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## A Critical Review of Brian Martin's Paper

The ownership of physical property such as movable or immovable things like a house or a car, implies that the proprietor or owner may use the owned property as he wishes and nobody else can lawfully use his property without his permission. The property can be sold or mortgaged. That is the way the concept of property has evolved and is inextricably linked to the concepts of wealth and profits in the present day economic systems. The owners of such properties protect their rights through a complex web of power relationship and systems that govern the societies.

In contrast to the ownership of physical objects, intellectual property is defined as a product of the mind, and as defined by the Convention establishing the World Intellectual Property Organisation, the UN specialised agency, includes rights relating to literary, artistic, and scientific works; inventions in all fields of human endeavour; scientific discoveries (No national laws or international treaties give any property rights to scientific discoveries); industrial designs; trademarks, service marks and commercial names and designations; and protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The intellectual property is not owned as a natural right but the rights to own such a property are conferred by the national governments through the enactment of appropriate legal systems. Given such rights,

the intellectual property can also be sold or mortgaged like the other physical properties.

The question of intellectual property has become of immense importance in the context of technological changes that have come about in the past few decades, specially, in the fields of biotechnology, new materials, microelectronics, computers and information technologies. These technological changes have tremendous wealth generating potentials and at the same time, have provided cheaper and easier access to the intellectual products, knowledge and the information base. Two schools of thoughts have prevailed. In one case, the intellectual property is strongly justified and a case is made for stricter controls and harmonisation of laws of different countries for its protection. Alternatively, it is argued that intellectual property serves no special advantages except perpetuating the inequalities in the society and, thus, should be abolished.

In this paper, Brian Martin makes a strong case against the intellectual property. He makes three pronged arguments against the intellectual property. Firstly, some of the problems associated with the intellectual property are pointed out. These problems are:

- (i) the information generated by governments which are paid for through public funds may not be freely available as it may be given to the private bodies for exploitation;

- (ii) Companies use patents to suppress innovation rather than as a means of sharing information with the public;
- (iii) trade secrets are used to suppress technological developments;
- (iv) intellectual property rights extended to biological information allow patenting of genetic materials found in third world countries who will have to pay for use of such materials that have been freely available to them for centuries; and
- (v) in practice, the most individual creators do not actually gain much benefits from intellectual property. It is usually the corporations and governments who own the copyrights or patents.

Secondly, Brian Martin provides a critique of the main arguments used to justify intellectual property. The key arguments in favour of intellectual property are:

- (i) people are entitled to the results of their labour;
- (ii) people have a right to possess and personally use what they develop;
- (iii) private property is a means for promoting privacy and a means for personal autonomy; and
- (iv) intellectual property is needed to promote creation of more ideas.

A counter critique to these arguments developed in the paper points out that the intellectual products are social products depending upon earlier contributions and as such any present contributor of ideas cannot validly claim full credit. Regarding the rewards for labour argument, the point is made that it is not essential for one to be compensated in monetary terms on account of the contributions made by them which are mostly due to natural talents. Trade secrets cannot be de-

fended on the grounds of privacy, because corporations are not individuals. The paper accepts the limited validity of the need of intellectual property to promote creation of more ideas. However, it is argued that, as might be expected, the length of protection of intellectual property has not been reduced in spite of the increase in the scale and pace of the intellectual work over the years.

The third dimension of Brian Martin's critique implies that the intellectual property cannot be justified on the basis of the marketplace of ideas. The marketplace of ideas is an artificial creation that serves powerful producers of ideas and legitimates the role of elites.

The straight forward alternative to intellectual property suggested by Brian Martin is that it should not be owned and that ideas are available to be used by anyone who wants to use them just as scientific knowledge or the language including words are available to anyone rather freely except in some areas like military research. The strategy suggested, to bring about a change wherein there is no intellectual property, is to defy it by reproducing protected works. The message is to organize nonviolent action — civil disobedience to laws on intellectual property. Further it is suggested that the strategy can be complemented by promotion of non-owned information, for example, public domain software. Such a strategy, if can work on practical grounds, could indeed be an excellent approach. But in practice—it is an undaunting task indeed! At any moment, the mankind is indebted to the cross-cultural intellectual contributions which need to be repaid.

The application of the laws of ownership of the physical properties to the ownership of the products of mind viz. intellectual property cannot be considered in isolation of the laws that operate and govern the economic systems. The practicality of the challenge

against the intellectual property as put forth by Brian Martin is, however, limited as the paper itself observes that it is impossible to imagine intellectual property being abolished without the rest of the economic system being unchanged.

The reality is that, presently, the world view on intellectual property is heading towards stricter controls that are embedded, for example, in the Agreement on Trade Related Aspects of Intellectual Property and are being put to practice under the aegis of World Trade Organisation. This is only the beginning of giving a deeper meaning to the concepts of intellectual property on a world-wide scale which integrate them with trade and into the prevailing modes of the economic system rather than bringing about a change in the system. To what extent, it will be possible to put in place systems for the en-

forcement of stricter controls on intellectual property and protect the rights of the owners against infringement? Most developing countries find themselves handicapped while managing such stricter controls on intellectual property. There is a limited awareness and guidance on various aspects concerning the intellectual property. The immediate need is to spread the awareness about the basic concepts of intellectual property and manage it. Information is power. The barriers to information can only be broken by having more information. The greater challenge is to organize the creative talents to generate wealth and take measures to exploit the intellectual property.

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