

The Revolt of the Poor: The Demise of Intellectual Property?

By Sam Vaknin, Ph.D.

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Three years ago I published a book of short stories in Israel. The publishing house belongs to Israel's leading (and exceedingly wealthy) newspaper. I signed a contract which stated that I am entitled to receive 8% of the income from the sales of the book after commissions payable to distributors, shops, etc. A few months later (1997), I won the coveted Prize of the Ministry of Education (for short prose). The prize money (a few thousand DMs) was snatched by the publishing house on the legal grounds that all the money generated by the book belongs to them because they own the copyright.

In the mythology generated by capitalism to pacify the masses, the myth of intellectual property stands out. It goes like this : if the rights to intellectual property were not defined and enforced, commercial entrepreneurs would not have taken on the risks associated with publishing books, recording records, and preparing multimedia products. As a result, creative people will have suffered because they will have found no way to make their works accessible to the public. Ultimately, it is the public which pays the price of piracy, goes the refrain.

But this is factually untrue. In the USA there is a very limited group of authors who actually live by their pen. Only select musicians eke out a living from their noisy vocation (most of them rock stars who own their labels - George Michael had to fight Sony to do just that) and very few actors come close to deriving subsistence level income from their profession. All these can no longer be thought of as mostly creative people. Forced to defend their intellectual property rights and the interests of Big Money, Madonna, Michael Jackson, Schwarzenegger and Grisham are businessmen at least as much as they are artists.

Economically and rationally, we should expect that the costlier a work of art is to produce and the narrower its market - the more emphasized its intellectual property rights.

Consider a publishing house.

A book which costs 50,000 DM to produce with a potential audience of 1000 purchasers (certain academic texts are like this) - would have to be priced at a minimum of 100 DM to recoup only the direct costs. If illegally copied (thereby shrinking the potential market as some people will prefer to buy the cheaper illegal copies) - its price would have to go up prohibitively to recoup costs, thus driving out potential buyers. The story is

different if a book costs 10,000 DM to produce and is priced at 20 DM a copy with a potential readership of 1,000,000 readers. Piracy (illegal copying) should in this case be more readily tolerated as a marginal phenomenon.

This is the theory. But the facts are tellingly different. The less the cost of production (brought down by digital technologies) - the fiercer the battle against piracy. The bigger the market - the more pressure is applied to clamp down on samizdat entrepreneurs.

Governments, from China to Macedonia, are introducing intellectual property laws (under pressure from rich world countries) and enforcing them belatedly. But where one factory is closed on shore (as has been the case in mainland China) - two sprout off shore (as is the case in Hong Kong and in Bulgaria).

But this defies logic : the market today is global, the costs of production are lower (with the exception of the music and film industries), the marketing channels more numerous (half of the income of movie studios emanates from video cassette sales), the speedy recouping of the investment virtually guaranteed. Moreover, piracy thrives in very poor markets in which the population would anyhow not have paid the legal price. The illegal product is inferior to the legal copy (it comes with no literature, warranties or support). So why should the big manufacturers, publishing houses, record companies, software companies and fashion houses worry?

The answer lurks in history. Intellectual property is a relatively new notion. In the near past, no one considered knowledge or the fruits of creativity (art, design) as 'patentable', or as someone's 'property'. The artist was but a mere channel through which divine grace flowed. Texts, discoveries, inventions, works of art and music, designs - all belonged to the community and could be replicated freely. True, the chosen ones, the conduits, were honoured but were rarely financially rewarded. They were commissioned to produce their works of art and were salaried, in most cases. Only with the advent of the Industrial Revolution were the embryonic precursors of intellectual property introduced but they were still limited to industrial designs and processes, mainly as embedded in machinery. The patent was born. The more massive the market, the more sophisticated the sales and marketing techniques, the bigger the financial stakes - the larger loomed the issue of intellectual property. It spread from machinery to designs, processes, books, newspapers, any printed matter, works of art and music, films (which, at their beginning were not considered art), software, software embedded in hardware, processes, business methods, and even unto genetic material.

