



01 COPY 01 RIGHT 01 COPY 01 LEFT 01  
01 01 01 01 RIGHT 02 COPY 01 01 01

# Convergence zone



**G**RAIN has recently been taking an interest in what we have been calling ‘convergence’: the ways in which people are resisting the push for monopoly rights over information in different sectors. In this time of unprecedented centralisation of power and control, resistance is building on many fronts. We couldn’t help wondering if our various struggles might be more effective if we found some common ground. In October 2004, we published an editorial in *Seedling*<sup>1</sup> as a first stab at exploring the possibilities for convergence amongst these social movements in different sectors. The editorial offered some suggestions, but mostly raised a lot of questions. As a next step, we decided to approach a number of people working in different sectors and from different perspectives and get their views on the possibilities for convergence. Our ten-person panel includes people working in the fields

of free and open software (FOSS), access to medicines, seeds, communications and the media.

Each panelist was asked to answer two questions:

- 1 What links do you see between the struggles happening in different sectors around patents, copyrights and other forms of monopoly rights over information?
- 2 What are your views on a convergence of these movements?

The answers to these two questions are laid out in the following pages. We didn’t expect consensus and we didn’t get it. What we did get is some very thought-provoking and insightful perspectives to stimulate further thinking about the overlap in our various struggles, and the creative ways in which these might be brought together.

<sup>1</sup> GRAIN (2004), “Freedom from IPR: Towards a convergence of movements”, *Seedling*, October 2004, [www.grain.org/seedling/?id=301](http://www.grain.org/seedling/?id=301)

1

Links?

## Dexter X

"Intellectually it's easy to discern commonalities. Everywhere you look – agriculture, science, software – you can see that every domain of human culture is collectively produced. Anyone involved in music knows there isn't a style, melody, riff or technique that doesn't build in some way on what's been done before. Sometimes obvious, sometimes less so, it's all a grand collaboration: quotes, references, allusions, hommages, covers, remixes, even venal plagiarisms. Attempts to bottle, commodify and fence-off this ineffable human expression are increasingly convoluted and desperate.

Everywhere there are opportunities to see the rickety pastiche of self-contradictory laws and treaties being used to alienate increasing areas of nature and human endeavour for private profit and to recognise the absurdity of it. Record Industry executives are doing a particularly good job of looking foolish to justify their profiteering, as their business model fails to adapt to new realities. Hopefully their fumbling will encourage people to recognise what a sham the whole system is.

Five major labels control a monopoly that exploits musicians and music-lovers and harms music culture. Some regard peer2peer file sharing and collective licensing as a solution, but most music would still be unavailable if it weren't commercially viable. As a disk jockey, what is most exciting about peer2peer file sharing isn't downloading major-label music, but rather the potential for unfettered grassroots collaboration between creative music-lovers, with commerce removed from the mix. The opportunity transcends music, but so do the real world limitations. It's inane to get excited about file-sharing when half the planet has never used a phone.

than either music industry monopolies or peer2peer file sharing ever could be. How many potential Fela Kutis and Mozarts have died preventable deaths?

Both our perceptions of the problem and our proposed solutions are influenced by widely divergent positions of privilege and proximity to power. Any solution that requires an army of lawyers and technocrats to implement it will guarantee that those rich and powerful enough to buy an army will trample those who cannot. Those armies are called corporations but we should see them for what they are. People with names and addresses use corporations to limit their liability for the risks they take and the crimes they commit. Every legal and technical tool that is crafted to protect people will be turned against them if fundamental inequalities are left unaddressed.

Real solidarity means looking for leadership from the most disadvantaged and the most adversely affected people. Indigenous people and people of colour, have had everything from musical phrases to medicinal plants taken from them as costless heritage of mankind, and returned repackaged as commodities with prices firmly attached. Copyrights, patents, licenses and abstract rights framed in alien cultures have not and will not provide practical protection against racism, colonialism, violence and greed."



4

2

Convergence?

