

# Why should intellectual property rights matter to civil society? CRIS Campaign

## Issue Paper 2

Inventions of the mind ? ideas ? are very special. All culture and society is built upon innumerable layers of accumulated past knowledge and ideas. In the arts, medicine, education, agriculture, and industry ? in almost all areas of human endeavour ? knowledge and ideas lie at the base of the flowering of human life and its passions.

Intellectual property rights (IPRs) emerged in the industrialised world as a means to mediate and control the circulation of knowledge, as a means of balancing the conflicting rights of different groups involved in the generation and use of ideas of economic value. IPRs are premised on concerns that the creators or authors of ideas have an economic right to a fair return for their effort and a moral right to not have their ideas misrepresented.

However, ideas are not simply the product of individuals and corporations. For the most part they incorporate and build upon the traditions, collected wisdom, and understanding of social groups and societies. Sometimes they build upon natural creatures and processes that have taken millions of years to evolve. Generally, at least in part, research is financed or subsidized by public funds and tax dollars, and public institutions are deployed to develop and maintain their social and economic viability. Consequently, society in general has a social right to use ideas to the benefit of the public good ? especially if they are key to social and physical well being.

IPRs attempt to balance these rights: the moral, the economic and the social.

### Trends in regulation

In information and communication industries copyright is the most important form of IPR. However, with the continuing rise of the Information Society and the development of information commodities, patents, trademarks and integrated circuits designs are becoming increasingly relevant.

In the last few decades, three distorting trends have emerged: corporations have emerged as the key owners of copyrighted material; the scope, depth and duration of copyright has grown hugely, to encompass not only intellectual work but also plant and life forms; and copyright owners wield a formidable set of instruments to enforce their rights nationally and internationally.

While IPR had traditionally been used by the cultural industries to reinforce their control over ?ideas? and ?products?, the threat posed by ?copying? in a digital era, has led to a renewed interest in IPR and to increased investments in the proprietorial significance of IP. In a knowledge economy, any content that is a product of the digital manipulation of data is considered intellectual property. Technically speaking, even an email message can qualify for IP protection. Some of the factors that have contributed to the consolidation of a market-based, global IP regime include the following - shrinking profits in an era characterised by technological and product convergences, economic downturn in the telecommunications and dotcoms sectors, and the real and imagined threats to corporate profitability posed by piracy via subversive uses of technology such as MP3 and establishments such as the recently domesticated, peer-to-peer, net-based music swapping service, Napster.

IPR has affected the public?s access to knowledge in the public domain and to copyrighted works, limited legitimate opportunities for cultural appropriations, stifled learning, creativity, innovation thus placing curbs on the democratisation of knowledge. IPR has also infiltrated into the domain of food and medicine, threatening the sustainability of indigenous knowledge and biodiversity.

## The TRIPS armoury

A key means by which IPR has been reinforced and extended is through the WTO-related, Trade Related Agreement on Intellectual Property Rights (TRIPS), and the Copyright Treaty (1996) that was negotiated by the UN-related, World Intellectual Property Organisation (WIPO). These agreements have been used 1) as a means to tie trade with IP, 2) as templates for national legislation on IPR and 3) for ensuring the harmonisation of global agreements such as TRIPS with local IP legislation. These global agreements have been backed by trade associations such as the Motion Picture Association of America (MPAA), groups like the US-based International Intellectual Property Alliance (IIPA) and corporations such as AOL-Time Warner, Microsoft and IBM. These groups are jointly concerned with issues such as the impact of piracy on profits, and are keen to extend the life of copyrights and patents, thus profiting from royalties and licensing agreements by creating more or less permanent enclosures over cultural property.

The TRIPS Agreements cover 1) patents, 2) industrial design, 3) trademarks, 4) geographic indicators and appellations of origins, 5) layout design of integrated circuits, 6) undisclosed information on trade secrets, and 7) copyrights (literary, artistic, musical, photographic, and audiovisual).

TRIPS favours industrialised countries and transnational copyright industries, while limiting the freedom of countries, especially less-industrialised ones, to design IPR regimes to meet their economic, social, and cultural needs. Especially onerous are TRIPS provisions on the patenting of life forms and pharmaceuticals and the appropriation and commodification of indigenous knowledge by TNCs.

## Copyright and patent mania

In the US, Congress extended the terms of copyright eleven times during the last forty years. The 1998 digital copyright law extended copyright by 20 years; works copyrighted by individuals in the post-1978 period were granted a term of 70 years beyond the life of the author; works owned by corporations were protected for 95 years and extensions applied even to authors who were long deceased or to works that were out of print. These extensions have also effected other parts of the world. Moreover, there has been a massive increase in patent applications ? 7.1 million applications were filed in 1999 as against 1.8 million in 1990. WIPO received a record 104,000 international patent applications from the information industries in 2001. 38.5 per cent of these applications came from the USA while the developing world hardly managed 5 per cent. In Europe, Philips filed for 2010 patents in the year 2000, while British Telecommunications amassed 13,000 patents protecting 1700 inventions in that same year. IBM remained the top filer of patents in the USA with 2,886 patents in the year 2000. It earned \$1.7 billion from licensing its patents ? a fraction of the \$38 billion that US companies earned from royalties in the year 2000. This has created a climate where all knowledge is commodified and sold on the market to the highest bidder, leaving the public good in a vulnerable state.

## IPR and its implications for civil society

The key issue for civil society is that related to the democratisation of knowledge. Since creativity builds on itself, what does civil society need to do to protect traditions of creativity? Would Shakespeare's writings or for that matter Microsoft's Windows platform been created if strict IPR laws had been enforced? What can be done to reward creators without allowing them to monopolise knowledge in perpetuity? What needs to be done to protect the global commons, and culture and life forms in the public domain that are the heritage of humankind? Are there possibilities for global civil society-governmental-inter-governmental collaborations in the matter of advocating for a ?cultural exception? clause related to trade in cultural products? What needs to be done to ensure that the cultural environments that we inhabit also include copyright and patent-free zones? What support can civil society give to the copy-left and open source movements? What pressure can civil society exert at local levels to ensure that IPR legislations respond to social and cultural needs rather to the needs of international capital? What can be

done to keep the Internet an open and innovative commons for all?

#### Additional resources

For an accessible introduction to IPR and Information issues, see James Boyle's (1997) *A Politics of Intellectual property: Environmentalism for the Net*, <http://james-boyle.com>., *Making Sense of IPR* under the resources section in the WACC website, [www.wacc.org.uk](http://www.wacc.org.uk), Vandana Shiva's *Protect or Plunder?: Understanding Intellectual Property Rights* (Zed Books, 2001), and Chapter 7 on the World Intellectual Property Organization and Intellectual Property Rights in *Global Media Governance*, by Seán Ó Siochrú and Bruce Girard with Amy Mahan (Rowman & Littlefield, 2002). For more substantive readings, see Ronald Betting's *Copyrighting Culture: The Political Economy of Intellectual Property*, (Westview Press, 1996), Rosemary's Coombe's *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law?*,(Duke University Press, (1998) and Lawrence Lessig's *The Future of Ideas: The Fate of the Commons in a Connected World* (Random House, NY, 2001).