Intellectual property rights - despite their noble title - are less about the intellect and more about property. This is Big Money : the markets in intellectual property outweigh the total industrial production in the world. The aim is to secure a monopoly on a specific work. This is an especially grave matter in academic publishing where small- circulation magazines do not allow their content to be quoted or published even for non-commercial purposes. The monopolists of knowledge and intellectual products cannot allow competition anywhere in the world - because theirs is a world market. A pirate in Skopje is in direct competition with Bill Gates. When he sells a pirated Microsoft product - he is depriving Microsoft not only of its income, but of a client (=future income), of its monopolistic status (cheap copies can be smuggled into other markets), and of its competition-detering image (a major monopoly preserving asset). This is a threat which

Microsoft cannot tolerate. Hence its efforts to eradicate piracy - successful in China and an utter failure in legally-relaxed Russia.

But what Microsoft fails to understand is that the problem lies with its pricing policy - not with the pirates. When faced with a global marketplace, a company can adopt one of two policies: either to adjust the price of its products to a world average of purchasing power - or to use discretionary differential pricing (as pharmaceutical companies were forced to do in Brazil and South Africa). A Macedonian with an average monthly income of 160 USD clearly cannot afford to buy the Encyclopaedia Encarta Deluxe. In America, 50 USD is the income generated in 4 hours of an average job. In Macedonian terms, therefore, the Encarta is 20 times more expensive. Either the price should be lowered in the Macedonian market - or an average world price should be fixed which will reflect an average global purchasing power.

Something must be done about it not only from the economic point of view. Intellectual products are very price sensitive and highly elastic. Lower prices will be more than compensated for by a much higher sales volume. There is no other way to explain the pirate industries : evidently, at the right price a lot of people are willing to buy these products. High prices are an implicit trade-off favouring small, elite, select, rich world clientele. This raises a moral issue : are the children of Macedonia less worthy of education and access to the latest in human knowledge and creation ?

Two developments threaten the future of intellectual property rights. One is the Internet. Academics, fed up with the monopolistic practices of professional publications - already publish on the web in big numbers. I published a few book on the Internet and they can be freely downloaded by anyone who has a computer or a modem. The full text of electronic magazines, trade journals, billboards, professional publications, and thousands of books is available online. Hackers even made sites available from which it is possible to download whole software and multimedia products. It is very easy and cheap to publish on the Internet, the barriers to entry are virtually nil. Web pages are hosted free of charge, and authoring and publishing software tools are incorporated in most word processors and browser applications. As the Internet acquires more impressive sound and video capabilities it will proceed to threaten the monopoly of the record companies, the movie studios and so on.

The second development is also technological. The oft-vindicated Moore's law predicts the doubling of computer memory capacity every 18 months. But memory is only one aspect of computing power. Another is the rapid simultaneous advance on all technological fronts. Miniaturization and concurrent empowerment by software tools have made it possible for individuals to emulate much larger scale organizations successfully. A single person, sitting at home with 5000 USD worth of equipment can fully compete with the best products of the best printing houses anywhere. CD-ROMs can be written on, stamped and copied in house. A complete music studio with the latest in digital technology has been condensed to the dimensions of a single chip. This will lead to personal publishing, personal music recording, and the to the digitization of plastic art. But this is only one side of the story.

The relative advantage of the intellectual property corporation does not consist exclusively in its technological prowess. Rather it lies in its vast pool of capital, its

marketing clout, market positioning, sales organization, and distribution network.

Nowadays, anyone can print a visually impressive book, using the above-mentioned cheap equipment. But in an age of information glut, it is the marketing, the media campaign, the distribution, and the sales that determine the economic outcome.

This advantage, however, is also being eroded.

First, there is a psychological shift, a reaction to the commercialization of intellect and spirit. Creative people are repelled by what they regard as an oligarchic establishment of institutionalized, lowest common denominator art and they are fighting back.

Secondly, the Internet is a huge (200 million people), truly cosmopolitan market, with its own marketing channels freely available to all. Even by default, with a minimum investment, the likelihood of being seen by surprisingly large numbers of consumers is high.

I published one book the traditional way - and another on the Internet. In 50 months, I have received 6500 written responses regarding my electronic book. Well over 500,000 people read it (my Link Exchange meter registered c. 2,000,000 impressions since November 1998). It is a textbook (in psychopathology) - and 500,000 readers is a lot for this kind of publication. I am so satisfied that I am not sure that I will ever consider a traditional publisher again. Indeed, my last book was published in the very same way.

