier starts with the customary genuflection to the copyright god itself. He says, "The point is not that copyright and trademark law needs to be overthrown. It is that the original goals need to be restored." It is all downhill from there, given that Bollier's focus on the excesses of what are now called 'content providers'[1] is a diversion from the structural issues of corporate control and the political-philosophical issue of the 'American' fetish of private property. Without questioning ownership and property, there is little ground left to stand on to curb the excesses of the system.

Smiers describes Bollier's culture this way: "In the Western world the dominant belief has been that individual freedom is the only real form of freedom, and everybody must accept this. The fact that there can be, and are, more worthwhile forms of freedom [such as cultural freedom] seems scarcely to exist in the Western mind." Contrary to Bollier, Smiers concludes that "The copyright system . . . is beyond reform. It is too much corrupted by monopolistic industrial interests. So let's abolish it. Or, perhaps, it's truer to say that a spontaneous meltdown of copyright is taking place."

A careful reading of the copyright page in each book speaks much about these differences in perspective. Not long ago, the copyright page contained a single line notifying the public as to whether it is the author or the publisher that owns the copyright on the book. Now the 'user' finds, in Brand Name Bullies as in almost every other book, a full page of claims and disclaimers. First the 'user' of the book is advised at length and in great detail as to what he or she cannot do, "except as permitted under Section 107 or 108 of the 1976 United States Copyright Act," which readers must look up for themselves. Then there is a paragraph headed "Limit of Liability/disclaimer of Warranty" that says that the publisher and the author "disclaim any implied warranties of merchantability or fitness [of the contents of this book] for a particular purpose" and that "neither the publisher nor the author shall be liable [God forbid] for any loss of profit or any other commercial damages..."

The copyright page of Smiers' book, on the other hand, simply says "Copyright (©) Joost Smiers . . . The rights of Joost Smiers to be identified as the author of this work has been asserted by him in accordance with the Copyright, Designs and Patents Act, 1988. Nevertheless, the author discusses in this book the untenability of the present copyright system."

While Smiers and Bollier cover much the same ground, Bollier seems to hold the law (copyright and trademark) responsible for the corporate stranglehold on public culture in the US and seeks to curb these excesses through legal reform. Smiers, on the other hand, puts responsibility on the logic of capitalism and the greed of the corporations. The law is simply upholding, or giving legal license to, what the culture appears willing to purchase.

In reading either book, it is clear that the common ground shared by plant patents, industrial patents, and trademark and copyright law, is the control of 'information' by its self-proclaimed 'creators' and 'owners.' In all cases, the information can be controlled only by increasingly harsh legal measures

[1] The media conglommerates that promote and present the content provided to them by their suppliers (artists, writers and musicians)

enacted by the very state they are fond of describing as an obstacle to progress.

Through technological measures referred to as "digital rights management" (DRM) the media conglommerates seek to own and control not only the means of production and distribution, but the means of reproduction as well. The US Digital Millennium Copyright Act of 1998 provides copyright owners with the legal means to control all downstream uses of their product after its purchase, through such technological means as DRM. The seed industry analogy to DRM is Terminator Technology: biological interventions that put control over seed reproduction into the hands of their corporate owners.

While Bollier criticises the DMCA, he still holds that "Copyright and trademark law is an important tool in incubating new creativity and building a culture. By giving creators a property right in their works, the law stimulates the development of all sorts of new works." Bollier simply ignores the fact that people have been creating since forever and that copyright and trademark law are very recent 'inventions' of a specific and limited (despite its universalist presumptions) culture. Nor does he express any real interest in exploring more just and effective ways of remunerating artists and cultural workers: "The point is not to reject some cherished principles of copyright (such as payment for artists) but to reconceptualise how traditional principles may be better fulfilled..." It may be that Bollier's primary insistence on the necessity and legitimacy of copyrights and trademarks, combined with his liberal commitment to 'balance' between public and private interests, limits both his criticism and his creativity. All he advocates is that, "We must strike a new balance of private and public interests that takes account of the special dynamics of the Internet and digital technology."

Smiers forsakes both the liberal balancing act and copyright and trademark law and calls for new approaches to the question of how cultural workers – artists, musicians, seed keepers and writers – are to be compensated for their contribution to the public good, if society values their contributions. He finds no place the 'star' system wherein corporations decide who will be the next star that they will lavishly promote, sell, pay and profit handsomely by, whether that be a singer or author – or an 'improved' plant variety.

Reviewed by Brewster Kneen.