Monopoly information rights are exacerbating a crisis. HIV/AIDS kills 6,000 people each day in Africa because drugs that can inhibit the virus have been made inaccessible by the people that control their manufacture. Thousands of farmers' suicides in India can be linked directly to debt and dependency pushed by increasing monopoly control of seeds. These and other crises facing the poor globally are life and death issues. HIV/AIDS is a greater threat to music



Dexter X is a disk jockey, activist and musician. A former Program Director at CKUT radio in Montreal, Dexter teaches media workshops, is a disk jockey in mobile sound systems at demonstrations and is currently developing a documentary film project about intellectual property rights. Dexter is also a climbing and civil disobedience instructor for The Ruckus Society and Greenpeace.

## Jargon Buster

**FOSS** (Free and Open Source Software, also F/OSS), is software which is liberally licensed to grant the right of users to study, change, and improve its design through the availability of its source code.

**The General Public License (GPL)** grants the user of a computer programme the freedoms to run, study and modify the program; distribute copies; improve the programme and release it to the public. The primary difference between the GPL and more 'permissive' free software licenses is that the GPL seeks to ensure that the above freedoms are preserved in copies and in derivative works using copyleft (see below).

**Copyleft** is a legal tool that gives users the freedom to redistribute software and alter/improve its codes as long as the freedom to copy and change is passed on to every user.

**The BSD license** (Berkeley Software Division license agreement) is one of the most widely used licenses for free software. It has fewer restrictions than the GPL, putting it relatively close to the public domain.

A **peer-to-peer (P2P)** computer network relies on the computing power and bandwidth of the participants in the network rather than concentrating it in a few servers. P2P networks are typically used for connecting nodes via largely *ad hoc* connections and are used for sharing content files containing anything in digital format, such as audio, video or data.

**BitTorrent** is both the protocol and the name of the P2P file distribution application that makes it possible to massively distribute files without the corresponding massive consumption in server/bandwidth resources.

**Fair Use** is the right to use a copyrighted work for educational, academic, or research purposes. The Fair Use doctrine has come under serious threat in the USA as a result of the Digital Millennium Copyright Act (2000), which includes a swathe of restrictive clauses related to the use of copyrighted material with major consequences for public libraries, educational institutions and home use.

**The Creative Commons** is a non-profit organisation devoted to expanding the range of creative work available for others to legally build upon and share.

*Ellen 't Hoen is the coordinator of the Globalisation Project of the Campaign for Access to Essential Medicines of Médecins Sans Frontières (MSF). Her background is in social work and law, and in the past she has*



*also worked for the consumer network Health Action International and as a consultant on drug policy for a number of institutions, including the World Health Organisation.*

## Ellen 't Hoen

Links?

1

"At the core of these actions I see the wish to take back space, to protect the public domain, to refocus efforts on the real needs of real people rather than on commercially viable products only. The overriding principle is to strengthen the notion of public interest rather than commercial interest – an attempt to push back the monopoly rights that have become all invasive. In the field of access to medicines this is very clear. Because of the globalisation of Western-style patent regimes we are losing the single most important mechanism to bring drug prices down: generic competition. I see a lack of government will to take action to stop this trend.

Convergence?

2

Even though the different movements are not in regular contact with each other they do strengthen each other. It is obvious that there is a global backlash against monopoly rights that have gone too far. It is important to be in touch and see where we can be supportive of each others' work, to understand each other's strategies and proposals in particular in case of disagreement. But we should also accept that the strength of the different groups is related to their particular area of expertise and interest and it is often fruitless to try to draw one group into working on issues that are not close to their heart. MSF is not working on medicines patents because we have a political or legal position on patents. We took on the issue because we see in our projects that high drug prices as a result of patents are causing enormous human suffering.

Even among the groups that work on patents and access to medicines there are different views on how to take the issues further and which strategies to follow. We have never let the differences stand in the way. The strength of the access to medicines movement has been in finding common ground rather than emphasising differences."



5



Beatriz Busaniche is a member of the Fundacion Via Libre ([www.vialibre.org.ar](http://www.vialibre.org.ar)). She is also a founding member of the Free Software Foundation Latin America ([www.fsfla.org](http://www.fsfla.org)), whose main goal is to promote and defend the freedoms and rights of software users and developers, specifically the freedom to write, use, redistribute and modify all the software they use.

