RESEARCH NETWORKS 6
Economic Sociology

*Intellectual property issue as a sociological conflict: Culture and the economic logic in a globalized world*

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Abstract: Issues related to Intellectual Property (IP) have recently come to the fore linked to essential conflicts in advanced industrial societies. However, there is a lack of research from a strictly sociological point of view. In this paper I suggest a new way of dealing with them. First, I locate the conflicts within its specific historical framework (the commercialisation of ideas and immaterial work, the cultural industries and mass consumption, the new technologies of information and Internet, the status of the authors in Culture and Science, the regulation of the cultural field, etc.). Secondly, I provide a sociological context to understand the conflict in which we observe the struggle between an individualist economic logic (ideas as commodities, private author’s rights, copyrights, patents and trademarks, etc.) and a collective-social one (ideas as public goods, the cooperative character of cultural production, the right to access information, etc.). Although current Intellectual Property policies are strengthening legal protection we are currently in a moment of re-definition and choice of the models of cultural regulation that will deeply affect the core of our social forms of living. We finally propose a connection between Economic Sociology and Sociological Theory through a renewal of the “forgotten” Conflict Theory in contemporary sociology.
1. A historical introduction: from cultural anonymity to economic authorship

Authorship and author have been two of the main concepts of western Modernity. Liberalism and romanticism created and shaped this kind of isolated and lonely genius who produced art and culture not within the world but “against the world”. An author is an individual (a person with a special gift, unexpected skills or unusual capabilities) who invents or produces culture (books and articles, symphonies, ideas, paintings, pictures, sculptures, etc.) and claims for them. Moreover, authorship is the symbolic stamp, the mark of a subject that legitimates its creation. The author is also the owner of what has been made/created and, therefore, is allowed to trade (mainly, buy and sell) with his creation (no mater if it is immaterial). This implies that authorship entails some economic rights (copyrights and patents) not only cultural significance. Hence, although we associate intuitively authors with culture or aesthetics and art, authorship and ownership are linked and deeply connected concepts, which suggests us these concepts (author and authorship) are part of the economic theory.

Although we seem to be quite used to these concepts, we should not take them for granted. The upsurge of authorship is a recent discovery in modern discourses (Foucault, 1977 and Chartier, 1993). Indeed, the pre-modern cultural production was based on the anonymous oral/dialogic tradition (the classic method of spreading information, knowledge and culture). Anonymity was a common way of distributing culture, knowledge and information. No authors were needed to legitimise/justify them. It did not matter who did something, people just were concerned how far ideas reached. Thus, authorship, in its modern form, transforms culture approximately by the XVII century, which becomes individual rather than collective, economic rather cultural. Since then, every cultural piece is linked to a person’s name. Knowledge and information becomes subject to ownership and modern authorship is born. The social consequences will be unpredictable, amazing and striking.

As mentioned before, looking at history I suggest authorship should be addressed from Economic Sociology instead of belonging only to cultural studies (sociology of culture). Author is an economic category, which binds culture and knowledge to ownership and private property (as economic natural rights). It is under the individualism of the initial economic liberalism (i. e., Locke, 1956) and the debates
around the French Revolution when the author becomes functional and meaningful (Hesse, 1990). The rise of the romantic notions of individual creativity in the eighteenth century where useful to the industrial capitalism and to the first intellectuals (Sherman and Strowel, 1994). Ideas, inventions and creations start to be seen as economic resources and intellectuals undertake the task of claiming for their jobs. They start to demand the economic recognition and rewards (wage, copyright, royalties, etc.) of their everyday work, the compensation for their individual efforts.

Nevertheless, we must bear in mind ideas are quite strange commodities due to some of their intrinsic features (non-rivalrous consumption and non-excludability) (see Barlow, 1993). That is the main reason why, at the beginning, they did not fit into the economic liberal theories and got overlooked in some discourses. It was pointless to worry about alleged non-economic things. Many economic theoretical approaches have ignored the economic role of “idea producers” because ideas are not scarce or material objects. As a matter of fact, initially they were considered in the same way as water, air, earth and so on. It is only right now, under the pressure of the current capitalist globalisation, that neo-liberal institutions (WTO, FMI, WB, etc.) seek to justify the entrance of ideas and information in a classic economic regime of private property and economic rights.

