



Book Reviews

Copyrighting Culture: The Political Economy of Intellectual Property

Ronald V. Bettig

Boulder, CO, Westview, 1996, xi + 276 pp., US\$60.00, ISBN 0-8133-1385-6 (hbk), US\$25, ISBN 0-8133-3304-0 (pbk)

The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law

Rosemary J. Coombe

Durham, NC, Duke University Press, 1998, xi + 462 pp., US\$59.95, ISBN 0-8223-2103-3 (hbk), US\$19.95, ISBN 0-8223-2119-X (pbk)

Intellectual Property in the Information Age: The Politics of Expanding Ownership Rights

Deborah J. Halbert

Westport, CT, Quorum Books, 1999, xvii + 186 pp., US\$59.95, ISBN 1-5672-0254-3 (hbk)

Owning the Future

Seth Shulman

Boston, Houghton Mifflin, 1999, xv + 240 pp., US\$25.00, ISBN 0-3958-4175-5 (hbk)

As information industries have boomed, so has the economic value of intellectual property, including patents, copyrights and trademarks. As intellectual property protections have increased, social impacts have escalated. So it is not surprising that there is increasing attention to intellectual property by a range of authors outside the legal field. Here, four contrasting books are reviewed individually and then compared on several criteria. To begin, some examples.

Dr Jack Singer of Vermont developed an improved method of operating on cataracts, using a specially designed incision so that no stitches were required for healing. However, his use of his own technique was challenged in 1993 when he received a demand for royalties because another doctor, in Arizona, had patented the procedure. He was threatened with a patent infringement suit unless he paid thousands of dollars per year in royalties.

The computer world was shocked in 1993 when a small company, Compton's New Media, announced that it had received 41 patents which gave it a monopoly over any software for searching multimedia databases, such as CD-ROM encyclopaedias. Dozens of companies were outraged, especially given that many of the patented techniques had been developed by others years earlier.

In 1994 the biotechnology company Agracetus received a European patent on all soybeans that were genetically altered, whether by Agracetus' technique or any other. This was a tremendous coup, given that soybean sales are worth \$27 billion worldwide and numerous other companies were working on genetic modifications.

In 1996, researcher Petr Taborsky became a prisoner in North Florida State Penitentiary's maximum security unit. He had been charged with claiming the rights to his own idea for a method of making the substance clinoptilolite absorb more ammonia. Taborsky's imprisonment was the outcome of a bitter dispute with his previous employer, the University of South Florida. It is an example, admittedly bizarre, of increasing tension over corporate–university research links and ownership of intellectual property.

Two researchers at the University of Mississippi in 1993 patented the idea of using turmeric on wounds for faster healing. Given that turmeric treatment had been used widely in India for decades, this decision caused enormous protest there.

These examples are given by Seth Shulman in *Owning the Future* to show the extraordinary scope of intellectual property law. Not all these patents were upheld in the face of protests and appeals, but they have all caused enormous consternation and litigation.

Shulman's aim is to show that the volume and scope of patents have become so broad that the whole operation is endangering the process of innovation. He recounts the difficulties of surgeons, programmers and pharmaceutical researchers caused by others in their fields patenting in the widest possible fashion and then demanding royalties or suing for patent infringement. A few companies benefit enormously, at least for a time, but the only sure winners are patent lawyers.

Shulman approaches the issue as a science and technology journalist. His prose is vivid and readable, with many stories of individuals and small companies caught in the juggernaut of patenting on an ever-broadening scale. The book gives an eloquent portrayal of the problems: innovation curtailed, monopolies created, choice and diversity limited.

The overall impact of Shulman's account is likely to be pessimism, in spite of his comment that commercialisation of intellectual property will either choke itself out or meet resistance. Shulman does mention the resistance to some of the more extreme intellectual property claims, such as the US Department of Agriculture's legal opposition to Agracetus' US patent on all transgenic cotton and resistance by researchers and librarians to the US government's attempt to change copyright law through the World Intellectual Property Organisation in 1996. Overall though, the impression he gives is of a system out of control.