## Beatriz Busaniche

**GRAIN:** You recently stated that the battle for free software has been won. Why?

Free software has accomplished what I call a “revolution by construction,” which means that instead of tearing down a system (private software), it simply built another parallel system, with its own rules and its own tools. Now we have a huge software ‘structure’ that is open to everyone to use, learn, improve and share. Over the past 20 years, a huge army of hackers around the world provided source code for this amazing collective construction effort. Almost in silence, they built the software that now is everywhere, freely distributed and unbound by the greedy conditions imposed on private software. This is a practical revolution - not utopia, but reality. Some 70% of the world’s servers are now running free software. We have created and proven free software that is actually being used by thousands of people around the world. And that community continues to build it, almost in silence. This revolution cannot be stopped. Now all we need is more people being part of the movement. This is our next battle.

**What forms of defence to you envisage against the appropriation of knowledge?**

The license problem is fundamental, particularly since it is now being applied to much more than software and which extend well beyond the requirements of copyright laws. Many online publications such as scientific journals now impose licensing conditions that tremendously limit access. In some cases they even block printing and often charge for each read-through, meaning you can never “buy” a copy nor store this kind of material

for later access or to share with others. These licenses, also known as EULAs (end user license agreements), set ‘copyright-plus’ use conditions on publications. EULAs on private software often forbid reverse engineering and other actions that copyright law permits.

In contrast, there are several kinds of free software licenses, the most popular of which is the GNU General Public License, which is used by around 60% of free software available in the world. This license assures the four freedoms for free software (see box), but contains a “copyleft” license, stipulating that the redistribution of any products derived from GPL software must be subject to the same license conditions. This minimal restriction allows more and more software to be added to the edifice of free software, while keeping people and companies from imposing restrictions on GPL free software. This provides developers the assurance that whatever they release will not be fettered by any limitations except for the GPL license itself.

This distinctive approach taken by the free software movement is an original defense against the monopoly privatisation of knowledge, and is now expanding to other cultural arenas, as we see with the licenses issued by the Creative Commons project. Just like the hackers, once led by Richard Stallman, found their own way to preserve free access to knowledge in their arena, each specific area must find its own approach, since models cannot easily be transposed.

This is a time to explore alternatives, to experiment with what others have done, but looking for specific and distinctive solutions in each field of knowledge. Open access to scientific knowledge and to publications, for example, are alternatives that are catching on in several places in the world. But there are many issues to be considered, and it is urgent that movements converge in their resistance against privatising life and knowledge.

**What common ground does the FOSS movement share with the struggle against IPR on life?**

What we are fighting in both cases is a growing monopolisation over knowledge by major corporations, many of which are more powerful than most governments. These companies can deny others access to knowledge and the benefits of science. We are all fighting against this exclusion. Our common points are the spaces where we struggle on all the fronts, such as WIPO, the WTO, agreements like TRIPs, free-trade agreements, etc. In addition, these movements are united by the idea





that there are parts of knowledge and of life that must not be the property of anyone, that no one has a right to preclude access by others to certain “common goods”. When we speak of knowledge, access to these goods is not exclusive, nor does it degrade or destroy them.

There is another detail uniting us which must be carefully considered due to the particular dangers it presents: code-based regulations. In software and digital culture, we speak of digital rights management (DRM), which is a means to restrict access to culture by means of regulatory code (software). In the fight against the privatisation of life, we confront other forms of regulation also based on codes, such as the genetic modification of seeds and the creation of suicide (Terminator) seeds, whose genetic code has been modified to no longer give life, to stop reproducing. Both of these code-based regulations go beyond mere legal requirements, both consolidate monopolies and both are invisible but obvious enemies in our common struggle (see box on p 15).

Another similarity in some cases has to do with community. Free software has been built via a collective, community process, fed by programmers from different corners of the planet who do their part writing code, reporting errors, making suggestions, and so on. The concept of “community” is very strong for us, and brings us closer to all communities that work collectively.

#### What are the differences you perceive?

There are several points of divergence. To begin with, we must look at the kind of regulations that control each situation. Regarding knowledge and software issues, we fight copyright and software patents. On matters related to the privatisation of life, we generally deal with patent laws. There are other differences too. A programmer can write software with a piece of paper and a pencil, while a pharmaceutical patent rides on a huge investment in research and development. These different characteristics mean that the possibilities for resisting monopoly will also be different. The other difference we see today is that the free-software movement has already consolidated a hard-to-beat form of resistance, while other movements are still searching for a strategy.