2. The sources of the conflict: private rewards vs. public benefits

How have we reached to this point? How has culture started to become a commodity and how did the Intellectual Property discourses emerge and consolidate? Two basic phenomena or processes took place and shook the modern minds. First, the invention of printing (Johann Gutenberg, around 1450) and the new ways of spreading and distributing published texts. The massive reproduction of documents produced new conflicts on the property of them. It was mainly due to the responsibility and the control of free speech and to the monopolistic practices of the first printings. The first copyright law (Anne Statute, in England) was established and signed because of censorship and monopoly around 1710 (Tallmo, 2003). Second, as Marx and Weber brilliantly pointed out, industrial capitalism forced every citizen to work in order to survive. Actually, work is the only way to maintain oneself, to earn a wage (enough money) to fulfil needs. Job is, from now on, the key to social integration and survival (Giddens, 1971:
49). That is to say “under capitalism workers are forced to sell their labour” (Singer, 1980: 45) and artist and intellectuals realised that the only way to get a wage is to trade with their productions or inventions. Thus, they had to convert their non-scarce and non-material trading objects (ideas\(^1\)) into scarce objects through private property (May, 2003). The “construction of scarcity\(^2\)” (producing market advantage for the holder) is a significant and remarkable aspect of the IP legislation and conflicts.

I would like to remark that the convergence of a technology of text production (printing) and the capitalist transformation of labour made a conflict to rise. It was not a unique and isolated element what changed the law but the confluence of an economic and a technological one. We often can not be sure social structures get transformed because only one item or event while many of them are involved. It is interesting and suggestive to understand social changes as a historical combination of technological systems (in this case, printing) and economic structures (the mobilization of labour force in the early stages of industrial capitalism, for instance). We can, therefore, describe the upsurge of the conflict and the attempt to overcome the conflict (copyright laws) with the next diagram:

Needless to say, it is the old and classic conflict theory developed by Marx: the clash between the social productive forces (technological innovations, in this case) and

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\(^1\) Ideas, as labour, land and money are, somehow, a “commodity fiction” (Polanyi, 1957): “The rendering of things not produced for sale as commodities required a story to be told about these resources which was not necessarily linked to their real existence or production but rather narrated a propensity to be organised through markets.” (May, 2003).

\(^2\) “Patents and copyrights are social innovations designed to create artificial scarcities where none exist naturally... These scarcities are intended to create the needed incentives for acquiring information” (Arrow, 1996, emphasis added).
the relations of production (the copyright and Intellectual Property laws) generates as an outcome, social conflicts (see Marx 1989, Preface). The results of the technological perturbation and dislocation on the existing relations cause disputes until new social relations are able to adjust to the new situation. Unless legal texts and economic norms adapt to the technological transformation, social breakdowns will keep on. This is, more or less, what happened in the XIV, XV and XVI centuries (after the printing started to be applied) and this is, roughly, what is happening now (after the Internet use). What we figure out is that new laws and current regulation procedures are attempting to balance the situation, seeking to recover the lost equilibrium.

If we look closer, we find out that ideas have been addressed as economic resources (commodities) but that they belong to social and collective cultures. Do authors represent accurately the production of knowledge? Can knowledge be an ownable property? Is the private logic the best way of dealing with culture from a distributive justice point of view? Are culture, knowledge, ideas, etc. private or public goods? Knowledge and ideas are at stake because they have economic value but they also have “social value” (education, development, progress, technological innovation, health care, science, etc.). The commodification of knowledge and its application is triggering disputes, disagreements and confrontations. This is the real and political conflict we are witnessing nowadays even many people overlook it.

As Marx said, market exchange has the effect of abstracting the (social) labour. It conceals also the conflict we try to describe here. Industrial intellectual property (patents) and literary or artistic intellectual property (copyrights) express ownership’s legal benefits hiding the collective production of these ideas (knowledge is a social product and a social construction) and the social use of them (i.e., the extensive social benefits from the diffusion of innovation). Besides, unlike material properties, these rights are temporary, returning to the public realm when they expire. This entails that private-public boundaries are being redefined constantly in an unseen and covered way.

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3 “Until very recently, copyright has been on the periphery of law and public policy concerns because it provided highly technical rules to regulate a specialized industry […] Copyright now affects everyone.” (Samuelson, 2001).
3. Context and framework of the conflict: postfordism, cultural industries and the information era.