Shulman introduces three perspectives for criticising intellectual property—productivity, equity and democracy—and usefully draws on analogies to public parks and infrastructure. But he gives no sustained examination of the history of intellectual property or of the arguments for and against it. He has no framework for systematically analysing the politics of intellectual property issues. Despite this shortcoming, *Owning the Future* is a powerful wake-up call.

Ronald V. Bettig's *Copyrighting Culture* has quite contrasting virtues and limitations. It is a detailed analysis of intellectual property using a political economy approach, concentrating on the logic-of-capital approach but being open to other frameworks such as critical legal studies. Bettig's focus is copyright, especially its role in the mass media and in the US. He presents political economy as a framework of analysis so systematically that this could be primer on the approach as taken in a Marxist direction. The book includes a materialist analysis of the history of copyright, an examination of ownership and control of the US media (a subject also traversed by others) and then a political

economy of intellectual property. The problem for capitalists is that information has the characteristics of a public good, thereby posing difficulties in excluding those who don't pay. The response of capitalists to this dilemma depends on the technology, whether theatre, broadcasting, pay-per-view, videocassette or film.

The bulk of Bettig's book is a close analysis of specific struggles over intellectual property. One is cable retransmission of television broadcasts, the subject of a battle within the capitalist class. Television producers wanted to interpret their intellectual property as requiring payments for cable retransmission, whereas cable operators didn't want to pay, naturally enough, and argued that they were just conveying a freely available signal to additional viewers. The struggle was played out in Congress, the courts and the government policy-planning system. Bettig closely examines the arguments and power plays involved in different legislative bills and court cases. The outcome in this case was compulsory licences for cable retransmissions, which Bettig argues reflect contingencies within an overall determination by economic structures. Indeed, his overall view is that 'The law and nature of intellectual property are essentially based in capitalism' (p. 144).

Another case involves the videocassette recorder, in which filmed entertainment leaders sued Sony because its Betamax video recorder allegedly violated intellectual property. After a tortuous legal history in which the US Supreme Court eventually supported Sony, Hollywood film and television producers adapted by moving into sales to video rental businesses and directly to consumers. These sorts of intraclass intellectual property conflicts also occur internationally. Bettig analyses the struggle over Canadian cable retransmissions of US television broadcasts and Hollywood's campaign against unauthorised video copying of its productions in other countries, using a framework of international political economy.

Although not every reader will follow Bettig all the way in his attempt to reduce nearly all dynamics of intellectual property to the logic of capital, his book is an excellent demonstration of the power of a political economy approach, though limited to copyright and the mass media. Bettig presents a politically committed position, but his analysis conveys a sense of hopelessness, in that capitalist interests seem inevitably to win out. This is somewhat redressed in a short concluding chapter about the politics of resistance to intellectual property, listing some examples of individual and collective opposition. Unfortunately, this examination of resistance is not integrated into the earlier chapters, where intellectual property is presented primarily as the subject of intraclass struggle. Perhaps because of its materialist emphasis, the book gives little mention of arguments against intellectual property that might serve to stimulate concern and mobilise resistance. Another problem, for the purposes of promoting action, is that the book, while clearly written, is far too detailed and filled with theory to be accessible to a wider public.

Rosemary J. Coombe's *The Cultural Life of Intellectual Properties* is the product of a dramatically different theoretical space: cultural studies. Far from finding concepts such as class and law useful, these are the subject of critique and deconstruction.