#### What has your experience been in the process of convergence to resist IPRs?

Overall it has been excellent and we have much to learn from other movements. Even so, I still see other

movements that resist IPRs but are dominated by the very discourse they seek to resist. It is incredible to see movements resisting intellectual property while demanding more protection for their own intellectual property. Our convergence is still not mature and there is much work to be done. But I do believe maturity will come as other movements strengthen their discourse and actions, as the free-software movement has.

Meanwhile, I am filled with frustration every time I see social movements that are perfectly aware of the implications of monopolies, know what they mean and fight them, but turn on their computers and use Microsoft software.

Resistance begins with words, and continues with action. Convergence will be difficult if broad sectors continue talking about “intellectual property” while writing their documents with Word. The free-software movement is ready to support other movements, but this must be reciprocal.

#### What pathways to you see being worth exploring in the quest for this convergence?

We need to find a common language that will help us unite forces, know each other better and strengthen the points we share, with no pretension of forcing those we do not share. We also need to establish common points for a minimum consensus, while avoiding trying to maximise points of agreement.

In other words, establish basic points, pillars on which to work, and let each movement find its own strategies and build its own alternatives. These are difficult times, in which we not only must resist but build as well, and our resistance goes by the construction. Building convergence is not easy, but it is the first step we must take.

**“I am filled with frustration every time I see social movements that are perfectly aware of the implications of monopolies, but turn on their computers and use Microsoft software.”**

### The four freedoms of free software:

Freedom 0: Freedom to use software for any purpose.

Freedom 1: Freedom to study how software works and to adapt it to your needs. This means access to the source code.

Freedom 2: Freedom to make copies and to distribute them to help your community.

Freedom 3: Freedom to improve the software and redistribute it, in order to contribute to the collective development of software.





McKenzie Wark teaches media and cultural studies at the New School University in New York City. His most recent book is *A Hacker Manifesto* (Harvard University Press, 2004). *A Hacker Manifesto* grows out of that experience, and attempts to provide a theory to go with the practice of creating and sharing free knowledge in a digital gift economy.

1

Links?

## McKenzie Wark

"While the details can get very complicated, it all comes down to the same question: who owns information? And since when is information something you can own? The consolidation of a strict, and strictly enforceable, 'intellectual property' regime is the dream of a new kind of class. I call this the vectoralist class. It is no longer so interested in owning land or capital because the actual production of primary and secondary goods can be contracted out. Rather, the vectoralist class aspires to control production and distribution through owning a portfolio of patents, copyrights, brands and 'trade secrets', protected under international law.

Movements that challenge the consolidation of intellectual property as the new basis of class domination all have something in common, even if they don't know it. The so-called 'piracy' of media products, is a social movement in all but name. I think everyone who creates 'intellectual property' could consider themselves part of the same class – the hacker class – and as having convergent interests. That could include programmers, musicians, writers, and also engineers, chemists – all sorts of people who are culturally distinct. What we have in common is that we have to sell the products of our intellectual labour to corporations who have a monopoly on realising its value. We invent the idea, but they control the means of production. The laws that used to protect us – copyright and patent – have been subtly changing over the course of the last few decades to protect corporate owners of existing 'intellectual property', not individual creators of new ideas. The *Hacker Manifesto* dramatises this emerging conflict.

2

Convergence?

The various movements for an information commons overlap. They all grasp part of the big picture. It's not that everyone working on the ownership of genes should run open source software, and so on. It's about tactical alliances, and collaborations in seeking understanding of how information became something that could be subjected to something approaching an absolute private property regime."

"I see the movements fighting monopoly rights facing a common struggle polarised around three simple issues: money, power/authority and mass. A simple example in the information technology industry is the widely known struggle between Microsoft and the movement for free and open source software. One side insists on enforcing copyright, while the other favours public license. The war between these two sides is quite ugly in Indonesia, and has resulted in significant casualties. In the last three months, the police raided many Internet kiosks in dozens of cities in Indonesia, and in some cases they confiscated the computers and put people in jail. Such action has prompted a outcry against Microsoft and started a migration process towards Free and Open Source Software, especially Linux-based software.

