

Editorial

The erosion of the intellectual commons

In the research centre that I run, rarely a day goes by without the dreadful term intellectual property rights (IPR) being raised concerning issues as to what we are able to research, how we are to charge for it, even whether or not we should bid for a research project. This creeping control no longer stops at the kind of work which our full-time paid research assistants are able to do, but it is increasingly affecting the funding of our research students. In the inexorable quest of the Research Councils—the agencies that fund basic research in UK universities—to force academics to get ‘relevant’ and develop their research in relation to organisations outside the ‘ivory tower’, many research studentships are bid for competitively, almost as research grants, with the outside organisation agreeing to modestly enhance the stipend for the PhD student. There are other vehicles too to make universities ‘relevant’, such as Teaching Company Schemes, Link programmes, and so on. In all these cases which now cover virtually all outside funding for research, the intellectual property is no longer vested in the researcher or in the university *per se*. Outside agencies want an increasing amount of the pot while university bureaucracies aid and abet them in the oft-mistaken belief that, if you negotiate hard enough, some of the riches at the end of the research rainbow will accrue to the resource-starved institutions that provide the environment for such work in the first place. Frequently those negotiating the transfer of these intellectual property rights have little clue as to what is being researched or its value. Moreover, there is something a little perverse in universities negotiating with outside agencies over research that they do not understand, which is to be carried out by students over whom they have no control and whose abilities to do the research are often not known in advance.

The whole enterprise, in my view, seems to be largely misguided, for it is based on a complete lack of understanding as to what is produced within our universities. First, most research is conducted within the realms of normal science and most research is built on foundations that belong, if they belong at all, to others, and this must mean the research community. Second, research is also about training and education, about learning, and this is impossible to own and value. Third, most research is indivisible. How do you carve up the IPR for a new theory, a new mathematical method, a new piece of software, a new interpretation of the past or the present, when all these are based on long historical sequences of ideas developed at many times and in many places? The vast majority of research cannot be partitioned in this way. You might be able to identify a new drug which originates from some particular experimentation in a given time and place, or even some new software, although this is more problematical, but for most of what we all do, IPR is a nonsense. And even if one is able to agree that a piece of research constitutes a product whose ownership is incontestable, then in most societies, control over the content lasts for only a limited period.

We all have examples of the ludicrous limits to which this process is going. The fastest growth area of British universities is not in ideas or research but in bureaucracies that are intent on negotiating IPR for everything in sight. Currently all our Economic and Social Research Council PhD awards that are sponsored by outside agencies are negotiated at great expense by lawyers where the external funds involved would not pay a worker in fast food store for more than three months. Moreover, the nature of the

work—in social science—is such that the chances of untold riches emerging at the end are close to zero. Of course, we are usually told that ‘maybe, just maybe, one of our researchers will hit the jackpot’ and in any case, ‘making social science is just as proprietary as making anything else’. I recently got a call quizzing me about a travel grant that I had gained from a bilateral foundation to undertake some research with an associate in a foreign university. The bureaucrat at the end of the telephone did not seem to be able to figure out that there was no IPR connected to this grant and even when I explained, at length, I don’t think I was believed. Our institutions are full of people who have no clue about what we do and who think that whatever we do, should be ‘their property’ and certainly *not* the property of the wider intellectual community.

Lest you think me philistine to a degree, let me assure readers that I see no problem whatsoever in researchers developing new ideas in the ivory tower and then profiting from them if it is clear that the ideas are their own. Most of the great success stories of modern commerce can be traced in one form or another to such efforts, especially in information technology. Silicon Valley is littered with examples. There may well be an argument between the originator and his or her university about intellectual rights, but it is perverse when this is dominated by third parties who want to get a share of this action before the researcher or university in question can exploit the idea. Universities are not very good at managing and profiting from innovation, but it is another thing to set up structures which positively endorse this inability and sell on the rights of others who have not yet even thought up the idea.

Much has been written about this erosion of intellectual commons, for this is what it surely is (Lessig, 2001). In modern Western society, certainly from the Renaissance on and clearly since the rise of the industrial state in the 19th century, there has been wide agreement that ideas are part of the public domain. The physical media through which these ideas might be communicated—up until the recent past, books, magazines, films, paintings, etc—may be the subject of ownership, but the content in terms of the ideas is not. This is broadly because in the realm of ideas, ideas do not decay the more they are used, unlike fixed resources such as food, manufactured goods, and the like. Once you hear of an idea, you are usually at liberty to tell others. You may not be able to copy the book or other medium in which you first come across the idea, but you can communicate it in other ways. There are blurred edges for sure—you can tell others about this editorial but you can’t make facsimile copies of it and sell the contents yourself, and there are limits too on whether or not you can give such copies away, but the ideas are very definitely in the public domain.

These issues are so deeply engrained in modern society that all a few brief paragraphs can do here is raise a concern. The Internet revolution and the commons that it has established, which is fast being eroded in the confusion of who owns what, is the signal for a much more considered debate: one which the academic community should be vigilant in pursuing, in the face of creeping control which masks this underlying privatisation of the public domain.

Michael Batty

Reference

Lessig L, 2001 *The Future of Ideas: The Fate of the Commons in a Connected World* (Random House, New York)