The demise of intellectual property has lately become abundantly clear. The old intellectual property industries are fighting tooth and nail to preserve their monopolies (patents, trademarks, copyright) and their cost advantages in manufacturing and marketing.

But they are faced with three inexorable processes which are likely to render their efforts vain:

The Newspaper Packaging

Print newspapers offer package deals of cheap content subsidized by advertising. In other words, the advertisers pay for content formation and generation and the reader has no choice but be exposed to commercial messages as he or she studies the content.

This model - adopted earlier by radio and television - rules the internet now and will rule the wireless internet in the future. Content will be made available free of all pecuniary charges. The consumer will pay by providing his personal data (demographic data, consumption patterns and preferences and so on) and by being exposed to advertising. Subscription based models are bound to fail.

Thus, content creators will benefit only by sharing in the advertising cake. They will find it increasingly difficult to implement the old models of royalties paid for access or of ownership of intellectual property.

Disintermediation

A lot of ink has been spilt regarding this important trend. The removal of layers of brokering and intermediation - mainly on the manufacturing and marketing levels - is a historic development (though the continuation of a long term trend).

Consider music for instance. Streaming audio on the internet or downloadable MP3 files will render the CD obsolete. The internet also provides a venue for the marketing of niche products and reduces the barriers to entry previously imposed by the need to engage in costly marketing ("branding") campaigns and manufacturing activities.

This trend is also likely to restore the balance between artist and the commercial exploiters of his product. The very definition of "artist" will expand to include all creative people. One will seek to distinguish oneself, to "brand" oneself and to auction off one's services, ideas, products, designs, experience, etc. This is a return to pre-industrial times when artisans ruled the economic scene. Work stability will vanish and work mobility will increase in a landscape of shifting allegiances, head hunting, remote collaboration and similar labour market trends.

Market Fragmentation

In a fragmented market with a myriad of mutually exclusive market niches, consumer preferences and marketing and sales channels - economies of scale in manufacturing and distribution are meaningless. Narrowcasting replaces broadcasting, mass customization replaces mass production, a network of shifting affiliations replaces the rigid owned-branch system. The decentralized, intrapreneurship-based corporation is a late response to these trends. The mega-corporation of the future is more likely to act as a collective of start-ups than as a homogeneous, uniform (and, to conspiracy theorists, sinister) juggernaut it once was.

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Intellectual Property Law

By Joe Regan

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Intellectual Property Law can be quite confusing at times. Copyrights, trademarks and patents all have a role in protecting your hard earned content and knowing their role is half the battle.

Intellectual property in itself refers to the creations of the mind, including such things as: artistic works, literary works, inventions, names, images, symbols, and designs used in commerce. In other words, the intellect that is the possession of an organization or an individual is considered intellectual property.

Intellectual property is divided into two categories, copyrights and industrial property.

Copyrights give the authors of an exclusive work, exclusive rights to that work for a limited amount of time. Copyrights cover such literary and artistic works as novels, poems, plays, films, songs and other musical works, artistic works (drawings, paintings, sculptures and photographs) and architectural designs. Copyrights, which must be renewed periodically, allow the creators of a piece of work, the opportunity to benefit from that piece of work.

Industrial property includes patents, trademarks, industrial designs and geographic indications of source.

Patents give the inventors of a new product, a certain (limited) amount of time in which he/she may prevent others from making, selling or using the invention without authorization.

A trademark is an intellectual property protection which is used to protect the distinctive features that distinguish one product from another. Those features can include such things as: symbols, colors, brands, names, sounds, smells, shapes, and signs.

Fortunately, Intellectual property laws benefit the creator of a property, by rewarding that creator for his/her innovation and creativity. Also, society as a whole benefits from intellectual property laws, by the fact, that these laws encourage creativity, therefore allowing the rest of us to benefit from the wide range of products and services that are produced.

Any violation of a trademark, patent or copyright could constitute the grounds for an intellectual property lawsuit. If you feel that you have been victimized it would be wise to consult a qualified attorney in your area. Find an attorney or law firm, which specializes in intellectual property law. Know your rights and protect them accordingly.

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