The key to making this kind of shift happen is changing the mind-set of software users, and fostering a strong community focus. Increasing education and cultivating the spirit to share will help the shift towards a more liberalised market and a fruitful proliferation of work in the public domain. This in turn will reduce poverty and engender further community participation.

Creating pro-poor, pro-community and pro-liberalisation policies is always a struggle. We can win through money, power, or mass. For the poor, creating mass is the only option – and it can be very effective. A simple example is the liberation of 2.4GHz WiFi/Wireless Internet in Indonesia. Until recently the Indonesian government controlled all telecom frequencies. But the rise of an alternative network installing Internet using wireless network technologies that bypass the telecommunications companies has created sufficient mass that the Indonesian government was forced to delicense the 2.4 GHz frequency in January 2005."



**Onno Purbo**

Onno Purbo is Indonesia's celebrated promoter of wireless networking; he is credited with inspiring the creation of RebelNet, which now links over 1,500 schools, 2,000 cybercafes and more than 2,500 outdoor WiFi "hotspots" in Indonesia.



Geert Lovink is a media theorist and activist who has lived and worked in Berlin, Budapest and throughout Central and Eastern Europe for the last two decades, teaching media theory and supporting independent media and new media culture.

## Geert Lovink

Convergence?

2

I am not sure if a convergence, or even a merger, will happen – or should be a desirable move in the first place. Giant meta-movements can easily be hijacked by ordinary politicians, as happened with World Social Forum. We're not talking about visiting each others meetings, signing each others' petitions or other traditional forms of solidarity, but a critical exchange of experiences. For the free software and open source movement, if you want to call it a movement, it could be very useful to learn from the internal strategy debates within the environmental movement. What is the benefit of running your own institutions? How do you create a collective memory so that vital experiences can be passed from one generation to the next? How do you run campaigns and reach large parts of the population? How do you translate complex issues into easily comprehensible issues? How do you overcome self-referential ghettos?

On the other hand (and unlike ten or fifteen years ago), the NGO world is everything but innovative when it comes to the strategic use of new network technologies. Why are so many social movements and NGOs in the iron grip of Microsoft, even though they argue relentlessly against similar monopolies in their own fields? US law professor James Boyle has talks about the need for 'environmentalism for the Net'<sup>1</sup>. It would be great to read similar theories written by environmentalists that recognise the new media as environments to take action in, not merely as tools that can be used for their cause."

<sup>1</sup> [www.law.nyu.edu/ili/conferences/freeinfo2000/confpapers/environ.html](http://www.law.nyu.edu/ili/conferences/freeinfo2000/confpapers/environ.html).

1

Links?

"What these movements share is a rather abstract drive to construct a 'public domain'. In some cases this public domain is under construction and secured through licenses, such the GPL and Creative Commons; in other cases, it is only a proposal. In the case of urban environments we're facing a rapid decline of public spaces through privatisation, surveillance and control. But at a metaphorical level, there is plenty of room for speculation. The links are there, but what we need is a lively process of social hybridisation. This could be a process of continuous mixing, based on local ingredients. We don't need grand theories that explain everything. This will only fuel conspiracy theories in which the source of all evil is reduced to one Enemy.

"By associating the notion of rights with intellectual property (turning IP into IPR), the ownership and infringement of "rights" has come to dominate discussions on intellectual property. IPR has become an ethical issue, and so any IPR-related question can be given a simple yes or no answer. We know that IPR is so commercially, politically, and culturally determined that we can afford no universal position to come to a packaged understanding.

BitTorrent movie piracy, which concerns young educated netizens' desires for entertainment and identity, and developing countries' access to medicine, which concerns uneven distribution of wealth and the capitalisation of medicine, are very different issues embedded in very different socio-cultural-political contexts. Situating them back to their own contexts is an effective way to challenge the current global IPR regime that focuses so much on "rights" and so little on "intellectual property".

We need to unify the too many agendas of the anti-IP movement with a common position, but there is the risk of going from "I support IPRs" to "I don't support IPRs" types of statements, which might elude the more important task of deconstructing the IPRs. So to answer the two questions, I would say that it's more urgent, at least academically, to complicate the different components and issues that are oversimplified by the current IPR discourse."



**Laikwan Pang**

Laikwan Pang is Associate Professor of cultural studies in the Department of Cultural and Religious Studies at the Chinese University of Hong Kong.



