

The SAGE Handbook of  
**Intellectual Property**



Edited by  
**Matthew David**  
and **Debora Halbert**

 **SAGE** reference

Los Angeles | London | New Delhi  
Singapore | Washington DC



# Globalization and Intellectual Property

Debora Halbert

## INTRODUCTION

Despite the effort to control intellectual property (IP) globally, ideas, creative works, and inventions do not respect national borders and in many ways cannot respect them. While it is certainly possible to develop methods to stop a pirate book or video game publisher, how does one stop people from being inspired by seeing the works of others, or from viewing different types of innovations, and then wanting to emulate, copy, or produce these things themselves? And yet, in the face of such global inspiration, the history of international intellectual property and its protection is the history of expanding property rights and broadening efforts to curb and control the mechanisms for sharing at the global level (Halbert, 1999). The framing justification for international intellectual property protection has its roots in protecting what we call IP from being stolen by foreigners who ‘take’ the ideas, inventions, literature and technologies that have been developed in a nation-state not their own. Sovereign law stops at the border but because commercial goods and ideas travel beyond these borders, an international system to protect the ‘property’ of nationals quickly becomes relevant.

Despite the myriad international regulations promulgated to protect products of the mind over the last century, these efforts have not managed to halt the flow of ideas across borders. In an attempt to control the flow of ideas across borders, debates about the protection of IP internationally are wrapped into discourses of national competitiveness, cultural preservation and commercial exploitation. Those producing what they see as their IP have long sought to establish firm boundaries over how ideas, art, literature, and other creative and innovative works are used and circulated globally. The words used to justify international intellectual property protection – piracy, theft, ownership, and the concept of intellectual property itself – are not neutral, but already carry with them a set of assumptions about what is at stake on the global table. Intellectual property isn’t tangible but the use of the word ‘property’ to describe these limited monopoly licences has made what was a metaphor into a reality.

While IP law is often categorized as an arcane body of law, better left to patent and copyright attorneys, these legal regimes are relevant to our everyday lives. Global IP laws, whether in the form of patents, trademarks, copyrights, geographical indications,

or the many *sui generis* regimes that protect things like seeds, integrated circuits and software, are integrally linked to the possibilities of global economic development and social justice for the global south. As Madhavi Sunder states in her recent book on intellectual property:

Intellectual property laws bear considerably on central features of human flourishing, from the developing world's access to food, textbooks, and essential medicines; to the ability of citizens everywhere to participate democratically in political and cultural discourse; to the capacity to earn a livelihood from one's intellectual contributions to our global culture. (Sunder, 2012: 4)

Intellectual property is the underlying legal scaffolding upon which creations are shared, technology is transferred, and art is inspired. Thus, the trajectory and scope of international intellectual property regulation should be clearly understood by any scholar interested in globalization.

In this chapter I want to build an analysis of how IP, and the many things it protects, moves from what we call international in scope to something we call global in scope. While the two concepts clearly overlap, the idea of globalization provides us with a conceptually different lens through which to study and understand issues of intellectual property. It allows us to ask different questions than those that are central to the concept of international law. At its most basic level, while international law and the process of negotiation remains centred in the nation-state, the concept of globalization seeks to transcend state-based analysis. Manfred Steger defines globalization as, 'a set of social processes that appear to transform our present social condition of weakening nationality into one of globality' (Steger, 2010: 10). The key to understanding globalization is to understand it as a constantly moving set of processes. Furthermore, as Steger notes, 'old geographical scales that distinguish sharply between *local*, *national*, *regional*, and *global* no longer work in a complex, networked

world where these scales overlap and interpenetrate each other' (2010: 11).

The focus of this chapter is to elaborate on the complexities of how laws made by states to protect their domestic products internationally have become something more – a global system that transcends the state and reconfigures the way we understand the issue of IP in terms of spatiality, power and control. This chapter will first introduce the basic concepts relevant to the primary forms of intellectual property – copyright, patents and trademarks. The second part of the chapter will discuss the key treaties and agencies that establish the international norms for IP, while trying to avoid delving too deeply into the long history of international intellectual property law. There is a broad literature available on the history and scope of international intellectual property upon which this essay will draw (Bird, 2008; Gervais, 2003; May and Sell, 2006; Netanel, 2009; Oxfam GB, 2002; Ryan, 1998; Sell, 2003; Yu, 2004). The final section will look at IP through the frame of globalization and the tensions made visible in the intellectual property landscape when it is viewed through the lens of globalization.

## THE BASICS OF INTELLECTUAL PROPERTY RIGHTS

As those with an interest in developing the international structures of IP recognize, creative and innovative work is intensely globalized because ideas have never respected the boundaries of the nation-state. The processes of cultural exchange may be voluntary, inadvertent or casual; they may be coercive and colonial or some combination. No matter the conditions through which contact occurs, humans through their interactions with each other spread ideas, innovations and art. Picasso's exposure to African art, for example, influenced his own art and by extension modern European art (Meldrum, 2006). Any number of foreign students

coming to the United States to study will return to their home countries with new cultural influences and ideas. One cannot overestimate the power of American hip hop as it has transited the globe and adapted to numerous local cultures (Haupt, 2008; Kato, 2007). The colonial journeys of the past and the history of international trade more generally have created cultural intermingling that, while generally ignoring the contributions of those not from the West, have allowed for significant changes in the lives of everyone living on the planet (Coombe, 1998; Cowen, 2002; Smith, 1999).

Within the modern context, the flow of intangibles in the form of products based upon ideas and innovations has meant that at least two things must happen in order to make a profit. First, intangibles such as music, art or invention must be made into commercial products that can be bought and sold in some sort of physical form. Once in a tangible form – a CD, a piece of software in a box, an iPod, or a book – it is easy to apply traditional property rights to the tangible product. However, the key to owning IP is to create a property right in the intangibles captured by the tangible product. Extending ownership over something that can be copied and flows so easily has been the central challenge of the digital age and was recognized as such from very early in the process (Barlow, 1992). Thus, in the digital age, the copyright owner continues to ‘own’ the music on an iPod or CD, the software even after it has been downloaded, or the content of the book even after it has been purchased by the consumer. The consumer may own the package the item came in, but is not free to *reproduce* copies of the original work.

While you may sell the original copy of a book or a CD you have bought, you may not make additional copies of it, keep your initial purchase and sell or share the other copies. While you can listen to the music on your iPod, you cannot legally share additional copies of that music with others without the copyright owner’s permission. Anyone who has read the licensing agreement attached to

the digital download of virtually any copyrighted work knows that consumers today purchase a licence to use the property of a company under the rules they have provided, but they do not purchase the item itself.