Coombe's primary interest is in trademarks and celebrity rights. She notes how everyday experience has become saturated with signs—such as Coke and McDonald's, whether as words or pictures—whose usages are the subject of legal control. On the one hand, the private status of the omnipresent trademarks means that corporate interests, by using legal means to police inappropriate uses of their trademarks, are shaping the way people use images that help constitute day-to-day reality. This is the stuff of hegemony. On the other hand, the uses of trademarks are not fixed by their owners, since people can exercise agency in developing unauthorised usages, such as artists who use commercial images in irreverent artwork. This is called appropriation, and can be considered a

form of resistance or challenge to attempts by owners to fix the meaning of their legally owned signs. The commercialisation of the public sphere provides a rich source of signs ripe for appropriation. Coombe describes and celebrates the process by which subcultures make use of mainstream owned symbols to help constitute their own identities.

The Cultural Life of Intellectual Properties is highly sophisticated and theory-intensive. It expounds cultural theory, and the postmodernist critique, with great erudition and an impressive array of citations, as well as other theoretical frameworks such as critical legal studies. It makes the case that cultural studies needs to take on board the fact that many sources of meaning in contemporary life are the subject of legal regimes (with the focus on trademarks and publicity rights) and that legal studies needs to incorporate postmodern understandings.

Coombe's exposition, with abstruse formulations studded with references to alterity, intertextuality and signifiers, will be a challenge for those not conversant with cultural studies.¹ The case studies are a bit more accessible. They include unauthorised use of intellectual property in the gay camp culture, in fanzines (especially creative renderings based on Star Trek), in the 'Gay Olympic Games', in images of Canadian Mounties and in Crazy Horse Malt Liquor. Coombe shows both the way commercial signs have been used by 'subaltern groups' (women, ethnic minorities, gays, lesbians and indigenous peoples, among others) and the way some of these groups have opposed commercial exploitation of images from their own cultures, as in the case of Crazy Horse Malt Liquor.

Embedded in Coombe's text are many examples and powerful arguments against the current scope of intellectual property. She analyses the way court decisions have served to close down creative use of trademarks and celebrity symbols. While she is obviously sympathetic to the case against corporate control over commercial images, she is mainly concerned to show the cultural uses of these images. For example, concerning celebrity rights she comments '... my interest here does not center on law reform, but on the celebrity as a medium for the creation of alter/native identities' (p. 337).

Cultural studies emphasise the capacity of people to creatively interpret and redeploy symbols rather than being passive recipients of commercial messages. Coombe approaches culture 'as contested terrain occupied by differentially empowered social agents, who define themselves with commodified cultural texts even as they improvise with and transform those forms in the service of diverse agendas' (p. 27). A cultural studies analysis also involves the deconstruction of modernist concepts and totalising discourses, as exemplified in terms such as law, authorship, property and the public sphere. Coombe's reiterations of the importance of appropriation, reauthoring and subaltern struggle pervade her entire discussion, though she clearly describes the hegemonic power of corporate players, a power bolstered by expansive legal interpretations of intellectual property. The trouble with her emphasis on agency is that it appears to prevent or sideline an assessment of the relative balance of forces: it appears impossible to ask 'who has more power?'

Coombe rejects the left's pessimism about domination by commercial interests and support for government regulation, presenting instead an argument for subaltern identity formation drawing on commodified discourses. Coombe's presumption appears to be that a nuanced understanding of postmodern culture and intellectual property's role in it may enable a better challenge—or perhaps just a better understanding.

Debora J. Halbert's *Intellectual Property in the Information Age* is a no-nonsense critique of intellectual property, arguing that it has expanded at the expense of the public good, stifling both innovation and speech. Her approach is to analyse narratives that have been used to make intellectual property seem natural, focussing on copyright. Throughout, she

contrasts two orientations to ideas: sovereignty and exchange, conceptually bolstered by the models of property and sharing, respectively.

Halbert begins with the historical development of copyright in England, Germany, France and the US, showing how intellectual property law was socially constructed using a standard story: first there is inspiration, then expression; the author has ownership; copyright protects the creative process, especially against villains who are called pirates. A key point in this narrative is the conceptual distinction between idea and expression, an arbitrary and artificial division that allowed authors to turn their work over to the publishers.