9



In 1984, Richard Stallman left his position as staff hacker at the Massachusetts Institute of Technology's Artificial Intelligence lab to launch the GNU Project and its free software operating system known as GNU ([www.gnu.org](http://www.gnu.org)).

The name "GNU" is a recursive acronym for "GNU's Not Unix". GNU is free software: everyone is free to copy it and redistribute it, as well as to make changes either large or small. Today, Linux-based variants of the GNU system are used by some 20 million people.

## Richard Stallman

1

Links?

"The various movements are dealing with issues that have little in common. Look at the issue of patents in the different fields. With medicines the issue is simply one of price – a simple issue, but one that means life or death for millions of people. With patents on seeds, the issue is not mainly about price. It is about taking away farmers' traditional freedom to save and exchange their seeds and breed their crops, which is an injustice even if the price were right. When you look at patents on software techniques, it's not an issue of price; it's an issue of freedom, but a different freedom – the freedom to do what's necessary in order to develop software. The development of non-trivial software involves combining thousands of specific, different techniques into one large programme. Any one of those techniques could be patented, so any large programme surely infringes hundreds of patents.

Plant breeding is not much like software development. You can't just take an idea and implement it in a new plant – breeding is not that simple. Yet the issues for seeds and free software are similar, in that we are talking about being able to copy and adapt things. Although seeds generally copy themselves imperfectly, while copying software is perfect, they are similar if you ignore this difference. For example, people carry out copying and adaptation for both software and seeds through cooperation. But I don't know how this translates into movements for political change.

Convergence?

2

At a broader, more general level, all these movements have something in common with many other movements. They all oppose laws being made to give business more power. Business has too much power. Democracy is broken, and we are all fighting against the power of business, whether it's over patents, or copyright, or water privatisation.

But beyond that very basic similarity, patents, trademarks and copyright are unrelated issues, and trying to treat them as a single issue is going to lead to confusion – what you think you understand about them will be false. Once we jointly reject the broad idea of giving business so much power, we must move to the specifics in order to think about what these disparate laws really ought to say."





1

Links?

## José Bové

"After the privatisation of land and other natural resources, the appropriation of the world by private interests has entered a new phase that is even more dangerous to our freedom. This time, it's nothing less than human intelligence which is being subjected to a new campaign of enclosures. Just like in the 18th century, when the army chased peasants off their farms, the state and its military apparatus are once again using force and violence to protect the rights of a few transnational corporations. Since the mid-1980s, farmers in France have been fighting every day against this rampant expropriation. Together with consumers and environmentalists, they have been going into fields to destroy test plots of transgenic plants because they reject the patenting of seeds. They reject the notion that genes, which express life, can be the property of a private company. Life is simply not for sale.

Other sectors are also being subjected to this aggressive privatisation. The struggle led by free software developers is very similar to our struggle for free seeds. Some scientists, especially those involved in medical research, used to consider us stubborn enemies of progress. But they're starting to understand how patents on gene sequences, held by some companies, are blocking them from freely doing their research. This is making them realise what is really at stake: the freedom to create, without paying royalties to a small group of transnational corporations. In other words: the freedom of science itself to not be totally dependent on private companies.



take advantage of computers and the internet, especially to counter-attack and promote free seeds adapted to peasant agriculture as an alternative to Monsanto's monopoly agriculture. The freeware Firefox browser is a serious challenge to Microsoft's Bill Gates today. Farmers should follow this example and undermine the hybrid maize seed market through the spread of open-pollinated varieties."

José Bové is a sheep herder and farmer of Roquefort cheese. While fighting to prevent the expansion of a French military base that would take over sheep herding land in 1976, Bové began to organise small farmers in the Larzac region where he lived. This resulted in the formation of Confédération Paysanne, a small-farmers union, in 1987. Since then, Bové has led numerous international rallies and protests against market consolidation, globalisation and the Americanisation of agriculture. Bové originally gained international recognition for his role in dismantling a McDonald's restaurant in his home town in 1999. He served time in prison for uprooting 5 tonnes of Novartis' GM corn in 1998, and recently faced further charges for uprooting Dupont's GM maize in 2004 (this time he managed to escape prison).