We will try to identify three elements to outline the social space and historical moment in which these IP conflicts arise: postfordism (Economy), mass cultural consumption (Culture) and new information technologies (Technology).

i) Many social theorists assume a new era has begun. Post-fordism models of economic organisation depend on new technologies and immaterial work (the Marxist “general intellect”) (see Marx, 1993). One of the key aspects of postfordism is that knowledge has become the basis of innovation; it is a central production factor. The economic structure unfolds a great dependence from information exchange and technical knowledge. Capitalism (as Negri and Lazzarato believe and postulate) seeks to grasp and recover the potential of “cognitive communities” for the sake of taking economic advantages. Capitalism has always “stolen” the labour force potential to keep on working or to grow up. The infrastructure basis of this new capitalist phase is the appropriation and implementation of cognitive skills and information.

ii) We should add another element in the conflict framework. For many decades (and mainly since the forties, fifties and sixties), mass consumption has taken over the whole society (Ritzer, 1999). We live for consumption, we live to buy and use (for a short period of time) every object offered in the market. Culture (whatever it is) has also been colonized by consumerism. Thus we can talk of Cultural Consumption and Cultural industries (Adorno and Horkheimer). Culture is, therefore, a new commodity which can be traded in markets and should be treated as such. Hence, unlike sociological analysis, from an economic point of view there is no distinction between a brick and a book (Berger, 1972).

iii) More recently, many sociologists have agreed to label our new societies as “Information societies” (Castells 1996, 1997 y 1998). They announce new communication and information technologies (i.e. Internet) have transformed radically the ways of dealing with culture, information and ideas. The “copy & paste” new mode of creating and producing things and the high-quality and non-effort copies they allow
imply some radical changes. In a nutshell, our societies are becoming more dependent on information technology.

Before the Internet, long copyright terms sometimes did not matter. You could do nothing with a book out of print. But, the new digital techniques allow us to reproduce and copy almost everything. We can take an extraordinary amount of knowledge and culture and make it available from the Internet so that it can be free for all. These advances in information technology and digital networks allow everyone to become a publisher. This possibility did not exist when the first copyright laws were written. The Internet has made the public domain more valuable. Digital networked environment has surely changed the economics of production of intellectual property. That is why many lawyers say we should seek to “restore some balance” (Boyle, 1996 and Lessig, 2000). New information technologies have moved us back, returning to the pre-printing times when anonymity, information free sharing or massive copies were easy and common (New York Times, May 10 2000). New technological systems have triggered somehow the revival of a never ending and non-healed up conflict (IP). The digital landscape and the new information technologies reopen the closed and slept conflict. The Internet age is the new battlefield in which friends and foes of the copyright laws fight.

4. The “real globalisation”: the world unification through intellectual property rights.

The history of IP rights⁴ has been a contested expansion of different arrangements in which the economic logic has slowly defeated the social one. It means, the private/individual model has increased its presence in laws and treaties and the legal protection has been strengthened. The global governance of Intellectual Property rights culminated recently in the TRIPs agreement⁵ (signed in 1994 and overseen by the WTO since 1995). This implies the IP conflicts have come near the top of the global political agenda, producing a considerable amount of polices and interpretations regarding the role of patents, copyrights and trademarks. The 73 articles of the agreement are a great

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⁴ The Statute of Anne (1709), the Berne Convention (1886), the Paris Convention (1891), the World Intellectual Property Organisation (1970), etc.
⁵ The contents can be read in http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm
influence on the national legislation of WTO members. They represent an undertaking to establish standards of IP rights protection and to provide legal mechanism to strengthen and enforce them.

I would like to point out the overwhelming and increasing relevance and significance of IP rights in the globalisation regime and in (international) economic relations. This set of universal norms are becoming the backbone of the new global capitalist order. Even some of the cultural, technical, scientific and medical sectors have resisted so far to this kind of multilateral agreements, they seem to surrender to the WTO’s legislative reorientation. The “theft” and “piracy” excuses conceal the formation of a uniformed legal system of ideas, information and knowledge commerce. Not only the WTO, but the World Bank, the WIPO (World Intellectual Property Organization) and other multilateral agencies are expending significant effort in these areas. The global legal regime of IP rights is a central piece of the globalisation process. The governance of contemporary capitalism depends on such treaties and convenes privileging trade interests and drowning out the development and social aspects. The celebrated ‘borderless world’ will not be sufficiently globalised until these agreements take effect.