A typical commercial property transaction conveys property from a seller to a buyer after the sale of the item. Intellectual property is, however, a type of property that remains with the IP owner, even after a purchase has been made. For many people, who assume when they buy something that it is theirs to do what they want with, wrapping their heads around how intellectual property is different from tangible property is difficult. As a law designed to restrict the production of more copies, copyright law extends its reach over a product well after the product has been sold. All other forms of intellectual property including patent law and trademark law offer extensive control to the IP owner, effectively prohibiting the use and reproduction of the item without authorization. While the cultural, technological and innovative products protected by copyright, patents or trademarks flow seemingly freely throughout the culture, their use and reproduction is legally protected and strictly enforced.

The politics of the digital age has been the politics of an expanding property rights discourse (Halbert, 1999). From the nineteenth century onwards, the trajectory of intellectual property has been towards a proprietization and internationalization of culture (Löhr, 2011: 33–4). The emergence of a system of international intellectual property protection in the nineteenth century allowed states to regulate culture and knowledge under the terms of property (Löhr, 2011: 34). Once the creation of property rights in intangibles has been established, the second step is to create the legal architecture that can protect these products as they are exchanged. In fact, protecting IP can only be done through the law, given the nature of intangibles. However, there is no universal agreement on how to draw the lines of protection, what should be protected, and how long that protection should last. Thus, there is an ongoing struggle

playing out at the global level over how much ownership should be exerted over intellectual property. This struggle will define how products of the mind will be exchanged well into the future.

International regulation of what is called intellectual property rights (IPRs) revolves around where to draw the line between what can be owned and what can be freely used without the permission of the copyright or patent owner. Drawing this line is not easy. It is a deeply political process that has significant implications for economic development, creativity and innovation. Draw the line too broadly around ideas and monopoly ownership stifles innovation and IP owners are given the legal ability to ignore the interconnectedness of all creative work and the source from which they acquired their own inspirations in favour of rigid property protections. Draw the line too loosely and one establishes a highly competitive landscape where the possibility of profit might be sacrificed to the quick pace of innovation and where many argue there will be no time to recoup the costs of innovation because the lead time and costs of original production for a new drug, piece of software, or movie far outweigh the ease with which it can be copied and enter the broader flow of ideas detached from its original innovator.

At the international level, copyrights and patents are limited and time-dependent. Copyright lasts for a minimum of the life of the author plus 50 years, according to international convention. Many countries, however, have longer terms, with the life of the author plus 70 years being most common. After that time, the copyrighted work enters what is called the 'public domain', and can be used without the permission of the original copyright owner. Works in the public domain can be modified, characters can be used for different creative storylines, and the work itself can be directly copied and produced without the permission of the copyright owner. One reason there are so many adaptations of Shakespeare is that his original works are free for anyone to use the

way they see fit. Not so for works still under copyright, like Harry Potter or the Star Wars characters. Some creative workers would like to see the time for ownership increased or made perpetual (Helprin, 2007, 2010). Many would like to see contemporary copyright include more flexibility for use by those other than the copyright owner instead of enhanced and more absolute control (Aufderheide and Jaszi, 2011; Lessig, 2004). The struggle is over how much, when, and the level of generality to which, ideas are owned and controlled via copyright law.

Patent law offers a shorter, but includes a more absolute, period of protection than copyright. The international term of protection is 20 years for most inventions, from the date of filing. Patentable inventions must be original and offer an inventive step beyond the current state of art in a given area to receive protection (Adelman et al., 2010). Scientific and technological innovations covered by patents also become part of the public domain after the expiration of the patent term. At this time, anybody can then commercially exploit the idea. While there is no 'international patent', the World Intellectual Property Organization (WIPO) manages the Patent Cooperation Treaty (PCT) and thus serves as the international clearing house for patent filing by making it easier for inventors to file patents in multiple countries simultaneously.

Despite the language of balance often used to narrate the development of IPRs, it should be noted that the history of intellectual property has been a history of expanding rights. The primary global regulatory institutions dealing with issues of intellectual property have developed because there has been an interest in seeing more comprehensive global rules governing the protection of IP. These international agencies see their role as facilitating trade by protecting property rights and by expanding the scope and protection of intellectual property laws internationally. The evolution of intellectual property rights is bound up with the development of a global capitalist system (May and Sell, 2006). At the international level, treaties have been designed to

preserve domestic economies from outside theft and provide protection for works that were sent into international trade (World Intellectual Property Organization, 2014b).

## THE INTERNATIONAL LANDSCAPE OF INTELLECTUAL PROPERTY RIGHTS

With the underlying justification and basic tenets of copyright and patent law in mind, this section will now look at the regulatory structures of IP at the international level. The global ecology of intellectual property can only be briefly described here. The two primary organizations governing intellectual property rights at the global level are WIPO, a specialized agency of the United Nations (UN) and the World Trade Organization (WTO) via the Trade Related Aspects of Intellectual Property Agreement (TRIPS). The international scene has, as Ahmed Abdel Latif notes, undergone a turbulent decade:

In the span of a few years, it has been confronted with a series of major challenges including the implementation of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), the exponential growth in the demand for intellectual property rights, the proliferation of international fora dealing with intellectual property matters, the conclusion of bilateral, regional and plurilateral agreements with far reaching intellectual property provisions and growing tensions between on one hand a potent drive for stronger enforcement of intellectual property rights and on the other hand a forceful push for greater access to medicines, technologies And knowledge. (Latif, 2011: 36)

These turbulent times are indicative of the present and future of international intellectual property.

Since the 1970s, the UN has been home to WIPO, which remains the central authority on IP and is responsible for overseeing and managing the vast majority of treaties pertaining to the subject, including the most famous – the Berne and Paris Conventions (May 2007). Since becoming a UN specialized agency, WIPO has understood its role

as promoting the expansion of IPRs globally, training people from the global south in the use of intellectual property laws, and claiming that strong protection of IP supports the larger mission of the United Nations regarding development. Economic development, it is argued by WIPO, occurs in the presence of strong intellectual property agreements and thus educating those in the global south about IP will lead to future development (Halbert, 2007).

As a state-based organization representing multiple different perspectives on the role of IP, WIPO has been somewhat responsive to the contemporary debates over the value of IP for development and the global south. For example, in response to controversies over the misappropriation of traditional knowledge and what has been called biopiracy, WIPO created the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The committee has been part of the ongoing effort to understand traditional knowledge in the context of IP but has also highlighted the problems of working within an organization designed to negotiate with nation-states and not with indigenous groups. The creation of a structure to address issues of traditional knowledge has not yet convinced many indigenous peoples that their interests will be met under the auspices of the organization (Asia Indigenous Peoples Pact, 2012). Furthermore, IP as a modern commercial right, is an uneasy fit with traditional knowledge and cultural expressions produced and managed under very different regulatory regimes (Boateng, 2011; da Cunha, 2009).

