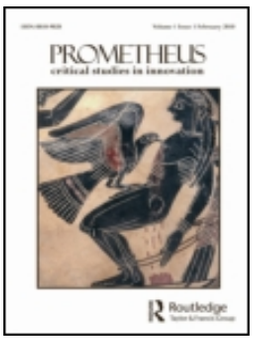

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## RESPONSE

# The *Manchester Manifesto*: a missed opportunity?

Graham Dutfield*

*Law School, University of Leeds, Leeds, UK*

*Graham Dutfield is professor of international governance at Leeds, research affiliate of the Intellectual Property Law and Technology Program at York University, Toronto, and adjunct professor at the Center for Studies of Intellectual Property Rights at Zhongnan University of Economics and Law, Wuhan. His research on intellectual property crosses several disciplines, including law, history, politics, economics and anthropology.*

The proposition paper on the ownership of science consists of an introduction to the *Manchester Manifesto*, the *Manifesto* itself, and some responses to criticisms of it made by others. It is highly critical of the *status quo* in relation to intellectual property rights, presumably from the position of the non-commercial scientist, the socially aware economist, and of intellectual property rights (IPR)-sceptical academics and non-government organisations, of which there are now quite a few.

I consider myself to be a fellow traveller. Had I been asked to endorse the *Manchester Manifesto*, I would most probably have done so out of solidarity (in which case, I would of course have had to decline the *Prometheus* Editor's invitation to comment on it). It does raise perfectly legitimate concerns about how the pursuit of profit and the aggressive assertion of IPR-based business models can run counter to public interest goals, produce drag effects on innovation, block flows of scientific information, and prevent access to socially-beneficial products, such as medicines for the poor – albeit without (rather unscientifically, one might suggest) citing any evidence, a word that barely features at all in the proposition paper and is nowhere to be found in the *Manifesto* itself.

For my part, I have for long criticised the unfairness and hypocrisy that afflict many of the international IPR rule-making processes (Dutfield, 2006a). I have also criticised the way that the European Union and the United States government self-servingly impose their rules on other countries while subserviently accepting whatever those business sectors they listen to claim is good IPR law and policy and ignoring sophisticated evidence-based studies and reports advising them to do otherwise. Take, for example, the sound recording right in Europe. The *Gowers Review of Intellectual Property*, commissioned by the UK Treasury, recommended that the 50 year term of this right be retained (Gowers Review, 2006), a view that was informed by a detailed economic study by the University of Cambridge, which found that

*Email: g.m.dutfield@leeds.ac.uk

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recording artists would benefit only a little from extension, while the costs to society would be quite substantial and few if any incentives for future creativity would ensue (Centre for Intellectual Property and Information Law, 2006).[1] I have also raised doubts about the extension of patent law to types of 'invention' that ought probably to remain beyond its scope (Dutfield, 2010, 2012). So, I am naturally predisposed to sympathise with the article's rather negative perspective on IPR.

However, I would have had to qualify my support with serious reservations. While I have nothing but respect for the authors of the *Manifesto* – and those who have endorsed it, many of whose names I recognise – overall it is a surprisingly poorly prepared document. A cynic might summarise the paper – including the *Manchester Manifesto* – thus: 'IPR (for which, read 'patents') isn't working. This is bad for science, the public, and for technological innovation; it's not fair, and here are a few commonly expressed reasons why. It doesn't have to be like this (that is, we are not against IPR *per se*). We know something needs to be done. We can reform the system, but we really need alternatives. We don't know what these might look like, but here are a few principles and policy considerations we need to think about.'

We have been here before – many times. Indeed, some of us have gone well beyond this (see, for example, Knowledge Ecology International, 2005; Royal Society for the Encouragement of Arts, Manufactures and Commerce, 2006, 2010). Do we need another well-meaning statement that reiterates the critical point of view, but evinces little real understanding of intellectual property rights, provides no practical prescriptions other than some fairly bland principles, and adds little of substance to debates on IPR, debates that we have now had for several years and which, as I have just suggested, have made some good progress?

Who owns science is a good challenging question that should provoke much needed discussion, including a clear statement of the problem, its causes, and what we should do to resolve it. Despite being associated with two prominent and justly-celebrated Nobel Laureates and public intellectuals, John Sulston and Joseph Stiglitz, and involving '40 leading scientists and ethicists from across Britain' in its drafting (Manchester University, 2008), the result is disappointing.