As it is widely known, the tensions stem from the meeting of two legal cultures (the two cultures of copyrights): the European and the US one. However, TRIPs agreement and other IP rights legal conventions have approached both cultures. It is widely praised the benefits (diversity) and costs (homogeneity) of globalisation in culture, but globalisation in culture does not unavoidably mean unification of topics and issues nor standardization and sameness (Tomlinson, 1999). It entails the fluid circulation of culture as economic goods and it requires unifications of laws and norms (GATs, WTO, TRIPs). In short, IP rights are a central contribution to globalise the world through a uniform and homogeneous set of economic rights and norms. WTO

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6 Bear in mind IP is an area where the US has mobilised considerable political economic pressure because it is the biggest exporter in the world of copyright and patents: “There is much more at stake politically for the US government than merely the governance of IPRs” (May, 2003).

7 “In Anglo-Saxon countries (reflecting the common law tradition) these rights are limited to an economic right, where the creator (or copyright owner) is legally entitled to demand a share of earnings from the utilisation or reproduction of the copyrighted work. In continental Europe (and in jurisdictions drawing from the Roman law tradition), there is an additional moral right not to have work tempered with or misrepresented.” (May, 2003).
success depend on the efficiency of TRIPs and other IP economic circuits. In fact, “the central intention of TRIPs agreement is to provide a legal (and global) framework and an uniform approach for a single intellectual property regime throughout the international system” (May, 2003). Rigid and stronger protection is helping to establish the commercial and financial trade flows that drive the globalisation process. Harmonisation of law across WTO members (more than a hundred) represents the triumph of economic globalisation extending the liberal conception of social life (Burch, 1995: 215). Summarising, among the many issues involved in building an international economic regime, none are potentially more significant for global commerce than those related to intellectual property, which include patents, trademarks, industrial designs, appellations of origin and copyright.

5. Cooperation vs. competition: the social vs. the economic logic

“Political Economy starts with the fact of private property; it does not explain it to us. It expresses in general, abstract formulas the material process through which private property actually passes, and these formulas it then takes for laws” (Marx, 1980: 66).

The IP conflict (culture/ideas as public goods vs. the natural economic rights to private property) we are dealing with unfolds a deeper confrontation between a dualistic conception of the world (as weberian “ideal types”). We have decided to label these two models as the social and the economic one although we realize it can be too simplistic. However, we will use and apply these words in order to highlight the features of both ways of understanding societies. The social one emphasizes the holistic, collective, dialogic, interactive and cooperative way of social life. The economic one stresses the individual, private, competitive, rational and selfish character of economic transactions. Consequently, we are dealing with two philosophical approaches to the socio-economic sphere that justify and legitimise different cultural and technological polices.

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8 “Protection of intellectual property on an unprecedented scale at the global level is particularly important if private sources of wealth are to achieve levels of capital formation necessary to play the lead role expected of them within the framework of the Internet’s emerging international regime” (Franda, 2001: 110).
Bearing this contrast in mind, we can build the following chart made of ideal types of visions or ways of addressing the cultural production issues and the IP conflict elements:

<table>
<thead>
<tr>
<th></th>
<th>(Capitalist/Liberal) Economic Logic</th>
<th>Social Logic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cultural Production</td>
<td>Individual (author): the labour of an individual acting in solitude to produce new knowledge</td>
<td>Collective (interaction): the dialogue of groups (culture takes place in social relations), outcome of collective interaction</td>
</tr>
<tr>
<td>Ideas (Knowledge)</td>
<td>Commodities and properties</td>
<td>Public Goods⁹ (social benefits)</td>
</tr>
<tr>
<td>Value</td>
<td>Commercial value (industrial application and money)</td>
<td>Social value (progress, education, freedom, empowerment, etc.)</td>
</tr>
<tr>
<td>Rights</td>
<td>Private rights (copyright as an economic natural right)</td>
<td>Public benefits (free access to knowledge for everyone)</td>
</tr>
<tr>
<td>Innovation</td>
<td>Based on individual possession of new ideas (taking individual advantage of them)</td>
<td>Based on the diffusion and sharing of inventions (taking advantage of team and community works)</td>
</tr>
<tr>
<td>Best way of organising the production of culture and technology</td>
<td>through the Market</td>
<td>through social/political regulation</td>
</tr>
<tr>
<td>Maximize the efficiency</td>
<td>Competition (propertisation)</td>
<td>Cooperation (sharing)</td>
</tr>
<tr>
<td>Property</td>
<td>Encourages individual effort through the reward of ownership of the fruits of the work</td>
<td>Limits and slows down creation and cultural innovation</td>
</tr>
<tr>
<td>Goals</td>
<td>Systematic commodity production</td>
<td>Systematic needs satisfaction/fulfilling</td>
</tr>
<tr>
<td>Ideas belong to</td>
<td>Individuals (Companies)</td>
<td>Public Domain (all)</td>
</tr>
<tr>
<td>Incentives to invent or create culture and science</td>
<td>Monetary rewards (relations are mediated by money)</td>
<td>Collective sharing (relations can be mediated by status and reciprocity)</td>
</tr>
<tr>
<td>Individual Effort</td>
<td>Should be rewarded</td>
<td>Should help to community</td>
</tr>
</tbody>
</table>

Table 1: (Liberal/Capitalist) Economic logic vs. Social logic

The laws we have described before are “sustained” and justified by certain social and economic discourses I intend to bring to the surface. At the heart of this problem is the important balance between a private economic logic (individual rewards) and a

⁹ Some authors have started to talk about “global public goods” (Kaul, Grunberg and Stern, 1999).
public social one (public benefits). In consequence, we can observe a clash between these two models and identify the “building pieces” of the (neo)liberal economic discourses. A few examples will be given below.

For instance, we find the claim for a “natural right to own and commerce with ideas” or the link between innovation (as a social change) and the need of being rewarded with money (as the only incentive that can assure cultural creation). These narratives of justification trying to put individual rights over the public developmental benefits are the language of the new liberalism. They affirm the primacy of economic development over the social welfare.

One of the endless and everlasting questions raised at the origins of the sociology was this: is it possible that humans would cooperate without the presence of an external coercion or restraint? (Axelrod, 1984). There have been two main responses: the contractual (Kant) and the coactive (Hobbes). Nevertheless we can find here several examples of natural cooperation (perhaps selfish cooperation) within the cultural field (just having a look at history). In opposition to a social view, liberal thinkers insist to make innovation to depend on competition among economic agents but on cooperation among social groups.

For many people, culture should belong to a non-owner “public domain”, a kind of source where everyone can access to and get a benefit. Since copyright duration has been increased for the last years, the public domain shrinks step by step. The more the copyright lasts, the less public domain we have. In the U. S., Sonny Bono extended the copyright term by 20 years, to 95 years for corporate works and life plus 70 years for individuals. This means, in the next 20 years, no copyrights will pass into the public domain.\footnote{See: http://eon.law.harvard.edu/openlaw/eldredvreno/pubdomain.html}

Many experts say “long copyrights are not helping innovation or growth” (Lessig, News.com, 6\textsuperscript{th} June 2003) reclaiming the public domain as a basis of cultural innovation and enhancement. However, economic institutions affirm copyright and patents monopolies are required to guarantee invention and creation, a paradoxical
statement in classical economic theory\textsuperscript{11}. Therefore, economic institutions assert the owner rights are protected for the sake of cultural and technical innovation. Social justice is deferred and made dependent on economic development. Moreover, the social costs of information or knowledge withholding are overlooked\textsuperscript{12} (there are inherent problems with commodifying knowledge). Public goods are only recognised under the neoliberal point of view as “residual” after the rest of natural and economic rights have been exercised. Social and collective aspects are subsumed beneath the normative economic and individual rights.

Patents and copyrights, seen as bargains between states and inventors/creators, provide rights which can be transferred to another person or company. It suggests author’s protection and individual care is not the central argument for sustaining copyright laws. It is the economic value of someone’s invention and production through its market trade. A kind of reliance on the advantages and efficiency of market organisation (in culture, technology and science) is central to the norms, narratives and laws on which Intellectual Property Rights are founded. We have tried to illustrate how the process of construction of scarcity through the commodification of knowledge plays a vital role in the operation of contemporary global capitalism.