WIPO has also recently taken up issues of development more substantively. The development agenda was initiated by civil society groups and states in the global south which sought clarification on how WIPO supported the UN's larger development goals. The result of these negotiations has been an effort to more clearly link WIPO's work with the UN's development goals (De Beer, 2009). Thus, despite being an agency that has often supported the efforts of the developed nations

to protect their IP internationally, WIPO has also demonstrated its willingness to respond to and discuss perspectives on IP that are more critical of the status quo. However, the IP landscape remains very pro-IP, even as the politics of IP have changed. First, as Susan Sell notes, developing countries have become far more sophisticated in how they approach issues of intellectual property and development, especially around access to medicines, and thus have become more capable of negotiating around issues of IP. However, in response, developed countries have also changed their strategies, shifting to multilateral agreements to continue to increase IP protection (Sell, 2011: 20–1).

Other UN agencies have also played a role in the global protection of IP. First, despite its clearly secondary role, the Universal Copyright Convention (UCC) remains in place and is governed by the United Nations Educational, Scientific and Cultural Organization (UNESCO). Signatories to the UCC include only 18 member states to the Berne Convention's 166 signatory nations (United Nations Educational, Scientific and Cultural Organization, 2014; World Intellectual Property Organization, 2014a). However, while not as popular as the Berne Convention, during the Cold War and well into the 1980s, when neither the United States nor Russia had signed the Berne Convention, the UCC was the primary international mechanism covering copyrighted works for the US and the USSR. The significant difference between the UCC and the Berne Convention was the lack of a provision protecting an author's moral rights in the UCC, an issue important to the US which does not include such protection in domestic law. Furthermore, UNESCO with its focus on education and culture retains a slightly different perspective on the role of IP globally, which may be more prone to sharing to enhance development than privatizing rights.

Second, the UN Declaration on the Rights of Indigenous Peoples includes specific provisions regarding IPRs. This declaration was ratified by 144 nations, with only Australia,

Canada, New Zealand and the United States voting against it (United Nations Permanent Forum on Indigenous Issues, 2013). The UN Declaration on the Rights of Indigenous Peoples extends to indigenous peoples the right to protect their cultural heritage and intellectual property in Article 31 (United Nations Permanent Forum on Indigenous Issues, 2013). While the declaration does not have the same force of law as the treaties governed by WIPO, it does highlight the concern felt by indigenous peoples regarding the methods and processes in place for preserving cultural heritage and traditional cultural expressions and knowledge.

Third, the Convention on Biological Diversity (CBD) also contains language related to intellectual property protection. Specifically, Article 16 on the Access to and Transfer of Technology indicates that any relevant technology transfers including those related to biotechnology must respect the existing international conventions on IP (Anon, 1993). Thus, throughout the UN, it is possible to see a general respect given to the concept of intellectual property and its relevance across all dimensions of international action.

Fourth, the Universal Declaration of Human Rights extends protection to 'the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits', as well as the right to 'the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author' (United Nations, 2013). Such language offers assurance that a balance should be constructed between the individual rights to benefit from authorship and the cultural community of arts and sciences. It also places cultural and scientific creation within the context of international human rights discourses that could better ensure public access and 'fair use' (Hamelink, 2004: 47).

Outside the United Nations, the most significant international agreement dealing with IP is the TRIPS Agreement administered by the WTO. In order to join the WTO,

member nations were required to sign up to the TRIPS and modify their domestic laws accordingly (Drahos, 2003). What was unique about the TRIPS method of IP protection was the claim that a lack of intellectual property protection was a barrier to trade (unlike the more conventional understanding that monopoly behaviour is a barrier to trade) and the specific inclusion of a dispute process that could enforce punitive sanctions against those that violated the agreement. Thus, TRIPS had teeth where WIPO did not. Daniel Gervais provides an excellent overview of the history and scope of the TRIPS agreement (Gervais, 2003).

The passage of TRIPS did not complete the efforts to regulate IP at the global level. The United States had pursued what many call TRIPS plus agreements bilaterally with many of its trading partners that enhanced the protection extended to intellectual property beyond that required by TRIPS (El-Said, 2005: 59; Gervais, 2007). TRIPS plus agreements tended to focus on strengthening patent provisions especially as they relate to public health and access to medicines and ensuring that copyright lengths extend beyond the 50-year minimum required in TRIPS (Gervais, 2007; Rossi, 2006).

Furthermore, the recent and controversial efforts to establish the Anti-Counterfeiting Trade Agreement (ACTA) have received significant attention, and as of this writing have met with massive public resistance around the world. Like its TRIPS predecessor, access to the negotiating table of ACTA was limited and followed what both Peter Yu and Daniel Gervais have called a country club model of membership (Yu, 2011: 2–3). However, public resistance around the world has at this point halted progress on formulating the agreement. Similar efforts to change United States law, in the form of the Stop On-line Piracy Act (SOPA), met with substantial resistance, including efforts by major web service companies such as Google who have an interest in preserving a freer flow of non-proprietary information to influence the debate (Constine, 2012).

While the UN's goals aspire to enhance the development of the global south, when it comes to IPRs, there is a specific interest in seeing that the law reflects the most restrictive protections available in the developed world even if these do not reflect the needs of the developing world. For example, at this point, all the former Eastern European countries have joined the WTO and the TRIPS agreement, requiring them to align their domestic laws with the international norms. Despite having acquiesced to the legal standards of the West, none of these countries have developed sufficiently vibrant indigenous cultural movements engaged in the international flow of cultural goods to require such strong protection. Instead, these rules work to protect American and European cultural products imported into the country and establish a system for fighting what the US considers to be massive piracy.

The resulting international legal regimes produced through state-based negotiations may contain flexibilities that can be pointed to as evidence that the current state of international law is not excessive and adequately reflects the needs of the developing world. However, these flexibilities were hard fought concessions and have been replaced in many cases by further bilateral negotiations. For example, the TRIPS agreement provided the developing world and least developed countries with a longer period in which to promulgate and adopt the relevant intellectual property laws. Such flexibility can be pointed to as evidence of the willingness of the developed world to facilitate development and ensure that these countries will benefit from the laws they are now party to. It can also be understood, however, as a flexibility that still requires all countries to ultimately have the same level of protection.

The continued differences between the rich and the poor, the continued commercial differences between culture industry producers and consumers, the continued ideological differences between those seeking more protection and those seeking to minimize protection mean that these international regulatory



frameworks are the subject of contestation, political manoeuvrings, and efforts to push the law in opposing directions regarding the scale of protection. These struggles do not mean that developing countries cannot use IP to their benefit, and indeed, as Sell points out, some developing countries do see the law as being able to protect them from piracy from the West (Sell, 2011: 21). Rather, these divisions demonstrate that the global political economy of IP was not established with the interests of the global south in mind and thus to utilize this legal structure means reframing the production of intellectual property related goods in terms defined by a Western commercial market. In the next section, I will investigate the production of intellectual property regulation and the resistance to these laws in the context of globalization.