After this historical overview, Halbert focuses on the US. She examines political narratives around the National Information Infrastructure, showing an expansion of the ambit of intellectual property. For example, copyright has been expanded from controlling use for commercial profit to controlling any use (including personal use). Because the domain of copyright has been expanding at the same time as new technologies have been introduced that make copying far easier and cheaper, advocates of maintaining expanding copyright have seen the need to educate the public about ownership and use, if only to prevent unauthorised copying through ignorance. Halbert also examines legal narratives of intellectual property, examining court decisions over copyrighting of software.

If people are to be convinced that intellectual property is a good and natural thing, then it is useful to vilify those who subscribe to a different ethic, such as sharing, common access, or cooperative production. Halbert examines the construction of the narrative of 'piracy' as applied to countries outside the US where copying of software occurs. This rhetoric became important in the 1980s as US manufacturing competitiveness declined and knowledge industries became prominent.

In many countries, intellectual products have long been seen as common goods, with the idea of intellectual property being alien. The US government used threats of trade sanctions to force foreign governments to adopt intellectual property laws. Halbert remarks that the narrative of piracy is remarkable in painting poor countries as thieves and powerful corporations as victims. The rhetoric of protecting the rights of creators is far from the reality in which the actual creators—such as programmers and artists—are employees, whereas the ownership and benefits accrue to the corporations. Halbert also describes the vilification and criminalisation of computer hackers, a process that obscures the power corporations exercise over information.

Halbert clearly states her opposition to expanding ownership rights in information. She argues that copyright doesn't protect authors, that creative people would create even without intellectual property (though not exactly the same things) and the copyright owners would still produce for markets with less protection. Intellectual property, she argues, serves to grab exclusive access to markets. Her preferred alternative is a narrative of sharing. She recommends considering the abolition of copyright law, or at least reducing its protections drastically, and calls for increasing questioning of intellectual property.

Intellectual Property in the Information Age, while scholarly in form and style, is quite readable and is not burdened with heavy theory. Through a critique of narratives, it embeds the social construction of intellectual property in a political economy context, using many examples. Most valuable of all is the critical assessment of the arguments for intellectual property and the presentation of an alternative model, namely sharing and the public good.

The four books under review are a sample of recent critical writing on intellectual property.² In order to better see how they fit within the 'conceptual space' of possible

Table 1

	Bettig	Coombe	Halbert	Shulman
Main IP area	copyright	trademarks	copyright	patents
Theoretical framework	political economy	cultural studies	narrative analysis	(descriptive)
Geographical focus	North America	North America	US	US
Style	heavy scholarly	very heavy scholarly	accessible scholarly	journalistic
Copyright owner	Westview Press	Duke University Press	Halbert	Shulman

intellectual property analyses, Table 1 above classifies the books according to a range of criteria.

This table highlights some of the similarities and differences between the books. Each one focuses on a single type of intellectual property—copyright, patents or trademarks—though in each case referring to more general intellectual property issues. None effectively ties together a comprehensive critique of a wide range of intellectual property types.

All the books focus on developments or events in the US, though in every case referring to other countries. This suggests that there is scope for more intellectual property analyses that look at the issues from viewpoints outside North America.³

The authors' theoretical frameworks contrast greatly. Bettig and Coombe expound their respective frameworks at great length and sophistication, virtually turning their books into case studies in applying theory. Halbert's framework of narrative analysis is understated but provides an effective structure for her analysis, whereas Shulman does not discuss theory at all.

All the authors are united in their concern, if not outrage, at developments in intellectual property, though for somewhat different reasons. Bettig sees copyright as a tool for capitalists, Coombe sees trademarks as a restraint on subcultural creativity (though also a resource for subaltern groups), Halbert sees copyright as a bar to sharing ideas, and Shulman sees patents as inhibiting innovation. The authors see intellectual property as a means by which powerful groups, especially corporations, are maintaining and extending their power.

