

Global intellectual property rights: arguments or power?

Comments on Ugo Pagano's "Positional goods and asymmetric development"

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Ugo Pagano develops in this paper a new and relevant argument against global intellectual property rights. He says that the global privatization of knowledge implied in the definition and enforcement of these rights involves a dramatic shift away from public goods that allow an equal liberty of use in all countries to a system of pan-positional goods that restrict the liberty of use everywhere in the world and creates a strong asymmetry between rich countries involved in IPR-protected decommodified production and the developing world that relies largely on the trade of standardized commodities. In fact, the inclusion in the WTO rules, in the 1990s Uruguay Round, of a broad concept of property rights under the label of TRIPS was definitely harmful to developing countries; it favored rich countries as even staunch trade liberalization supporters acknowledge while.¹ The Uruguay Round was a classical example of asymmetric agreement that was possible because it happened in the end of the foreign debt crisis which had enfeebled developing countries, and just after the fall of Soviet Union: the peak time of American ideological hegemony.

According to Pagano, "basic knowledge should be a global common. However, the presence of TRIPS and the absence of global cooperation have created an environment with global intellectual private property rights and with local national funding for public research. As a result,

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we face an inefficient over-development of private knowledge and a corresponding under-development of public knowledge, which necessarily leads to an asymmetric development of the poor, as compared to the rich areas of the world.” The irony involved is that rich countries are always claiming the superiority of free markets but do not hesitate in creating a monopoly of knowledge and in subsidizing such monopoly with public funds. Another irony is that the catch-up theories of development that economists teach at their universities are based on the assumption that poor countries will have access to the technologies that rich countries develop.

Global intellectual property rights proponents argue that such protection creates incentives to firms expending in research – something that would benefit all. When developing countries respond that this is not so, that it involves an asymmetrical relation, the representatives of rich countries retort that business enterprises in the poor countries will also profit from the assertion of intellectual property rights – what is true in theory but not in practical terms: it is obvious that business enterprises in developing countries have a much smaller possibility of developing new technology than the ones in the rich world.

How Pagano criticizes this view? He argues that global intellectual property rights transformed commodities into positional goods, granting a monopoly to their owners. I have my doubts that this is an argument; it is rather the statement of a fact – a fact that intellectual property rights proponents would not deny. The question is to know if this monopoly – the ‘incentive to research’ – is a reasonable argument. It is not, according to Pagano, because knowledge should be a public good. This is an argument, but not as strong as it seems in so far as it adopts a logical-deductive method of reasoning. As Pagano recognizes, knowledge is not a pure public good. It is a semi-public good; it is a non-rival good that can be used by many individuals without decreasing its value, but, differently of a pure public good, can be consumed individually to the detriment of others. In other words, it can be transformed into a positional good – a good that, in the words of the author, is “a good such that an agent consumes the same but negative amount of what another agent consumes”.

The transformation of knowledge into a positional good and, thus, into a monopoly not against neighbors as are land property rights, but against everybody everywhere, may be the outcome of the fact that it is a secret, or of establishing a ‘legal position’ that artificially transforms knowledge into a positional good. Thus, it is not the ‘nature’ of knowledge as a public good that was violated by intellectual property rights, but the power of the countries that were able to legally transform them into a ‘right’. Since knowledge is not a pure public good but just a semi-public good, the concept of public good opens room for all kind of debates, and, thus, adds little to the argument against global intellectual property rights. The fact that these rights create more than monopolies, that they create pan-positional goods that impose “restrictions for many individuals at various country locations and potentially for all the individual of the world” shows how strong are these rights if developing countries accept them but does not demonstrate any inner inconsistency in the existence of such rights and such positional goods. It is ironical to use a concept that neoclassical economists use and abuse to restrict state intervention, but since the pure public goods are almost non-existing goods, since most goods subject to public debate are semi-public goods, arguments based on such concept are never persuasive. It would be wonderful to prove the logical contradiction between the concept of public goods and global intellectual property rights, but this is just not possible.

Thus, we have to choose other arguments; instead of a logical, we can argue that global intellectual property rights are inefficient and unjust. Pagano knows that and offers several arguments oriented to the inefficiency economic claim and the injustice moral claim. In terms of efficiency or economic development, the question is to know if the average world per capita income would increase faster or slower with global intellectual property rights. This depends on how key for such development are the research expenditures of business firms that would not take place if such rights were not so broadly granted – if developing countries continued to reject them while they were not interested in protecting, at world level, the property rights of their business enterprises. Private research is important to economic development, but the incentives that business firms have to do research would be just margin-

ally reduced with a not so global protection of property rights. Private research is already enormously subsidized by governments, and already produces enormous profits that would be only marginally affected. On the other hand, it is important to note that a large part of the goods that are protected are not the outcome of research, but of marketing, branding. In this case, it makes no sense to argue in favor of global intellectual property rights using the efficiency argument: marketing is a good strategy of attaching to goods more per capita value added but does not make production more efficient: it just increases its psychological value content.

In moral terms, the question is to know if it is just or unjust to put such a great burden on developing countries. One can say that this depends on the good. If we are speaking of drugs that are consumed by the poor, as it is the case of AIDS retroviral drugs, the injustice is patent. If we speak of other goods, justice or injustice issue becomes less clear, but it is almost impossible to argue in terms of justice when we are artificially creating privileges for the rich.

Yet, as it was the case of the ‘public good x positional good’ argument, the efficiency and the justice arguments are not definitive. I believe that eventually they are more persuasive, but the question is not to know which the best arguments are. Pagano’s argument is relevant because it is a kind of internal critique; and because it aims to be a logical-deductive argument of the type neoclassical economists are used to. The efficiency and the moral arguments are probably stronger, but they are equally subject to counter-arguments. In all three cases, the arguments of the proponents of global intellectual property rights are weaker, but, as in many other international cases, the final criterion is not truth, nor efficiency, nor morality, but power in international competition. Globalization is the stage of capitalism in which nation-states compete at global level through their business enterprises. In this competition, rich countries count with strong nations able to form strong nation-states. Despite that, between the 1930s and the 1970s, developing countries were able to assert their national interests and develop. In the 1990s, the rich countries again proved to have more power – more economic and, principally, more ideological power – and approved rules at the WTO

that are detrimental to developing countries. Today, after the last six years sharp decline of the American ideological hegemony, rich countries in general are relatively less powerful. Developing countries may now have more room to discuss such rules, and to establish domestic limits to their implementation. Papers like Pagano's are an important subsidy in this fight.

Note

- ¹ I read more than once the admission by *The Economist* that this round was uneven in relation to developing countries.

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