### **THE GLOBAL STRUGGLE OVER INTELLECTUAL PROPERTY AND THE FUTURE**

Thinking about IP through global lenses means that one sees the processes of network formation across the traditional lines of analysis – states, ideologies, etc. These international struggles are fought asymmetrically with the sides in the debate not evenly matched in terms of financial backing or advocacy power. Additionally, the players on each ‘side’ are not always clear.

Take for example the complex position of the United States within global IP struggles. It is no secret that the US leads the charge in terms of an international intellectual property maximalist position at the behest of its commercial content producers – the publishing, movie, film, software and pharmaceutical industries. However, under the layer of corporate actors, who constitute the vast majority of copyright and patent ownership, is an additional layer of creative workers and content users who hope to benefit from a new digital world that is global in scope. Furthermore, activists that would like to see the digital

future be shaped by entirely new attitudes towards the copy that are quite visible within the US discourse on intellectual property. Thus, the US international policy position is at odds not only with the behaviour of the vast majority of people living on the planet but also with many of its own citizens. While the US government is at the forefront of international efforts to expand intellectual property protection, many US citizens are in direct opposition to these efforts. Thus, a traditional narrative that privileges the nation-state as the primary international actor loses the complexity of global struggles emanating from the same geographical territory.

One cannot reduce globalized debates over IP to primarily corporate battles versus anti-corporate forces either. For example, while a copyright maximalist position is clearly advocated by the US-based lobbying associations, including the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA) and their international counterparts, the industry giant Google has favoured less restrictive copyright protection, in part because their business model requires access to information. The computer technology industry offers another examination of the complexities of the tension between how to protect copyrights and patents. The most visible corporate players such as Microsoft and Apple utilize copyright and patent laws to control innovation and development, but smaller firms and individual software designers often seek to enter the programming world using open source models. Furthermore, the rising popularity of free and open source software means that even the big technology giants offer products using open source programming as well.

One possible way of configuring the global context of the debate on intellectual property is to use the lens of digital futures and analogue pasts. Advocates for these two positions seek to shift the debate towards broader protection (analogue) or more flexible protection (digital). The struggle to expand intellectual property protection is central to the ongoing transformation of the world from an

analogue to a digital environment. Thus, globalization of IP is linked to larger patterns of digitization and a networked future.

It is quite common in the IP literature, especially the literature written about copyright, to claim that the digital world has changed everything about copyright law. Copyright law was designed to protect the copy in a world where control over the means of copying was relatively centralized. Printing presses, recording studios and film production equipment, for example, were expensive and access to these services was centralized into industrial sectors. Reproduction of copyrighted works when the means of reproduction remained relatively difficult to access could be more easily controlled by law (Halbert, 2008). If one wanted to make a reproduction of a record, the equipment to reproduce it with the same quality as the original was simply not available to the average person. After the introduction of the tape recorder, copying became easier, but quality remained quite low. A cassette recording from the radio might have been adequate, but did not provide the same sound quality as a purchased recording. The same can be said for written materials. Until the photocopier machine, technologies of print reproduction made it quite difficult, though not impossible, to engage in copying or the mass reproduction of a text. However, even with the photocopier machine, the photocopied book was not the same quality as the original.

While illegal copying could be found, as the very existence of IP laws in the first place demonstrates, to develop a viable illegal commercial alternative for records, books or movies required a serious investment in equipment and the development of distribution networks for these goods. While such 'pirate' activity has long been part of the intellectual property debate, it has been the decentralization of the means of reproduction that has been most devastating to the concept of copyright as offering control over the copy. The decentralization of the means of reproduction in the digital present creates a fundamentally different relationship

between people, ideas and technology. In a world where everyone has access to copying technologies for all forms of media, the circulation of goods without the control of the copyright owner becomes the norm and not the exception. Scholars focused on intellectual property law are quite aware that the issue of controlling digital copies is in need of reformulation (Benkler, 2006; Lessig, 2004; Zittrain, 2009).

In an attempt to grapple with the digital world through conventional practices, including domestic law making, many nations are changing their laws to protect digital works at a level far beyond that required by international agreements and at a level not seen in the analogue world. South Korea, New Zealand, Canada, Britain and Sweden, for example, have passed 'three strikes and you're out' laws that impose fines and criminal penalties on those who are caught file-sharing. These laws ban infringers from the Internet or impose other restrictive penalties after the third violation of the country's copyright laws (Winseck, 2011). The digital future we want to inhabit is at stake in the production of laws focused on how copyright will be regulated on the Internet. Who will control the cultural products that can now flow without any concern for the national boundaries of the state or the interests of property owners is one of the central points of struggle over the future of the Internet.

When efforts to maximize or minimize IP protection are mapped onto the framework of digital futures and analogue pasts, the underlying impulses motivating the different trajectories becomes more visible. The expansive growth of international intellectual property law is an effort by industry and country advocates for the analogue past to deal with the digital future by extending the laws in place for copying in a more controlled and centralized world. However, the digital future is a fundamentally different future where the means of reproduction have been so decentralized that controlling the copy means controlling individual behaviour in restrictive ways. Furthermore, what global individual

behaviour demonstrates is that more than anything, culture flows through sharing, inspiration and endless copying. Obviously, we continue to live in a less than perfect world where it is possible to talk of multiple Internets that do not connect, rather than a single global Internet (Knake, 2010: 26). However, the level of potential communication across national borders is more open than ever before. To seek to control, modify or halt this flow is to halt the potential of the Internet to connect people in ways that have never been possible before.

The digital future is also the future of the immaterial. The globalized reach of patents and trademarks, while not as affected by digitization as copyrights, are also indicative of the turn towards the immaterial. The extended protection provided to the underlying ideas as opposed to the products upon which these ideas are based shifts protection from the material object (which must be given up once sold) to the immaterial, which extends the rights of owners long after the material product has been relinquished. To extend control over intangibles, and indeed over time, space and territory, requires a different and more expansive level of property control. Thus, IP in the context of globalization and digitalization helps illustrate the difficulties of a legal regime tied to the nation-state in an era of globalized flows of culture, products, and knowledge and the possibility for perpetual control.

What becomes obvious in the trajectories between maximalism and minimalism is that the contemporary global economic system is built upon a recognition that the immaterial ideas in the form of innovation (protected by patents), expressions (protected by copyrights) and branding (protected by trademarks) are the most valuable part of a product. The raw material and the product itself are increasingly ancillary to the value created by branding and the underlying ideas (Klein, 2009). It is the 'intellectual property' of an item that adds value while its material existence can be produced in the globalized flow of cheap labour for only a minimal cost.

Sweatshops throughout the global south producing cheap electronics and clothing for the globalized world can be sold at astronomically high prices not because labour costs are high, or workers valued, but because these material goods have been wrapped into an understanding of abstract value protected via intellectual property law.

