

PROMETHEUS

**INFORMATION FEUDALISM:
WHO OWNS THE KNOWLEDGE ECONOMY?
A BOOK REVIEW**

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Information Feudalism: Who Owns The Knowledge Economy?

Peter Drahos with John Braithwaite

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Back in 1995, Peter Drahos wrote a futuristic article called 'Information Feudalism in the Information Society'.¹ It took the form of an imagined history of the information society in the year 2015. Drahos provided a pessimistic vision of a future, in which the information age was ruled by the private owners of intellectual property. He ended with the bleak, Hobbesian image:

It is unimaginable that the information society of the 21st century could be like this. And yet if abstract objects fall out of the intellectual commons and are enclosed by private owners, private, arbitrary, unchecked global power will become a part of life in the information society. A world in which seed rights, algorithms, DNA, and chemical formulas are owned by a few, a world in which information flows can be coordinated by information-media barons, might indeed be information feudalism.²

This science fiction assumed that a small number of states would dominate the emerging international regulatory order set up under the World Trade Organization.

In *Information Feudalism: Who Owns The Knowledge Economy?*, Peter Drahos and his collaborator John Braithwaite reprise and expand upon the themes first developed in that article in 'The Information Society'. The authors contend:

Information feudalism is a regime of property rights that is not economically-efficient, and does not get the balance right between rewarding innovation and diffusing it. Like feudalism, it rewards guilds instead of inventive individual citizens. It makes democratic citizens trespassers on knowledge that should be the common heritage of humankind, their educational birthright. Ironically, information feudalism, by dismantling the publicness of knowledge, will eventually rob the knowledge economy of much of its productivity.³

Drahos and Braithwaite emphasize that the title 'Information Feudalism' is not intended to be taken at face value by literal-minded readers, and crudely equated with medieval feudalism. The title is intended to serve as a suggestive metaphor. It

¹ P. Drahos, 'Information Feudalism In The Information Society', 11, 1995, pp. 209-222.

² Peter Drahos and John Braithwaite, *Information Feudalism: Who Owns The Knowledge Economy*, Earthscan Publications, London, 2002, p. 222.

designates the transfer of knowledge from the intellectual commons to private corporation under the regime of intellectual property.

In this engaging and accessible book, Drahos and Braithwaite trace the deal-making at the General Agreement on Tariffs and Trade (GATT) that led to intellectual property becoming a part of the World Trade Organization. The authors seek to solve a fundamental conundrum about the development of the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs Agreement):

One of the puzzles this book sets out to solve is why states should give up sovereignty over something as fundamental as the property laws that determine the ownership of information and the technologies that so profoundly affect the basic rights of their citizens. The puzzle deepens when it is realized that in immediate trade terms the globalization of intellectual property really only benefitted the US and to a lesser extent the European Community.⁴

A number of explanations are advanced to solve this mysterious turn of events. Chapter 6 charts how the United States used Special 301 actions to discipline recalcitrant states into complying with intellectual property standards. Such threats were an important impetus for countries to enter into bilateral and multilateral agreements. Chapter 7 charts the disillusionment of the private sector in the United States became disillusioned with the World Intellectual Property Organisation as a forum for standard-setting in the field of intellectual property. Drahos and Braithwaite paraphrase this dissatisfaction amongst companies based in the United States: 'The endless dialogue at WIPO would never produce the rules needed for a new knowledge game'.⁵ Chapter 8 focuses upon the effort of the United States and the European Union to include a comprehensive code on intellectual property in the GATT round. Chapter 9 focuses upon the translation of the deals of the TRIPS negotiations into the form of treaty language. The authors note: 'The basic rule for negotiators was to find very clear language to describe the deals favourable to them, while striving to set in ambiguous language those deals in which they had made concessions'.⁶

The book is based upon interviews that Drahos and Braithwaite conducted with five hundred key informants as part of their epic project, *Global Business*

³ Id, p. 219.

⁴ Id, p. 11.

⁵ Id, p. 65.

⁶ Id, p. 139.

Regulation.⁷ The authors observe: 'Our purpose in conducting so many interviews has been to reveal what the formal language of international intellectual property agreements does not: the informal dynamic of power that determines the choice of words, their meaning and subsequent utilization'.⁸ The majority of the informants remain anonymous. The book is filled with the susurrus of the murmuring voices who provide insider's insights into the deliberations behind the formation of international treaties. However, a few dominant personalities stand out in the book.