6. The software case study: an example of the ambiguous and disputed IP conflicts and the role of market.

“If people had understood how patents would be granted when most of today’s ideas were invented and had taken out patents, the industry would be a complete standstill today. The solution… is patenting as much as we can… A future start-up with no patents of its own will be forced to pay whatever price the giants choose to impose.”

(Bill Gates, Challenges and Strategy memo, May 16, 1991)

\textsuperscript{11} In this case we find an artificial right distorting the free market: “Whereas we might expect the public action concerning private property would normally be directed at the prevention of the rising of prices, in these cases the object of the legislation is to confer the power of rising prices by enabling the creation of scarcity” (Plant, 1934). As a matter of fact, patents have been used historically to maintain import monopolies what seems to agree with Schumpeter’s point of view (Schumpeter, 1950).

\textsuperscript{12} For example, sociologists should notice one of the outcomes of IP rights is to strength the Matthew effect (Merton, 1968). Developing countries have handicapped themselves by acceding to some agreements, treaties or convenes (i.e. TRIPs).
Computer industry claims to be threatened by the Internet and fights to strengthen the software patents against piracy\textsuperscript{13}. They would like to take control of the ideas programmers combine to make a program. Their effective monopoly on modern software implies the control over production and distribution of information on and out of the net. These monopolies are “software patents” that restrict the use of the software ideas and depict the Industry’s drive toward ever stronger rights.

Nonetheless, computer software is made up of thousands of smaller instructions, loads of sequences of code. A computer program embodies hundreds of algorithms and software ideas and that makes patents meaningless or nonsense: “Since each idea is abstract, there are often different ways to describe it: thus, some ideas can be patented in multiple ways. Since a single piece of software can embody thousands of ideas together, and those ideas are arbitrary in scope and abstract in nature, writing software will only be worthwhile for those who are rich and have a large software monopoly portfolio” (The Guardian, June 5, 2003).

The European Commission is currently debating a proposed directive on computer-implemented inventions that will allow software patents. It is a highly exciting sociological exercise to read the arguments and reasons each part (pro and against the patents) assert to justify weather or not software patents should exist. However, the European Patent Office (EPO) is already registering software patents of dubious legal validity defying the treaty that governs it and stretching the field of what can be patentable. A group of programmers have launched a campaign against software patents in Europe. They emphasize patent system can slow down and even stop information innovation\textsuperscript{14}. In the Internet age, “software fights” are clear battles for the control and possession of technological, cultural an scientific ideas (and their implementation).

Recent experiences has shown how culture and information can be produced cooperatively more efficiently then trough the market competition (GNU/Linux and the

\textsuperscript{13} “In the United States, for example, until 1994 computer software was considered to be covered by copyright law, under which it was treated in the same manner as mathematical algorithms in a way that often mad it ineligible for patents. But that approach changed drastically in the mid-1990s as the software industry became the driving force of internet and IT development and computer code became increasingly valuable.” (Franda, 2001: 126).

\textsuperscript{14} See http://swpat.ffii.org
open source communities). These experiences are associated to a social movement: the free software movement that protects the intangible interest we all have in an open information environment, in robust public domains and in fair laws. The GNU/Linux’s cooperative, shared and decentralized programming experiences are evidences for a central point in our discussion\textsuperscript{15}. The programmers community has organised itself to produce software collectively and without any money rewards but the community’s recognition. What has been questioned is not Microsoft’s leadership or certain structures in the software market but the fact of the economic market as a way of organising its production. Their legitimacy and efficiency to produce and generate technological culture and scientific knowledge does not bear on liberal competition. They undermine the image of workers competing for an individual wage and not caring or concerning with any other issue. However, there is another crucial point: they have proved that the production of culture, technology or science is more efficient when is cooperative and not forced trough market’s rules. Market production is not always the best choice for everything and is clearly inefficient when used for some areas such as culture and technology. In some way, what we obtain is a clear proof of the contingent and fictional capitalist colonisation of cultural, cognitive and techno-scientific systems. Classic economic market is no longer the favourite mode of arranging software creation, information exchange or technical innovation. In other words, capitalism finds here its own limits.

7. A kind of conclusions: new conflicts in post-industrial societies, the link between economic sociology and sociological theory.