"Free José"



2

Convergence?

I think the movements questioning intellectual property rights have a common ideal: the freedom to create. With each of our specialities, we have developed different forms of struggle. I am impressed by the movement around the development of Creative Commons licenses because it respects the rights of authors while it allows for free and open circulation of creative works.

Today, farmer-breeders who for generations have been developing and sharing free seeds are being dispossessed by companies like Monsanto and Pioneer [DuPont]. We should sit down with the legal people who drew up the Creative Commons licenses and see whether farmers could use a similar approach with seeds. Also, as farmers, we should



1

## Links?

## Peter Drahos

One effective way to fight the powerful without getting caught up in their games is to turn to the deeper principle of simple rules. We can learn from the free software movement about simply saying no. We need to learn to walk away from deals and strengthen the capacity to say no. We need need to look for ways to say no in which you can't be compromised or betrayed. So much of the game of international negotiations depends on local betrayal – officials signing off on things that they don't really understand. The way to stop that is to stick to very simple rules. These may be different for different groups, but they are simple rules that we can unite behind, and they will trigger an evolutionary sequence that will allow us to win the struggle.

One key to the success of US negotiators is making the pace so fast that no-one can keep up. In Geneva there are developing country negotiators with responsibility for 12 different sectors. That's ludicrous – anyone knows you can barely keep up with one sector, let alone 12. Of course people suffer from negotiating fatigue. That's why the capacity to say no is so important. Local NGOs have to say to their negotiators, "Walk away: do not open up yet another negotiation, do not say yes to this offer of a bilateral negotiation". Pick a few negotiations and target all your resources on them, because that way you can gain strength and unity.

Another key to fighting power that we can all unite behind is civil disobedience. When a country is negotiating with the US behind closed doors, and there are huge riots in the country, the weak negotiator can turn to the US and say, "I would love to give you those patent terms, but my hands are tied – this is just politically unsaleable in my country". But if there is no riot and the negotiation takes place behind closed doors, the negotiator is going to cave in. Civil disobedience is one of the few tools left for weaker parties to work with, and it can be very effective. Look at the anti-war movement during the Vietnam War in the US. Things change when people get out on the streets.



Peter Drahos is Professor of Law and Head of Program of the Regulatory Institutions at the Australian National University. His publications include *A Philosophy of Intellectual Property* (1996), *Information Feudalism: Who owns the knowledge economy* (2002, with John Braithwaite, reviewed in *Seedling*, see [www.grain.org/seedling/?id=265](http://www.grain.org/seedling/?id=265)), and *Global Intellectual Property Rights: Knowledge, access and development* (2002, with Ruth Mayne).

2

## Convergence?

There is such massive diversity in the world and such different moral views that you have to find a common framework. That framework is human rights. It's institutionalised and on certain issues – like health and education – there is massive cross-cultural agreement. Other rights – like the right to food security – are not so widely shared, but that doesn't matter. The strength of human rights is that it recognises diversity, and has a common conceptual framework. You can try and invent your own language and globalise that language, but it's going to take a long time to get anywhere. Human rights have been institutionalised in our world and a lot of people have given up a lot to get those rights on the table. That counts for a lot. Every country is going to come up with the same fundamental rights – like education and health. Other rights are much more contestable, but that doesn't matter, because some rights may be more important to some countries than others. Every country has to practice the principle of toleration (which is implicit in human rights) and unite around that vocabulary. The vocabulary gives them the tools to look at intellectual property rights and ask what do these monopoly rights do to meet their objectives. So I think it is possible for all these groups to unite around human rights, using its vocabulary, to form a more global community.

You might not like the idea of rights, but that's all you have to work with. When I went to the Philippines doing some work on access to medicines, a lot of groups there told me that they found the language of human rights – 'the right to health' – very helpful. You've got to use it. You have to think of ways of bringing that language to life. There is so much moral diversity in the world, you need abstract ideas to unite around.

If you don't want to call it a right, call it a 'fundamental claim'. I'm not saying that we shouldn't be trying to look at alternative solutions and creating new languages, but you can't turn your back on the things previous generations have fought for; it doesn't make sense. You have to use the language of human rights because it is institutionalised into a common framework and so many countries accept it, even though their practices may not be consistent with what the language says.