A small number of visionaries and entrepreneurs were responsible for the development of the TRIPs agreement. The chairman of pharmaceutical drugs company, Pfizer, Edmund Pratt, was a central figure in the globalization of intellectual property rights.⁹ He provided the impetus to draw together trade, investment, and intellectual property. The eminence griese, Jack Valenti of the Motion Picture Association, was a public propagandist for the cause of copyright owners. His theatrical performances served to galvanise Congress into linking intellectual property to the trade regime. The sweet-talking Chairman of the TRIPs Group, Lars Ansell, played an important role as a broker and a go-between in negotiations between developed countries and developing countries.¹⁰ His diplomacy was instrumental in the development of TRIPs agreement.

Drahos and Braithwaite provide a number of corporate case studies to illustrate the thesis of the book. Chapter 3 holds up DuPont as an exemplar of corporate research and development. The company integrated scientific labour into processes of industrial production and market competition. It was successively involved in the production of nylon, plutonium, and transgenics. Chapter 4 provides a brilliant portrait of the pharmaceutical drugs company, Pfizer. It suggests that the manufacturer was prompted to become a champion of intellectual property and trade in response to declining markets in developing countries. Chapter 10 suggests that chemical and pharmaceutical cartels were instrumental in pushing for the patenting of biotechnology. Drahos and Braithwaite observe: 'Obtaining patents in new technological processes was a basic strategy of insurance even if the product pipeline

⁷ John Braithwaite and Peter Drahos, *Global Business Regulation*, Cambridge University Press, Cambridge, 2000.

⁸ Peter Drahos and John Braithwaite, *Information Feudalism: Who Owns The Knowledge Economy*, Earthscan Publications, London, 2002, ix.

⁹ Id, pp. 68-69.

¹⁰ Id, pp. 139-140.

coming from these new processes was uncertain'.¹¹ Chapter 11 considers the history of IBM and its change of tack in relation to intellectual property. After initially making its source code available to computer programmers, IBM became a strong advocate of copyright protection for computer software, and subsequently focused upon patents in relation to computer programs and business methods.

In this account, the authors are sometimes a little too fond of neologisms. 'Biogopolies' appears to be an awkward way of labelling private patent monopolies in the field of biotechnology in Chapter Ten. Similarly, 'infogopolies' seems to be an ungainly phrase to describe the behaviour of information technology companies, such as IBM and Microsoft in Chapter Eleven.

Drahos and Braithwaite are particularly interested in the operation of the patent office - what Albert Einstein, a one-time Swiss Patent Examiner, once called a 'secular cloister'. The historical discussion of German chemical patents is instructive.¹² The patent attorneys drafted the specifications as broadly as possible so as to achieve the maximum coverage of chemical science, but also sought to minimise the disclosure of the invention. Indeed, many of the specifications were designed to mislead inquiring minds as to the manner in which certain products were manufactured - sometimes to the extent of being dangerous to unwary scientists.

In contemporary times, patent offices have become increasingly dependent upon funding their operations from patent fees collected from applicants. As a result, they have undergone a cultural change, in which they have become beholden to multinational companies.¹³ The development of the TRIPs agreement has put pressure on developing countries to set up intellectual property offices. For instance, South Korea has set up the 'Korean Patent and Anti-Piracy Office' to placate the demands of the United States.¹⁴ The authors conclude that a number of measures are necessary to prevent the capture of patent offices and courts by multinational corporations.¹⁵ They advise that non-governmental organisations should demand effective application of the tests of patentability in the public interest, and insist on denial of patents to companies which do not adequately document the know-how

¹¹ Id, p. 165.

¹² Id, p. 54-56.

¹³ Id, p. 161.

¹⁴ Id, p. 20.

¹⁵ Id, p. 205.

needed to work the invention. Furthermore, there is a need for human rights and competition rules to be taken seriously by patent administrations.

