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EDITORIAL

This issue focuses on intellectual property rights, though from two very different perspectives. The research papers consider how intellectual property rights relate to traditional knowledge, very different from the sort of information created in an R&D laboratory. The collection has been organised by Peter Drahos, Director of the Regulatory Institutions Network of the Australian National University in Canberra in a venture supported by the Australian Research Council.

In his own paper, heading the collection, Peter Drahos immediately extends the discussion beyond the customary concern with protecting the traditional knowledge of indigenous peoples. He argues that this sort of knowledge is itself indigenous, part of the infrastructure of a civilization, and interwoven with its landscape and culture. Australia is his palette and it is there that a picture is painted of knowledge quite meaningless in isolation from the knowledge inherent in complete systems. His bushfire example is especially telling: traditional knowledge is required to sustain the bush by regular burning, but burning the bush without this knowledge destroys the very habitat burning is intended to maintain. Burning in ignorance reduces the bush to a commodity exploitable only by the resource-intensive methods of European farming. In disregarding knowledge as part of a system, the system itself is destroyed to be replaced by activities with which Western notions of intellectual property rights are more sympathetic.

Christoph Beat Graber and Jessica Lai also look at Australian evidence – the attempts of the Australian government to promote an Australian Authenticity Label to denote products of indigenous culture. This top-down effort to label (in every sense) worthy indigenous heritage met with spectacular - and mercifully rapid - failure. The authors make interesting comparison with a quite different approach, the bottom-up voluntary system that is Fairtrade. They are much impressed by the willingness and ability of individuals to favour indigenous products through the market, an interesting case of market success in dealing with traditional knowledge in the face of government failure.

Susy Frankel considers the efficacy of geographical indicators in protecting traditional knowledge. She is not sanguine: such indicators are tailored to the requirements of Western communities and Western farmers (champagne, perhaps, both literally and metaphorically). Geographical indicators are not at all suited to the traditional knowledge of indigenous peoples. And lastly in this special issue, Miranda Forsyth argues, much as Peter Drahos argues, that traditional knowledge cannot really be separated from the culture in which it is embedded. She finds her evidence in Pacific Island communities and, like all the authors in this issue, is critical of a hierarchical approach to dealing with traditional knowledge. But Miranda Forsyth goes further in finding that any homogenized approach to the problem, any approach that disregards individual circumstances, may well do more harm than good.

The debate in this issue is on the use of intellectual property rights in scientific research. It is inspired specifically by the publication of the *Manchester Manifesto*,

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and more generally by Sir John Sulston's epic battle against the use of the patent system in the race to sequence the human genome. It is interesting to speculate how different the exploitation of this knowledge would have been had it been protected by patents. Some would point out that a decade of exploitation has been more notable for the potential of development than for its realization. Others would see the speed of the research and the research networks that have been created as testimony to the power of open access to create the knowledge infrastructure vital for commercial development. The proposition paper from Catherine Rhodes, John Harris, Sarah Chan and John Sulston reproduces the *Manchester Manifesto* in full, and outlines some of the reasons for producing it, and some of the reaction to it. The *Manifesto* roundly condemns the use of the patent system in scientific research and received much support from the scientific community when it was first published.

Our respondents in this debate are generally critical of the way the intellectual property system is used, and might have been expected to be as one in their support of the *Manifesto*. Instead, they have reservations. Huanming Yang is an exception, pointing out in no uncertain terms that human genome research and research into rice genomes have flourished in China in large part because of the stance that John Sulston took against the patent system. Had purely commercial criteria driven human genome sequencing, China would not have been a partner in the project and Chinese research that may well transform rice production would probably never have begun. George Church is also an entrepreneurial scientist and a mite more circumspect than Huanming Yang. He observes that the open access weapon the *Manifesto* recommends may not always be appropriate. Trade secrets is probably a much better weapon of choice, and yet the *Manifesto* makes no mention at all of trade secrets.

Peter Drahos, the very same Drahos who organized the special collection of papers on traditional knowledge, is sympathetic to the ideals of the *Manifesto*, but questions the idealism of scientists. After all, Peter Drahos notes, scientists are the greatest users of the system the *Manifesto* castigates. He finds it a bit rich that scientists should deplore the patent system with their words, while supporting it with their actions. Graham Dutfield, like Peter Drahos, sees scientists wanting it both ways. And, again like Peter Drahos, he wonders why their venom is reserved for the patent when the armoury of intellectual property rights contains so many other weapons designed to make private property out of what might otherwise be public knowledge. Is this total focus on patents an indication that scientists are just not very familiar with intellectual property rights?

Graham Dutfield goes further, as he is entitled to do, and observes that the *Manchester Manifesto* (which is reproduced here, at the insistence of its authors, exactly as it was first published) really is something of a mess. Its faults go well beyond failing to consider other forms of intellectual property rights. The *Manifesto's* understanding of the patent system is inadequate and its logic is faulty. A worthy effort, to be sure, but perhaps a case of scientists being unaware that other subjects can be as complex as their own, and that solutions to problems in the social sciences are no more likely to be simple and single than solutions in the sciences. So glaring are these deficiencies, so serious the charge of ignorance of the subject that the *Manchester Manifesto* is less a case of could do better than of could do harm.

And there we have it. Quite an exciting issue really, especially considering that both the debate and the research papers are concerned with evaluating the impact of

intellectual property rights, an activity that normally offers all the thrills and spills of stamp collecting. The debate papers share a more subtle theme with the research papers: the complexity of intellectual property rights may confound their understanding, but partial understanding does not necessarily restrain the assurance with which opinions about intellectual property rights are expressed. The need for academic analysis is evident.

Stuart Macdonald
General Editor