The expansion of IP protection globally is aligned with a generation-long shift towards recognizing that it is the immaterial knowledge, the innovation, the branding, and the ideas behind a product that provide its primary value, rather than the material object itself. Valuing and protecting immaterial knowledge over the material product itself is most visible in the use of trademark law to create a global brand, as remarked upon by Naomi Klein in her work *No Logo* (Klein, 2009).

Nike, for example, is a global brand for a line of products not discernibly different from other sportswear. However, they are able to sell their brand for significantly more than the cost of production because of the added intellectual property value of the globally known swoosh. 'Knock-offs' of tangible products remain an important issue for many trademark owners as global branding also means the global circulation of unauthorized versions of a popular brand. These products enter the global flow of trade, cross borders indiscriminately, and challenge the concept of ownership of immaterial property as well as the underlying assumptions of the intellectual property system itself (Raustiala and Sprigman, 2012).

Branding Ethiopian coffee via trademark law is a case in point. Professor Madhavi Sunder tells the story of Getachew Mengistie, the director of Ethiopia's Intellectual Property Office, who realized that Ethiopian coffee farmers were paid only 3–6 per cent of the retail value of their internationally recognized coffee, coffee that Starbucks marketed and sold for up to US\$26/pound. This story is not new, but instead exemplifies how the exploited raw materials of the global south are branded and sold to Western consumers with very little of the added value returning to the original producers. However, Mengistie

sought to change this. He began working on a strategy to trademark Ethiopian coffee varieties and require companies such as Starbucks to pay a higher price for the initial raw material. Starbucks fought hard to keep the Ethiopian coffee free of trademark control, but, through international pressure, finally relented (Sunder, 2012: 40–2).

The story of Ethiopian coffee suggests that despite the overwhelming advantage created by intellectual property laws for corporate cultures, the laws themselves can be used and appropriated against those who have historically benefited. It is telling that one of the most significant global brands – Starbucks – which imposes its trademarked corporate world on everything it touches would resist the efforts of poor coffee growers in Ethiopia who attempted to utilize that same legal regime to protect their interests. The story of Ethiopian coffee is important not only because it illustrates the power of the brand in creating value for a material product but it is also important because it demonstrates that intellectual property laws can be used to address the disparities in wealth between the producers of the raw materials and the consumers of a branded product. That a country like Ethiopia may find value in global intellectual property laws and use them to defend its own efforts to funnel some of the commercial success of coffee back to its producers helps to highlight the complexities of a global system that does not align around clear cross-cutting ideologies. While many in Ethiopia may actively seek access to medicine without patent protection or download free versions of Microsoft because they cannot afford an official one, other Ethiopian actors may seek to use the law to defend commercial practices that could benefit the country. Thus, maximalist and minimalist trajectories may work in different regimes of IP quite differently depending on the situation of those impacted.

Having acknowledged the complexities of the trajectories of maximalism and minimalism and how these tendencies help us understand the processes of globalization as a moving set of strategies on the part of multiple

actors across the globe, the remainder of this section will provide several examples from the domain of copyright law that highlight the divide between the analogue world grounded in a state-based legal system and the globalized world of digital culture. In each of these examples, the stark difference between the way the state reacts to the flow of digital goods and the very existence of these sites of globalization demonstrates the sea change we are undergoing in terms of grappling with the ways things will be shared in the digital future. These examples also illustrate the failure of state-based legal enforcement mechanisms to grapple with the cultural flows of the digital present and the impact this has on territoriality, sovereignty and the role of law, both domestically and internationally. These examples also point to the new trajectory in global intellectual property policing – where US domestic law becomes the global norm. I will discuss a few examples that illustrate the distinction between the analogue legal system and digital futures.

First, the recent shutdown of MegaUpload in conjunction with a raid on Kim DotCom's home in New Zealand highlights the approach to criminal copyright now understood as appropriate at the global level and represents a scorched earth approach to copyright infringement and international enforcement (Ernesto, 2012a). As part of the effort to destroy MegaUpload which, according to the indictment filed in a US federal court, was a haven for piracy, DotCom's New Zealand home was raided, his assets frozen, the website shut down, the servers seized, and all users, legitimate and illegitimate, deprived of their content without any opportunity to retrieve it. DotCom's extradition to the US was sought. In an action that required the collaboration of United States and New Zealand law enforcement to arrest a dual German/Finnish citizen living as a permanent resident of New Zealand and running a business that served a global customer base of millions, Kim DotCom and his criminal troubles are indicative of the globalized world of copyright within which we find ourselves.

As one of the world's most popular content sharing websites, the US shut down of MegaUpload was widely perceived to be an assertion of the supremacy of a copyright maximalist position in the wake of the failure of the ACTA legislation in the US (Bradley, 2012). While the case remains mired in legal technicalities, Kim DotCom has recently launched a new version of MegaUpload, called Mega that will be more difficult to police, as well as a new service called Megabox which will work with artists while responding technologically to the problems of piracy (Gallagher, 2012; Guarini, 2013). Kim DotCom's case exemplifies the nature of global copyright issues as they are filtered through the legal system of the analogue world. While he will ultimately be tried for breaking American law (while living in New Zealand), the 'product' he sold has no tangible form and is possibly located in every nation in the world. The global world of digital culture is almost impossible to manage under the analogue world of national and international law.

A second story that further clarifies the copyright maximalist position is the US government's efforts to extradite Richard O'Dwyer to the United States on charges of criminal copyright infringement. When he was arrested, O'Dwyer was a college student who ran a website called TV Shack. TV Shack allowed users to share links to on-line video content. As the *New York Times* article covering the case noted, O'Dwyer, 'has found himself in the middle of a fierce battle between two of America's great exports: Hollywood and the Internet' (Sengupta, 2012). At issue in this case is not the direct piracy of Hollywood material, but a website that linked to other sites that may have pirated Hollywood material. For creating this website, O'Dwyer was arrested by City of London police along with US Customs officials (Gabbatt, 2012). The US sought O'Dwyer's extradition to face criminal charges that could result in up to ten years in prison, a penalty well out of proportion with the 'crime'. While the case has not been widely reported in the United States,

many in the UK find the US claims against a UK citizen threatening to their sovereignty and there have been popular efforts to halt the extradition. In 2012, O'Dwyer travelled to New York where he signed a 'deferred prosecution agreement' and was fined the equivalent of £20,000 (Gabbatt, 2012).

Extraditing possible criminals to face trial in a country where they committed crimes is not new, but is part of the legal structure in place that allows states to enforce their laws. However, O'Dwyer was never physically in the United States nor did his website have servers in the US, like DotCom did. Thus, unlike a crime against physical property that would have required O'Dwyer to have been physically in US territory to achieve the same results, O'Dwyer, according to this logic, can be arrested and tried in American courts for activities he undertook using his personal computer in a completely different country. While his extradition is pursued by the US government, the US government's agenda is that of Hollywood (Satran, 2012) and this case serves as a warning shot to those outside the US who would violate US law.

