

# Preface to the ANU eText edition

The print version of *A Philosophy of Intellectual Property* came out in 1996. I do not remember signing the contract, but I suspect I paid little attention to its terms. I was bedazzled by the idea that someone was going to publish a book on what I took to be an obscure topic. The idea that I might bargain over the terms of the contract never occurred to me.

I had fallen into teaching intellectual property law by sheer chance. One day in 1987, the year I started at the ANU Law Faculty, Professor Dennis Pearce strolled into my office and asked me if I was interested in taking the subject over from him as he was to become Commonwealth Ombudsman. I had never studied the subject, but it sounded interesting and so I said yes. A few years later, Professor Tom Campbell joined the Law Faculty. Tom was in charge of the Dartmouth Series in Applied Legal Philosophy, an important interdisciplinary project that sought to bring philosophy and law into a closer critical engagement with each other. With only a couple of years teaching intellectual property law behind me I was far from an expert. Still, this limited experience made me realise that this was an area of property theory that needed more critical investigation of its foundational assumptions. I drafted a book proposal for Tom, he liked it and arranged for a contract.

After the book's publication, Professor Michael Blakeney arranged for a launch in Western Australia at a meeting of intellectual property teachers. After that I did not give the book much thought. I had begun working with John Braithwaite on the globalisation of regulation and was spending a lot of time in the field doing interviews. Over the years this and other projects took me to China and India. Much to my surprise, I met students and researchers who had read *A Philosophy of Intellectual Property*. Of course, they could not afford to buy the book. As is generally the case with this kind of book it was priced for

the US, European and Japanese library market. Print runs were in the order of 400 and any private sales were a bonus. Sales in developing countries, certainly in the 1990s, were simply not expected. This model remains largely unchanged. It works well for publishers since it minimises the need to invest in the wide distribution of academic books. This, combined with cheap academic labour and outsourcing of production, helps to explain the profits of global academic publishers. In China I learnt that there had been some 'unofficial translations' of the book and in India photocopies of the book had been circulated. The people I met in China and India were a little embarrassed by these practices but I encouraged them, saying that if it was within my power I would make the book available for free.

The book continued to surprise me. Dartmouth kept on issuing reprints. In 2008, a Chinese publisher, the Commercial Press, published a translation that had been negotiated with Dartmouth. The translator was Professor Zhou Lin of the Chinese Academy of Social Sciences. A translation into Japanese done by Dr Takakuni Yamane came out in 2011. In 2013 Professors Mahmoud Hekmatnia, Mahdi Moalla and Ali Taqikhani of the Islamic Research Institute for Culture and Thought in Tehran translated it into Persian.

In the years following the publication of the book, I became better at negotiating copyright contracts for my other books. However, I never re-read my original contract with Dartmouth. Then a couple of years ago I received an email from a student in Germany who had come across the book in the course of his studies. He also happened to run a small open source publishing business and wanted to know if I owned the electronic rights. This was something I had never bothered to check. I eventually managed to locate a copy of the contract. When I read its clauses it looked to me like I owned the electronic rights. Some internet research suggested that this was not uncommon with publishing contracts from the early 1990s. Dartmouth, to its credit, confirmed that it did not have the electronic rights and so I offered those rights to my German correspondent. But he faded out from further communication and so I did nothing about it until 2014 when I had a chance conversation with Dr Gaetano Dimita, a lecturer in intellectual property law at the Centre for Commercial Law Studies, Queen Mary University of London. He suggested that an electronic version would be useful for students and encouraged me to keep on pursuing electronic publication.

The answer to electronic publication turned out to be resting on my own doorstep – ANU Press. ANU Press was the first publisher in Australia to use mainly electronic publication. The Press' ebooks are available for free in a range of formats and hard copies can be purchased at modest cost. Manuscripts also undergo a peer-review process.

As a reader of this electronic version of my 1996 book will soon gather, I am against intellectual property rights in their present form and more or less against them in any form. Copyright in its present form underpins, amongst other things, a global oligopolistic structure of academic publishing that costs academics, students, universities and citizens dearly. University libraries and debt-laden students cannot afford overpriced books and journals. Most academics find that the books over which they have long laboured disappear into a black hole of obscurity, something reflected by citation studies. Citizens lose on multiple fronts. Very often their taxes have already paid for the production of knowledge at universities. Public taxes fund universities to be broadcasters of public knowledge. Why should citizens pay for this service again? The use of copyright to impose private taxes on publicly funded knowledge production is a case of double taxation.

If the production of knowledge at universities is to be used to solve the world's many problems it must be diffused. Copyright is a giant barrier to this diffusion, one that global publishers and their lobbyists seek to lift ever higher. Through obtaining intellectual monopoly privileges from morally corrupt legislatures they inhibit the diffusion of knowledge that is central to the growth of equality amongst people and nations.

This is not the place to outline a global strategy of resistance to copyright cartels. We should note that resistance is breaking out in various forms such as the founding of pirate political parties in many countries and the organisation of sites of knowledge diffusion such as Library Genesis.

What should Australian universities be doing? For the moment, most of them are notably absent from the fight to diffuse knowledge. There are more than 40 universities in Australia. Every single one of them should have an epress model backed by high standards of peer-review, free distribution of the electronic text and a small price to meet the

cost of publishing the hard copy version. Academics should be given strong incentives to publish in these epress university imprints. There would be lots of benefits. As more texts and journals became free, universities would pay less in excessive copyright licence fees. Australian universities with an active epress publishing model that served the intellectual commons could form a network and then seek links with other universities in other parts of the world that were driven by the same philosophy of placing knowledge in the intellectual commons. Australian universities could also help interested universities in Oceania to establish their own epress voices of knowledge diffusion. Standards of peer-review amongst commercial publishers are variable and sometimes non-existent. Universities could assume much more control over these standards, thereby increasing the reliability of the knowledge being contributed to the intellectual commons. Eventually a global network of universities committed to being custodians of the intellectual commons would emerge. A central goal of the network would be continuous innovation in dissemination strategies aimed at growing the intellectual commons. Universities would strive to improve their free service as broadcasters of knowledge in the intellectual commons. Members of the network could determine rewards and incentives for joining the network. One also hopes that being part of a network of universities that was committed to a vision of the intellectual commons based on equality and the diffusion of knowledge would be seen as inherently rewarding.

Naturally, these are just the barebones of an idea, but there is no reason why Australian universities should not collectively organise against copyright cartelism. The software tools to do this already exist and they will continue to improve. Australian universities owe it to their students and the public to fight against copyright cartels and for the intellectual commons. The case for supporting the creative intellectual commons seems to me to be just as strong as when I outlined it in 1996. The dangers the creative intellectual commons faces from the creed of intellectual property proprietorism seem to be greater than in 1996. That said, the opportunities that spring from an interconnected world to defend this commons through a networked entrepreneurship and politics are much greater.

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