Drahos and Braithwaite also stress the importance of copyright law during the negotiations of the TRIPs agreement. They play upon the irony that the United States of all countries should push for multilateral agreements, after a long history of hostility towards the Berne Convention. The authors observe that the coalition of United States corporate interests was put under great stress by conflicting interests:

A key question was whether the US domestic coalition would hold together. Hollywood, as we saw earlier, under no circumstances wanted TRIPs to strengthen the moral rights of authors, something that the Berne Convention did do. At the same time, the US computing industry did not want the standards in the Berne Convention to be globalized. The copyright industries and semiconductor chip industry were worried that a new multilateral dispute resolution process might neuter the 301 process that had brought the US such bilateral success.¹⁶

Hollywood successfully opposed the introduction of moral rights and performer's rights under the TRIPs agreement, and the Silicon Valley has been consoled that the Special 301 Process has been used with a vengeance even after the advent of the TRIPs agreement. However, the TRIPs agreement has rebounded back upon the United States in some respects. In an action brought by the European Union, a dispute resolution panel of the World Trade Organization has found that the United States was in contravention of the TRIPs accord in relation to exemptions for the public performance of music under the *Fairness In Music Licensing Act* 1998 (US).

There is surprisingly little in the book about trade mark law and other distinctive signs, probably as a result of space considerations. Drahos and Braithwaite seize upon the debate over geographical indications during the TRIPs agreement. However, the authors only briefly touch upon the link between trade marks, and globalisation. In an unexpected bestseller, *No Logo: Taking Aim at the Brand Bullies*, Canadian journalist Naomi Klein considers the treatment of well-known brands and trade marks - such as Nike, MacDonalds, and Starbucks.¹⁷ She considers resistance to brands through rogue websites, culture-jamming, and the 'No Logo' movement. Ironically, this book was published by multinational publisher Harper

¹⁶ Id, p. 132.

¹⁷ Naomi Klein, *No Logo: Taking Aim At The Brand Bullies*, Harper Collins, London, 2000.

Collins. In response, *The Economist* magazine carried a series of articles on branding under the banner *Pro Logo* and the tag line 'Why brands are good for you'.¹⁸ The *Economist* complained:

Brands have thus become stalking horses for international capitalism. Outside the United States, they are now symbols of America's corporate power, since most of the world's best known brands are American. Around them accrete all the worries about environmental damage, human-rights abuses and sweated labour that anti-globalists like to put on their placards. No wonder brands seem bad.¹⁹

The Economist defends trade marks in terms of their original objectives, as badges of origin: 'Brands are derided by opponents of capitalism. Naomi Klein in her best-selling *No Logo* argued that they oppress, exploit and homogenise. The idea is utterly wrong-headed. Brands do not rule consumers; consumers rule brands'.²⁰

The debate over the TRIPs agreement has been revisited in the fierce argument over patent law and access to essential medicines. A number of pharmaceutical drugs companies challenged the validity of the legislation passed by the South African Government to permit compulsory licensing and parallel importation of essential medicines. However, they were forced to back down in the face of international attention led by non-government organisations such as the Treatment Access Campaign, Oxfam, and Medecins Sans Frontieres. At a recent talk, the self-styled public intellectual John Ralston Saul summed up the controversy in a cursory form:

And the, finally, intellectual property - I can do this in about three minutes... But look at the pharmaceutical companies. It was said you couldn't do anything about the price of medication - AIDS medication, for example. Nothing. And yet a little group of citizens - not even the government, of South Africa started a campaign and in a short time became so powerful that the government of South Africa joined in with them and within a short period of time the cartel of pharmaceutical companies said: 'We give in, but it 's not a precedent.' Two weeks later, or something, Brazil introduced a law which said: 'If you charge us more than we want to pay, we're going to make them our way - cheap.' And they gave in. A couple of weeks later, France introduced somewhat the same legislation. These are paper tigers. They 're

¹⁸ Editorial, 'The Case For Brands', *The Economist*, 360, 8238, 8 September 2001, p. 9

¹⁹ Ibid.

²⁰ Id, p. 3.

very, very fragile - as soon as citizens stand up. And for a very simple reason and that is they, unlike you, live from consumption.²¹

The story of the Treatment Access Campaign, though, cannot be told in such a summary form. No doubt there is a sequel to *Information Feudalism* waiting to be written about the politics of the battle between the South African Government and the pharmaceutical drugs companies, and the Doha Declaration on TRIPs and Public Health at the WTO Ministerial Council in November 2001.

²¹ J.R. Saul, 'Showcase Lecture For The National Institute for the Humanities', Manning Clarke Lecture Theatre, The Australian National University, Wednesday 29 May 2002.