Similar efforts to shut down the widely popular file-sharing site, The Pirate Bay, in 2006 not only met with complete resistance on the part of the site's operators, but sparked a growing international political movement in the form of the Pirate Party to help reshape intellectual property laws worldwide (Erlingsson and Persson, 2011; Keating, 2008). Like MegaUpload, The Pirate Bay has a global user base and is popular amongst file-sharers. Until recently, The Pirate Bay controlled their servers in secret physical locations. However, discovery and a potential raid on the servers was always a threat, even with backup servers in place. In response to the fear of another raid, The Pirate Bay became truly global by moving its operations into the cloud in October 2012.

Cloud-based computing is a growing trend for all types of computer usages as technology savvy people seek to access their data instantaneously from wherever they may be. Mobile devices and the need to link multiple

media devices to the same data encourage the notion of cloud-based management of data. Of course, 'the cloud' must also be located in a tangible place, but cloud hosting companies offer 'virtual machine' space where purchasers of space are not known, privacy is ensured via encryption technology, and if one server goes down it is easy to configure a different virtual server with total anonymity (Ernesto, 2012b). As The Pirate Bay operators told the on-line website, TorrentFreak, 'Moving to the cloud lets TPB move from country to country, crossing borders seamlessly without downtime. All the servers don't even have to be hosted with the same provider, or even on the same continent' (Ernesto, 2012b). While the cloud may have its own sets of problems, The Pirate Bay move highlights the way in which a global approach to file-sharing has become almost impossible to fight using the state-based law enforcement approach of the past.

While the nation-state remains the central unit of analysis in the creation of an international legal regime, these examples demonstrate that the flow of culture and the patterns of use by content users are changing. The corporate global model seeks regulatory control via the law and in the face of fundamentally different digital uses of creative work. These international actors include powerful trade organizations and industry players who are fully integrated into the negotiating arms of the most powerful states, those that have achieved full development – the United States, European countries, Japan and their trading partners. The views of the IP maximalists are enshrined in the language of property-based incentive structures. They continuously argue that without the protection of intellectual property, people would not create and their creations would not be publicly available. Their perspective on the use and application of international intellectual property is illustrated through the US positions in the examples above.

However, there is a global alternative to the maximalist position that has emerged as part of the resistance to the over emphasis on intellectual property (Halbert, 2005). The efforts

to retain the space for a non-commercialized and free flow of culture, ideas, creative work and innovation, while ensuring the legal structure of intellectual property does not primarily benefit the already developed players, have taken on a variety of names and approaches at the global level. These include the open access movement, the access to knowledge (A2K) groups, the initiative to provide access to medicines, the global creative commons model, and the development agenda. Each of these efforts and many more like them are supported by a global network of NGOs and civil society actors, the less developed countries, and activists in the global north that understand the need for less restrictive IP laws.

Those seeking a more flexible global IP structure are without a substantive voice and of course embrace their own set of contradictions. Advocates for a more flexible IP system have created global networks to build a narrative resistance to IP maximalism and the power of their message far exceeds their numbers, in part because their position is far more closely aligned with how most people share to begin with. There are small civil society groups, often with only a few staff, and some of the poorest countries in the world advocating for enhanced sharing against some of the most powerful lobbies and nation-states. However, many poor countries may have policy makers and public officials who, having received training as elites, then advocate for an IP system that fits with the interests of far more powerful nations.

Agencies such as the Knowledge Ecology International (KEI), the Electronic Frontier Foundation (EFF), Public Knowledge, The South Centre and the Third World Network (TNW) provide a combination of political and scholarly advocacy for a more balanced sense of intellectual property enforcement that they argue will lead to a better distribution of wealth for those living in the global south. While advocates for a more limited scope of copyright protection are often called copyright minimalists, this term does not fit their position in part because virtually all advocates deemed 'minimalists' do not

reject the concept of intellectual property in its entirety, but rather seek to reduce the terms and scope of ownership and improve the possibilities of the public domain. In other words, while some may advocate for the elimination of all copyright law (Smiers and Van Schijndel, 2008), the vast majority embrace the underlying system of intellectual property but feel it has been skewed too far in favour of industry interests.

Outside the domains of capitalist efforts to own and control the distribution of commercial goods, there is a global flow of innovation, information and creativity that offers a fundamentally different view of the world. In the university system, global research cooperatives in science and technology continue to exist where a balance between secrecy and competition keeps innovation moving forward. The Creative Commons (CC) and Free and Open Source Software (FOSS) efforts have created a global space within which the circulation of ideas can move forward free and unhindered by property barriers, or with less restrictive property barriers than those established under global IP laws. Communications technologies work despite, not because of, IP and the foundation of much of what we understand as the Internet is based upon open source software.

The networks of sharing and the digital citizens it has produced are indicative of a generationally different approach to knowledge production and sharing. When your peer group can be in a gaming environment with global reach, a university setting with international nodes, or a global business, it is technology and not the state that best facilitates the possibility of global exchange. While the reality may not yet live up to the promise, digital generations encounter the world and culture much more differently than past generations. The demand is for instantaneous access to all entertainment regardless of geography, as well as an ability to share it freely with others. It is almost taken for granted that knowledge will be instantly accessible and easily acquired, indicating the future demise or radical alteration of the

system of university education. The ongoing and significant digital divide notwithstanding, citizens understand content sharing and user generated content as essential to future progress and innovation. To the extent that copyright gets in the way, there is no use for it. Those taking the minimalist approach are situated in all countries across the globe, putting the vast majority of the world's population in direct opposition with their governments and those that own the intellectual property. MacKenzie Wark conceptualized this as Marx 2.0 (Wark, 2004).

The emergence of the Pirate Party is yet another indication of how different the understanding of content acquisition is for the digital generation. Perhaps more accurately, the digital era has provided a new method to break through the property boundaries established by industry owners of content. Prior efforts to halt copying could be directed at concentrated players – those who produced mass quantities of CDs, knock-off luxury goods, movies, and the like. They remained a central locus of illegal production. The devolution of piracy due to the digital age means that the law must now criminalize everyone if it intends to halt the 'theft'. The future implications of 3-D printers only exacerbate the transformations underway.

Furthermore, as is also prevalent in the IP literature, the boundaries between inspiration and originality versus appropriation and adaptation are at best blurry. While the legal effort is to expand protection to reduce the availability of knock-off products, an effort that is built on clear property boundaries around the intangible, from a more critical perspective, the knock-off, highlights the importance of 'sharing' for future innovation (Raustiala and Sprigman, 2012).