What is to be done? All the authors describe some of the resistance to expanding intellectual property rights that is occurring, most of all Coombe, for whom the appropriation of trademarks is a central theme. However, none of the authors analyses opposition to intellectual property in any real depth. For example, the free software movement,⁴ which has produced an impressive library of highly useful programs (including the operating system Linux, which has received a fair bit of publicity), is given little attention. The authors do not systematically analyse resistance efforts to see what does and doesn't work and how better campaigns could be organised.

The books do contain many valuable ideas that could be used by opponents of intellectual property. There are examples of ridiculous excesses of intellectual property protection, such as the Disney corporation's efforts to have child care centres remove Mickey Mouse murals. There are valuable critiques, such as of the fiction of authorship as a rationale for copyright which is owned by giant corporations. There are powerful arguments for free exchange being in the public interest.

The style of writing will undoubtedly influence the audience for these books. Bettig's book seems to have been little noticed; it is not cited by any of the other authors. Coombe's book is daunting to read, though it may have influence through its cultural authority as a scholarly tour-de-force. Halbert's book is far more accessible, combining

critical insight with a strong commitment, but Shulman's highly readable treatment is likely to gain the greatest audience and do the most to stimulate concern.

The dominance of intellectual property is shown by the conventional copyright ownership of all four books. It would be hard to find a commercial or scholarly publisher willing to agree to unlimited copying.⁵ This suggests that the analysis and critique of intellectual property will remain of importance for a long time to come.

Notes and References

1. A characteristic sentence: 'Differences between those who disseminate commodity/signs (a sign that is a commodity with an exchange value in its own right as well as a signifier with a field of cultural connotation) and those who consume them animates the legal regulation of cultural forms; such cultural forms simultaneously become mediums for expressions of alterity as they function as expressions of authorial distinction' (p. 15).
2. Others worthy of note are James Boyle, *Shamans, Software, and Spleens: Law and the Social Construction of the Information Economy*, Harvard University Press, Cambridge, MA, 1996; Peter Drahos, *A Philosophy of Intellectual Property*, Dartmouth, Aldershot, 1996; Thomas Mandeville, *Understanding Novelty: Technological Change and the Patent System*, Ablex, Norwood, NJ, 1996; David Vaver, *Intellectual Property: Copyright, Patents, Trade-marks*, Irwin Law, Concord, Ontario, 1997.
3. See, for example, Darrell A. Posey and Graham Dutfield, *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities*, International Development Research Centre, Ottawa, 1996.
4. See <http://www.gnu.org/>.
5. An example of a different approach is the book by Negativland, *Fair Use: The Story of the Letter U and the Numeral 2*, Seeland, Concord, CA, 1995, which is annotated 'N©!'. Negativland appropriated material from the rock group U2 and entered a nightmare of legal wrangle, described in this book with numerous original documents and commentaries.

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Making PCR: A Story of Biotechnology

Paul Rabinow

Chicago and London, University of Chicago Press, 1996, 190 pp., US \$22.50, ISBN 0-226-70147-6

Making PCR describes itself as the 'behind the scenes account of the invention of one of the most significant biotechnology discoveries of our time—the polymerase chain reaction'. It focuses on Cetus Corporation in the USA, a company which was established in San Francisco in the early days of commercial biotechnology.

The book explores the culture within Cetus and the many individuals who influenced the development and commercial introduction of PCR. It is divided into seven chapters, and is written in a narrative style interspersed with lengthy transcripts of interviews between the author and various players within and outside the company. These interviews occasionally break the flows of the text but add great depth to the story.

PCR was developed as a technique by many people over several years and was not commercially valuable until it could be made to work in experimental systems. These facts provide much of the complexity that this book explores. Interviews by Rabinow, scattered throughout the book, provide different players' perspectives on the process of