For advocates of change, the proclamation of declarations, manifestos and similar public statements must be clear in purpose, carefully targeted, and the texts themselves need to be persuasive and authoritative. Ideally, they should also be brief, leaving more detailed coverage, perhaps, to a background paper. If they are to advocate evidence-based policymaking, as they surely should, they must themselves be evidence based; or else, the assertions made need to be readily defendable by reference to published evidence whether or not there is space to cite the relevant literature, which there will probably not be. In my view, evidence for all the specific criticisms made in the *Manifesto* varies from the abundant to the inconclusive, and in most cases, there is at least some reasonably sound evidence to the contrary. One just does not feel confident that each of the writers had the evidence at her or his fingertips while they were assembling the text and making such bold statements.

Moreover, reading the *Manchester Manifesto* leads one to wonder to whom exactly it is being addressed, other than those who are already so convinced that the IPR system is in a bad state and that business unduly controls the scientific agenda and the results and applications of scientific research that we do not need further evidence. In truth, the *Manifesto's* vague and occasionally contradictory language offers very little coherence concerning the role of IPR in the ownership of science, or indeed what scientific *ownership* actually entails.

This may seem harsh. However, close examination of the text amply justifies such negativity. Given its central position, we might as well start with the use of the term 'intellectual property rights', which in the Manifesto is just another way to say 'patents'. There is obviously much more to IPR than patents: trade secrets and copyright are directly relevant. Nonetheless, the critique appears to focus entirely on patent issues. This is particularly problematic given that copyright is so obviously relevant to control over scientific information, including access.

A more comprehensive response to the question of who owns science in its broadest sense, which to the authors of the *Manifesto* includes technology and innovation, would involve a whole set of other issues. These would include the rules governing ownership of intellectual property arising from scientific work carried out by employees in the public and private sectors; the potentially distorting impacts of the UK government's recent insistence that research should have a demonstrable 'impact', which implicitly denigrates blue-sky research; and restrictions on access to scientific information caused by the high prices of journals and the requirement of many journals that authors assign copyright or grant permanent exclusivity to the publishers. (I wonder how many of us have had the experience of publishers demanding both our signature on their standard form assigning them copyright when sent the proofs to check). It might also have been relevant to have referred to the problem of scientific articles published in respectable journals being written by ghost-writers paid by drug companies, in effect to endorse their products while downplaying safety issues (Ross *et al*., 2008; Singer, 2009). (For a useful discussion on the conflicts between scientific integrity and commercial imperatives including the pursuit of intellectual property protection in the United States setting, see Krimsky (1999, 2003)). Allegedly, some individuals have lent their names to these articles despite having had nothing to do with the work being reported, and little if anything to do with the actual writing. In so doing, the papers acquire a fraudulent veneer of objectivity. If that is not a disturbing example of science being corrupted by the pursuit of profit to the detriment of the public and the integrity of professional science, one wonders what is. It goes without saying that playing fast and loose with authorship is a copyright issue, albeit not *just* a copyright issue. By construing 'ownership' and 'science' so broadly, the *Manifesto* is attempting to say at lot. In reality, it does not tell us very much.

As for overall clarity and coherence, one could say much about the paper and the *Manifesto's* shortcomings. It is counter-productive to nit-pick such a worthy effort and so I will be brief. A key problem is that while much of the proposition paper is critical of 'the current system of ownership and management of science and innovation' (also referred to as 'the current dominant model of innovation and commercialisation of science') as if there is a single system or model, it is never defined properly. It is just assumed on balance to be a bad thing because of the availability and exploitation of 'strong IPR'.

The global dynamics subsection is confusing. Given the historical record and taking into account the self-evident importance of imitation in the learning process, it follows that developing countries should have some freedom to tailor their IPR laws and regulations to fit their circumstances (Dutfield and Suthersanen, 2005). Accordingly, legal and regulatory harmonisation with the rich nations should be undertaken, if at all, with extreme caution. One size is very unlikely to fit all.[2] The analysis up to this subsection is entirely consistent with this

argument. And yet, this part of the *Manifesto* is quite ambiguous on the matter. At one point, it appears to criticise diversity in national regulation of innovation as if harmonisation is preferable. It also identifies as a problem that international regulation promotes pursuit of national interests. One would have supposed the current international IPR regime makes it *too difficult* for many developing countries to promote their national interests and that this, and not the opposite, is a failing.

The *Manifesto* is a disappointment, especially given the high standing of those involved. But that is not all. In my view, it may also threaten to undermine the credibility of those of us who *do* feel we have very sound reasons for finding the current patent and copyright systems and their usage by business to be unbalanced, unfair, and detrimental to scientific openness and to the development of applied science that is oriented towards public interest goals.

## Notes

1. For a list of other academic critiques, see http://www.cippm.org.uk/copyright_term.html. In September 2011, the European Council ignored these evidence-based criticisms of extension and agreed by a majority decision to prolong the term to 70 years.
2. Here, I should declare an interest: I have for long been actively opposed to the substantive international harmonisation of patent law (see Dutfield, 2006b).

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