A different example has to do with the global nature of file-sharing that has become the standard method for sharing music and entertainment products in the information age. Piracy as understood by the content industries is a global problem, but it is a problem created by sufficient wealth to be digitally connected – it is a problem of relative affluence. Countries without Internet connections,

computers, or even cell phones, remain disconnected even from pirated digital goods. Thus, when states advocate for stronger IP laws to protect the property claimed by the content industries, they act against their own populations who are devising new ways of sharing content and the evolving digital cultures created by the Internet. In other words, they are defending the old against the new. These new tensions and lines of struggle only become visible when one uses a global instead of an international lens to understand the world of intellectual property.

## CONCLUSION

Globalization as a field is both critical and reflective, with tendrils moving into different disciplinary avenues. To think within a global frame is to think about issues not just in relation to the state, but to move beyond the nation-state to understand the interconnectivity of the world. While a traditional international view would perhaps understand the only relevant actors to be states engaged in negotiations through member-based international organizations like the UN, in reality the global architecture of IP includes many other dimensions. It includes nations, UN agencies, the World Trade Organization (WTO), civil society actors, NGOs and political activists. While some may disagree with labelling the intellectual positions of those active in fields related to intellectual property as embracing a maximalist or a minimalist trajectory, these categories are useful when providing a description of the political debates over the scope, duration and content of IP regulation. The debate over intellectual property can be characterized through efforts to pull protection towards longer terms, broader protection and more consequences for violations, or towards a more limited scope, shorter periods, or against further criminalization. One should not take these terms as oppositional binaries but instead as trajectories along a continuum of approaches

to IP. Furthermore, these trajectories do not map easily along the traditional lines of analysis – north versus south, communism versus capitalism, etc.

Intellectual property has always had global implications. These global trajectories will continue to structure IP debates well into the future. As we move further into the digital future and away from the analogue past, our lived experiences become more implicated in global flows of commercial goods and cultural products. It is important that the shape of intellectual property laws to come adequately reflect the cultural needs and desires of the world's people instead of the short-term interests of an industrial past.

## DISCUSSION QUESTIONS

- (a) In what ways are national and international property rights law incompatible with traditional conceptions of 'knowledge'?
- (b) Intellectual property rights are constructed and applied to serve whose interests primarily?
- (c) How are new information technologies transforming the meaning of intellectual property?

## REFERENCES

- Adelman MJ, et al. (2010) *Global Issues in Patent Law*, 1st edn. St. Paul: West.
- Anon (1993) Convention on biological diversity. Available at: <http://www.cbd.int/convention/text/> (accessed 14 January 2014).
- Asia Indigenous Peoples Pact (2012) IPs to withdraw from active participation in World Intellectual Property Organization (WIPO) Inter Governmental Committee. Available at: [www.aippnet.org/index.php/daily-sharing/724-ipss-decide-to-withdraw-from-active-participation-in-world-intellectual-property-organization-wipo-inter-governmental-committee](http://www.aippnet.org/index.php/daily-sharing/724-ipss-decide-to-withdraw-from-active-participation-in-world-intellectual-property-organization-wipo-inter-governmental-committee) (accessed 20 June 2014).
- Aufderheide P and Jaszi P (2011) *Reclaiming Fair Use*. Chicago: University of Chicago Press.
- Barlow JP (1992) The economy of ideas: Selling wine without bottles on the global net. *IP on the Global Net*. Available at: <https://homes.eff.org/~barlow/EconomyOfIdeas.html> (accessed 20 June 2014).



- Benkler Y (2006) *The Wealth of Networks: How Social Production Transforms Markets and Freedom*. New Haven: Yale University Press.
- Bird R (2008) *The Global Challenge of Intellectual Property Rights*. Cheltenham, UK and Northampton, MA, USA: Edward Elgar.
- Boateng B (2011) *The Copyright Thing Doesn't Work Here: Adinkra and Kente Cloth and Intellectual Property in Ghana*. Minneapolis: University of Minnesota Press.
- Bradley T (2012) MegaUpload takedown proves SOPA and PIPA are unnecessary. *PC World Business Center*. Available at: [http://www.pcworld.com/article/248469/megaupload\\_takedown\\_proves\\_sopa\\_pipa\\_are\\_unnecessary.html](http://www.pcworld.com/article/248469/megaupload_takedown_proves_sopa_pipa_are_unnecessary.html) (accessed 21 May 2012).
- Constine J (2012) SOPA protests sway Congress: 31 opponents yesterday 122 now. *TechCrunch*. Available at: <http://techcrunch.com/2012/01/19/sopa-opponents-supporters/> (accessed 22 January 2012).
- Coombe RJ (1998) *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law*. Durham: Duke University Press.
- Cowen T (2002) *Creative Destruction*. Princeton: Princeton University Press.
- da Cunha MC (2009) 'Culture' and Culture: Traditional Knowledge and Intellectual Rights. Chicago: Prickly Paradigm Press.
- De Beer J (2009) *Implementing the World Intellectual Property Organization's Development Agenda*. Waterloo: Wilfrid Laurier University Press.
- Drahos P (2003) *Information Feudalism: Who Owns the Knowledge Economy?* New York: New Press.
- El-Said M (2005) The road from TRIPS-minus, to TRIPS, to TRIPS-plus. *The Journal of World Intellectual Property* 8(1): 53–65.
- Erlingsson GÓ and Persson M (2011) The Swedish Pirate Party and the 2009 European Parliament election: Protest or issue voting? *Politics* 31(3): 121–8.
- Ernesto (2012a) MegaUpload shut down by the Feds, founder arrested. *TorrentFreak*. Available at: <http://torrentfreak.com/megaupload-shut-down-120119/> (accessed 3 March 2012).
- Ernesto (2012b) Pirate Bay moves to the cloud, becomes raid-proof. *TorrentFreak*. Available at: <http://torrentfreak.com/pirate-bay-moves-to-the-cloud-becomes-raid-proof-121017/> (accessed 7 December 2012).
- Gabbatt A (2012) Richard O'Dwyer's two-year extradition ordeal ends in New York. *The Guardian*. Available at: <http://www.theguardian.com/uk/2012/dec/06/richard-o-dwyer-avoids-us-extradition> (accessed 18 May 2013).
- Gallagher S (2012) Kim Dotcom's Megabox: Music service or malware? *Ars Technica*. Available at: <http://arstechnica.com/business/2012/09/kim-dotcoms-megabox-music-service-or-malware/> (accessed 7 December 2012).
- Gervais D (2003) *The TRIPS Agreement: Drafting History and Analysis*, 2nd edn. London: Sweet and Maxwell.
- Gervais D (2007) *Intellectual Property, Trade and Development: Strategies to Optimize Economic Development in a TRIPS-plus Era*. Oxford and New York: Oxford University Press.
- Guarini D (2013) Kim Dotcom's Mega Cloud sharing service attracts massive traffic, privacy concerns. *Huffington Post*. Available at: [http://www.huffingtonpost.com/2013/01/23/kim-dotcom-mega\\_n\\_2533751.html](http://www.huffingtonpost.com/2013/01/23/kim-dotcom-mega_n_2533751.html) (accessed 18 May 2013).
- Halbert D (1999) *Intellectual Property in the Information Age: The Politics of Expanding Ownership Rights*. Westport: Quorum.
- Halbert D (2005) *Resisting Intellectual Property*. London and New York: Routledge.
- Halbert D (2007) The World Intellectual Property Organization: Past, present and future. *Journal of the Copyright Society of the U.S.A* 54(2): 253–84.
- Halbert D (2008) Mass culture and the culture of the masses: A manifesto for user-generated rights. *Vanderbilt Journal of Entertainment and Technology Law* 11(4): 921–61.
- Hamelink CJ (2004) Intellectual property rights. In: Thomas P and Zaharom N (eds) *Who Owns the Media? Global Trends and Local Resistances*. London, New York and Penang: Zed Books, pp. 43–50.
- Haupt A (2008) *Stealing Empire: P2P, Intellectual Property and Hip-Hop Subversion*. Cape Town: Human Sciences Research Council.
- Helprin M (2007) A great idea lives forever. Shouldn't its copyright? *The New York Times*. Available at: [http://www.nytimes.com/2007/05/20/opinion/20helprin.html?\\_r=2&adxnml=1&pagewanted=2&adxnmlx=1299481200-JSugZnsfzvMzJ4wppST/RA&](http://www.nytimes.com/2007/05/20/opinion/20helprin.html?_r=2&adxnml=1&pagewanted=2&adxnmlx=1299481200-JSugZnsfzvMzJ4wppST/RA&) (accessed 7 March 2011).
- Helprin M (2010) *Digital Barbarism: A Writer's Manifesto*. New York: Harper Paperbacks.
- Kato MT (2007) *From Kung Fu to Hip Hop: Globalization, Revolution, and Popular Culture*. New York: SUNY Press.
- Keating J (2008) Pirate politics. *Foreign Policy* 164: 104.
- Klein N (2009) *No Logo*, 10th anniversary edn. New York: Picador.
- Knake RK (2010) *Internet Governance in an Age of Cyber Insecurity*. New York: Council on Foreign Relations.
- Latif AA (2011) Change and continuity in the international intellectual property system: A turbulent decade in perspective. *The WIPO Journal* 3(1): 36–55.

