ABSTRACT. An elite consensus appears to have formed around the strengthening of IPR regimes. At the same time, many people, particularly in developing countries, are questioning the idea of paying for what they intuitively sense might possibly be free. In view of the potential for global dissensus on this issue, businesses that produce and distribute explicit knowledge, or digital sequences, would be quite prudent to start making contingency plans for a new form of global capitalism: one characterised by much weaker IPR regimes. Competitive business strategies based upon rival-complementarity (i.e. physical goods and human services that complement digital products) indicate the feasibility of a global economy-of-things, resting upon a freely accessible ecology of knowledge. This might be built in the future, in much the same way that an industrial economy was built, historically, upon a natural ecology of available land and biosystems. Such an arrangement conforms to several rather fundamental political intuitions.

1. Introduction

Recently, human chromosome #22 was decoded by a not-for-profit research team. The sequence of about 30 million bytes was posted on an internet website, freely available to all. A spokesperson suggested that “it would be a major blow for science and humanity if the human genome became a piece of commercial property”. At the same time, in parts of Africa and elsewhere, millions of human lives are at stake, due to the high prices of proprietary versions of drugs such as the AIDS cocktails. It is inevitable that some states accept “parallel imports” from producers who have not been subject to constraints based upon Intellectual Property Rights (IPR) laws.

Episodes such as these are part of far larger and more important macro-trend. IPR laws, originally devised in quite different cultural contexts of production and consumption, have now moved to centre stage, not only of business activity, but also of a wider social and political life. The present paper explores some of the implications of this trend for business strategy and policy. The following section briefly describes the industry strategy of rival/non rival reversal (i.e. the high pricing of non-rival goods, low pricing of rival goods) that has been made possible by extending traditional IPR laws into the digital domain. It is then noted (section 3) that there is a growing dissensus surrounding the whole issue of paying for explicit knowledge and information that might well be quite freely and available.

It is this current dissensus per se that must now be taken into account and managed, pragmatically, by today’s business strategists (not to mention politicians and the other stakeholders). Accordingly, sections 4 and 5 of the paper set out some generic business strategies for profit in the absence of “proprietary” protection of digital sequences. Section 6 briefly discusses the policy-level and political dimensions of a world without copyright, such as the rather ironic conformance with libertarian political intuitions, as well as the
implications for distributive justice. The final section alludes to the metaphor of a new ecology of knowledge, coupled with varied possible motives for political intervention in such an “ecology”.

2. Rival/non-rival reversal

In the late 1980s a spokesperson for Apple Computers predicted that by the year 2000, hardware would be given away free, with profits flowing from the software. It was implicit at the time that this strategy was going to be greatly facilitated by IPR laws, especially copyright extended to apply to digital works (including programs). Furthermore these laws were to be promulgated and enforced by governments working with industry (an alliance that Adam Smith himself, incidentally would surely have condemned). Many producers of digitalisable works, or digital sequences (DSs) have subsequently followed a rather similar strategy. They have used economies of scale and scope in hardware production and distribution, to install an affordable base of hardware that has leveraged the value of their produced DS. IPR laws have been routinely invoked and advertised, to help the industry as a whole capture as much downstream revenue as possible, from selling copies of DSs.

This strategy has been spectacularly successful. To some, it is nothing less than a miracle; to others it is closer to being a “con-trick of Global proportions” (a phrase that Noam Chomsky once applied to global capitalism, in general). With hindsight, it is at least noteworthy that such a radical business concept (i.e. expensive non-rival knowledge) went unchallenged, for so long, by so many consumers, citizens and their governments. Simple common sense, not to mention natural rights arguments of the type asserted by John Locke (regarding property rights over land), dictate that once a non-rival good has been produced and is not a private secret, it should be quite freely available to all those entities who can make constructive use of it. Furthermore, money and prices should be used to facilitate exchanges or allocations of scarce rival goods.

Common sense, critics might point out, can often be “non-sense”, overlooking vital considerations, such as the supply side: the need to provide incentives and rewards for innovation and production, with a commensurate return on invested capital. Yet there are a variety of ways (sections 4 & 5) that businesses and capitalism in general might prosper, in the complete absence of the copyright and patent laws that currently restrict or forbid replication of DSs. Furthermore, there can be substantial innovative activity in the fields of science, technology and entertainment in the complete absence of any pecuniary motives, as exemplified by the case of the human genome.

3. Dissensus

In the last decade, despite dissenting voices (e.g. Helpman, 1993; Shiva and Holla-Bhar, 1996; Thurow, 1997; Calton, 1999; Donaldson, 1999, to mention but a few), an elite consensus appears to have formed around strengthening and cross-border harmonisation of IPR regimes (as indicated, for example, by the 1993 TRIPS agreement). In the political level discourse (e.g. Proceedings of the WTO) the dominant consideration or justification has been the securing of incentives for producers and distributors, or taking care of the supply-side. Powerful professional and industrial groups, located mainly within the developed regions also have a considerable interest, or stake, in this outcome and they have lobbied accordingly. These groups include not only producers and distributors of digital works, but also the legal and accounting professions, as well as the military (who have an interest to the extent that IPR regimes are believed to increase the rate of local technological innovation).

Yet, these groups do not have a monopoly of understanding of human systems, with technology. Rather, each group can be depicted as a productive strategic entity: producing ideas, deploying a vocabulary, and generally trying to co-create a future macroenvironment in which the group can prosper, in future (e.g. Singer, 1996a). These activities do not necessarily serve the interests of consumers, nor citizens. Indeed, as Adam Smith noted, they typically oppose them. As a result, one can identify competing or conflicting discourses. There is an elite discourse on IPR, which deploys the vocabulary of piracy, attracting investment and measurement of intellectual capital, with another, equally contemporary discourse concerning dis-