

REGNET PROGRAM REVIEW 2001-2006

IMPACT CASE STUDY: INTELLECTUAL PROPERTY

Over a decade or so Drahos and Braithwaite have produced a body of work that looks at the conceptual foundations of intellectual property (Drahos, *A Philosophy of Intellectual Property*), the globalization of intellectual property (one of the case studies in Braithwaite and Drahos, *Global Business Regulation*), the geo-politics of intellectual property in the global knowledge economy (Drahos with Braithwaite, *Information Feudalism*). These books along with journal articles contain a group of empirically-based theories that have had an impact beyond the academy. This has occurred in two ways. Firstly, organizations looking for evidence-based approaches to global issues have picked up and used this work as part of their searches for relevant literature. Secondly, as a result of their research Drahos and Braithwaite have become linked to a range of influential networks that shape the regulation of intellectual property. These networks, which in turn are linked to other important networks, have produced a networked diffusion of Drahos and Braithwaite's work. A sense of this network diffusion can be gained from the fact that Drahos has been invited to undertake work for a number of organizations including the UK Commission on Intellectual Property Rights, European Commission, ASEAN Secretariat, the Commonwealth Secretariat, UNCTAD, WIPO, WHO, Oxfam, MSF and the Quaker UN Secretariat.

Impact on International Organizations

In November of 1998 Drahos was invited to Geneva to present a paper on intellectual property rights and human rights to commemorate the 50th Anniversary of the Universal Declaration of Human Rights, organized by the World Intellectual Property Organization in collaboration with the Office of the United Nations High Commissioner for Human Rights. In that paper, Drahos argued that intellectual property rights are subordinate forms of rights that should be designed to serve more basic needs such as health and education. This argument has been picked up in the documentation of the Sub-Commission on the Promotion and Protection of Human Rights (for examples, see E/CN.4/sub.2/2001/13, 27 June 2001, E/C.12/2000/SR.77, 13 December 2000 and E/CN.4/sub.2/2001/10, 2 August 2001). Since this 1998 paper (published by WIPO in French, English and Spanish) the relationship between intellectual property and human rights has become widely discussed.

Each year the UNDP publishes its Human Development Report, a report that now commands global attention. In the 2005 Report one of UNDP's case studies is intellectual property rights and access to medicines. The Report cites Drahos

and Braithwaite, *Information Feudalism* and Drahos, '*BITs and BIPs*' *Bilateralism in Intellectual Property*'. The UNDP in explaining the problems of higher standards of intellectual property rights draws on the empirically grounded theory in these works.

Impact on Developing Countries

Developing countries have also used the work of Drahos and Braithwaite. In a key article published in the *European Intellectual Property Review*, Drahos argued that the acquisition of genetic resources by pharmaceutical companies from indigenous groups was full of information asymmetries on both sides and problems of bargaining power. Drawing on the regulatory approach in *Global Business Regulation* he argued that the creation of a global bio-collecting society would solve many of these problems. This idea has been very widely discussed. For example, in 'Report of the International Seminar on Systems for the Protection and Commercialization of Traditional Knowledge', New Delhi, April 2002 (organized by the Government of India and UNCTAD with a large attendance including the delegations of 14 developing countries), "It was proposed to consider the idea of a Global Biocollecting Society, as proposed by Peter Drahos" (see p13 of the Report).

This line of work led to a request by UNCTAD and the Commonwealth Secretariat for Drahos to formulate a new approach to the issue of a treaty on traditional knowledge. In 2004, Drahos presented in Geneva a paper outlining how developing countries might solve the resource constraints affecting them by means of a nodally co-ordinated enforcement pyramid (based on Braithwaite's theory of the enforcement pyramid). Of course, the world does not change as a result of one paper, but this example does show how the inductively grounded theories of Drahos and Braithwaite enter and influence the discussions in global policy networks

Braithwaite was invited to Bangkok in 2005, along with several other intellectuals (Nobel Laureate, Joseph Stiglitz, Mary Robinson), to assist the prominent candidate for Secretary General of the UN, Deputy Prime Minister Surakiart to develop a platform for his campaign. Braithwaite and Stiglitz successfully pushed knowledge economy issues, as they also did in a one hour meeting with the Prime Minister of Thailand.

Developing countries have also drawn on Drahos' work on free trade agreements. He has been invited to Thailand and Malaysia to talk about the US-Australia FTA. When Korean officials have visited Australia they have met with Drahos about the US-Korea FTA. In December of 2005 Drahos and two other well known academic lawyers were funded by the Quaker UN Secretariat to

attend the WTO meeting in Hong Kong to act as a resource group for developing countries on intellectual property rights issues.

Impact on NGOs

International NGOs have made extensive use of the work by Drahos and Braithwaite. One example of this is Oxfam's access to medicines campaign (see the Oxfam publication *Formula for fairness: patient rights before patent rights*). Drahos is part of a small group of lawyers who are members of MSF's Neglected Diseases Group, a group that helps MSF think through the issues surrounding global access to medicines. These NGOs also diffuse Drahos and Braithwaite's work through many other high level networks. By way of example, when Drahos and Oxfam organized a one day seminar on TRIPS in 2001, the then EU Trade Commissioner Pascal Lamy was happy to be a key speaker and part of the debate that ensued. (At that time the EU was formulating its position on TRIPS and access to medicines). Moreover Oxfam arranged for Drahos to meet with high level European Commission officials to discuss the issues surrounding TRIPS.