

## The end of intellectual property is nigh...

By Philippe Leliaert  
pl@syntaxisnetworking.com

Some years ago members of the British Parliament were invited at one of the Royal retreats. Mrs Glenys Kinnock, spouse of the then-leader of the Opposition and presently Member of the European Parliament, when in the drawing room noticed various works of art by famous painters stacked side by side in a stand. She reflected, noticeably annoyed, on why these were not being made available to the public given that ostensibly they were not even being enjoyed by the royals themselves. And she had a point.

### ***The end of Intellectual Property is nigh... and not too soon!***

Of course, having purchased something with one's own money should mean that one can do with it whatever one damn well pleases. In this case, however, it means that the general public is being deprived of enjoyment. And given that "enjoyment" is something of value to people in general, it also means that in this instance value is being destroyed!

On this premise the world applauds Napster and KaZaA for facilitating the free sharing of music, flying in the face of the Music Industry who see their royalties dwindle. Napster in the meantime has lost its battle against the Industry, interestingly not for

copyright infringement - which it did not do - but for effectively “aiding and abetting” such infringement since the files were shared via Napster-operated servers<sup>1</sup>.

Recent global events provide for discussions that are morally more challenging: the South-African government recently passed legislation to allow for the purchase of cheaper generic versions of anti-aids drug cocktails to combat the AIDS epidemic in Africa - but were sued by some forty pharmaceutical companies claiming infringement of US patent rights<sup>2</sup>; and the Canadian government was similarly challenged by Bayer<sup>3</sup> when it ordered anti-anthrax pills from Apotex Inc, Canada's largest pharmaceutical company, in response to the terrorist attacks in the USA.

The arguments in favour of Intellectual Property Rights (IPR) are well understood: without legal protection against unauthorised and uncontrolled copying companies would be unable to charge the higher margins needed to cover the research & development costs that copycats do not have. For pharmaceutical companies these R&D costs clearly are significant.

There is however an alternative: given that IPR are increasingly challenged not just by rogue operators but even by governments looking after the social interest, and given that the protection of IPR becomes increasingly difficult - and costly - perhaps IPR are just no longer a basis for sustainable competitive advantage!

IPR should be recognised for what they are: a relic of the ‘old’ Industrial Economy, where ownership is exclusive and business focus is on “I win, you lose” (or: “it’s mine, not yours”) in a zero-sum game conducive to corporate expansionism measured by market share. But in the New Economy it is no longer possible to “be everything for everyone”. Instead there is increasing talk and interest in collaborative commerce models where business success is measured by the agility to combine one’s strengths with those of partners. This is in fact a search for the “win-win” combination where both parties trustingly contribute to each other’s success. Instead of hoarding one’s

---

<sup>1</sup> see for instance <http://abcnews.go.com/sections/scitech/DailyNews/napsterruling010212.html>

<sup>2</sup> see for instance <http://www.observer.co.uk/business/story/0,6903,421887,00.html>

<sup>3</sup> see for instance [http://news.bbc.co.uk/1/hi/english/health/newsid\\_1610000/1610036.stm](http://news.bbc.co.uk/1/hi/english/health/newsid_1610000/1610036.stm)

strengths they are being made available for others to in fact expand the application areas. This is called creating leverage: maximising value while minimising costs (at the very least avoiding lawyers' fees for patent filing & protection).

Intellectual Property has its place in business: it is a form of Intellectual Capital that sits at the core of Human Capital (sprung from people's creativity), Customer Capital (valued and coveted by customers) and Structural Capital (belonging to the organisation). But Rembrandts in the attic - or in the Queen's castle - are of use to no-one! Business today is based on knowledge, and the value of knowledge increases with use. So let knowledge be used - the more the better. Realise that the value of one's Intellectual Capital assets increases the more they are accessed and used. Realise also that other forms of Intellectual Capital besides Intellectual Property can bring in revenues.

Linux proves that success can be achieved without resorting to secretive and protective measures against IPR infringement. Everyone is invited and positively encouraged to contribute to the improvement of the product, making it better for all to enjoy. No "not invented here" nonsense! Interestingly, the number of upgrades and new versions is now very limited - which cannot be said about certain other operating systems.