- Lessig L (2004) *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin.
- Löhr I (2011) Intellectual property rights between nationalization and globalization. In: Löhr I and Siegrist H (eds) *Intellectual Property Rights and Globalization*. Leipzig: Leipziger Universitätsverlag, pp. 27–45.
- May C (2007) *The World Intellectual Property Organization Resurgence and the Development Agenda*. London and New York: Routledge.
- May C and Sell SK (2006) *Intellectual Property Rights: A Critical History*. Boulder: Lynne Rienner Publishers.
- Meldrum A (2006) How much did Picasso's paintings borrow from African art? *The Guardian*. Available at: <http://www.theguardian.com/artanddesign/2006/mar/15/art> (accessed 2 June 2010).
- Netanel N (2009) *The Development Agenda: Global Intellectual Property and Developing Countries*. Oxford and New York: Oxford University Press.
- Oxfam GB (2002) *Global Intellectual Property Rights: Knowledge, Access and Development*. Houndmills: Palgrave/Oxfam.
- Raustiala K and Sprigman C (2012) *The Knockoff Economy: How Imitation Spurs Innovation*. Oxford: Oxford University Press.
- Rossi F (2006) Free trade agreements and TRIPS-plus measures. *International Journal of Intellectual Property Management* 1(1): 150–72.
- Ryan MP (1998) *Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property*. Washington, DC: Brookings Institution Press.
- Satran J (2012) Richard O'Dwyer memo leaked to TorrentFreak reveals MPAA's insecurity in piracy fight. *Huffington Post*. Available at: [http://www.huffingtonpost.com/2012/08/08/richard-odwyer-memo-torrentfreak-mpaa\\_n\\_1757472.html](http://www.huffingtonpost.com/2012/08/08/richard-odwyer-memo-torrentfreak-mpaa_n_1757472.html) (accessed 12 November 2012).
- Sell SK (2003) *Private Power, Public Law: The Globalization of Intellectual Property Rights*. Cambridge: Cambridge University Press.
- Sell SK (2011) Everything old is new again: The development agenda then and now. *The WIPO Journal* 3(1): 17–23.
- Sengupta S (2012) US pursues Richard O'Dwyer as intermediary in online piracy. *The New York Times*. Available at: <http://www.nytimes.com/2012/07/13/technology/us-pursues-richard-odwyer-as-intermediary-in-online-piracy.html> (accessed 12 November 2012).
- Smiers J and Van Schijndel M (2008) *Imagine – No Copyright*. Barcelona: Gedisa.
- Smith LT (1999) *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books.
- Steger MB (2010) *Globalization*. New York: Sterling Publishing Company, Inc.
- Sunder M (2012) *From Goods to a Good Life: Intellectual Property and Global Justice*. New Haven: Yale University Press.
- United Nations (2013) *The Universal Declaration of Human Rights*. Available at: <http://www.un.org/en/documents/udhr/> (accessed 14 January 2014).
- United Nations Educational, Scientific and Cultural Organization (UNESCO) (2014) *Universal Copyright Convention. UNESCO: Creativity*. Available at: <http://www.unesco.org/new/en/culture/themes/creativity/creative-industries/copyright/universal-copyright-convention/> (accessed 14 January 2014).
- United Nations Permanent Forum on Indigenous Issues (2013) *Declaration on the Rights of Indigenous Peoples*. Department of Economic and Social Affairs. Available at: <http://undesadspd.org/IndigenousPeoples/DeclarationontheRightsofIndigenousPeoples.aspx> (accessed 20 June 2014).
- Wark M (2004) *A Hacker Manifesto*. Cambridge: Harvard University Press.
- Winseck D (2011) NZ feels the throttling effects of new maximalist copyright laws. *The Globe and Mail*. Available at: <http://www.theglobeandmail.com/technology/digital-culture/nz-feels-the-throttling-effects-of-new-maximalist-copyright-laws/article4183070/> (accessed 20 November 2012).
- World Intellectual Property Organization (2014a) *WIPO-Administered Treaties*. Available at: [http://www.wipo.int/treaties/en/ShowResults.jsp?treaty\\_id=15](http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=15) (accessed 14 January 2014).
- World Intellectual Property Organization (2014b) *Treaties and Contracting Parties: General Information*. Available at: <http://www.wipo.int/treaties/en/general/> (accessed 14 January 2014).
- Yu PK (2004) *Currents and Crosscurrents in the International Intellectual Property Regime*. East Lansing: Michigan State University College of Law.
- Yu PK (2011) ACTA and its complex politics. *The WIPO Journal* 3(1): 1–16.
- Zittrain J (2009) *The Future of the Internet – and How to Stop It*. New Haven: Yale University Press.