Although I started this paper assuming I was going to address new conflicts (contemporary conflicts in post-industrial or advanced information societies) we have found out that they cannot be labelled as really “new”. Actually, their deeper core is attached to old and well known social dilemma and conflicts. Under the superficial skin of the IP conflicts we have discovered historical sociological and moral problems related to social justice. Beneath the external appearance of the IP agreements and laws underlies the social construction of a private property. The context is new but the main

\textsuperscript{15} See http://www.gnu.org or http://www.linux.org
and inner dimensions of the conflict remain the same. Moreover, many of nowadays conflicts are nothing but revised and updated classic social clashes. What really changes is the resource at stake. While in the industrial societies (the first capitalism) it was land or the means of production what was at stake, in the post-industrial societies it is information and ideas.

For example, we should take account of the conflicts arising from the meeting of the developing countries’ interest (to share and get low-cost IP protected commodities) and the US/European acceptance of the legitimacy of TRIPs and IP rights related agreements which enforce IP protections to every trade object (no matter what kind of object). The developing countries would like not to pay high prices for cultural, technical or medical stuff and US or Europe are ready to take advantage of their economic value of IP rights.

On the other hand, the space of conflicts has moved. There has been a displacement from working and productive spaces to immaterial and consumption spaces. It is like if the conflicts change their objects at stake (the resources) and its location but the rest remain the same. Copyright holders are, more or less, like the old landlord owners claiming for their natural right to take economic advantage of their possessions. The rights given to creators are nothing but a renewal of the old first laws of land property. Needless to say private property is a historical institution reproduced through its social and legal use which brings out conflicts on the balance of private rewards and public benefits. The economic codification of particular social relations (between owners and non-owners, consumers and rights holders, etc.), conflictive or not, reproduced as rights have deep consequences for society. The digital agenda of a new politics of intellectual property does not concern only on the administration of creations on mind16 (as a system of protection of innovation and creativity) but obviously unfolds a great variety of discourses, practices and hidden interests. The appeal to protect owners against ‘theft’ and ‘piracy’ (liberal and natural rights discourse) provides temporal monopolies that do not enhance always the cultural realm. The neoliberal legal model imposed in a not sufficiently globalised world is a continuous source of fights and problems.

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16 Basically because originality and mind’s creations are historically and socially constructed (Eco, 1992).
Besides the mentioned issues, we have also approached the economic construction of social life. Many sociologists stress economy has a full social theory within, embedded. Economic discourses, as those which compose the regulatory principles of IP rights (individual natural rights, strengthening of private sectors, liberalisation, private property support, IP rights as a system of invention’s protection, government and public activities should avoid undue restrictions on commercial activities, etc.) imply hidden political and philosophical outlooks with overwhelming consequences. Beneath a surface made of mathematics and charts, economy contains anthropological and epistemological perspectives which, many times, are confronted to the grounds of social theories. The justification of competitive advantages (the IP rights) for an economic space is legitimised through a complex set of arguments based on alleged welfare, social innovation, individual rights, etc. Therefore, we can conclude, Economy is nothing but a kind of social theory (a “performative science” as Callon would say, see Callon, 1998) and should be addressed so. Also bearing in mind economic ideas, representations and beliefs routinely construct and transform economic behaviour itself (Fourcade-Gourinchas, 2003). Examining some of the main points of divergence between the economic liberal views on the one hand and those of the social ones on the other, I have sketched the symbolic and discursive construction of the economic field (Bourdieu, 2002).

Sociologists, at least in Europe, have abandoned somehow conflict theory. Such a theoretical discipline seems not be appealing enough for social researchers. Consensual theories have taken over the current sociology. Conflicts, as sociological objects, do not seem to be the key to understand social theory and social changes. Anyhow, in an epoch of drastic mutations and massive changes, conflicts will appear everywhere. Hence, sociological theory should take notice of what is happening around economic conflicts because they reveal intrinsic features of contemporary societies. Weak or strong IP rights protection or economic rights contested or not make the cultural realm and technological innovation to be completely different. The current political economy is a great source of sociological study objects around which policy makers and legislators work restless. Capitalism expands itself through conflictive processes and disputed phenomena. The development of modern economies (and societies) is predicated on the institution of property and on the conflicts around it.
From an epistemic perspective and an analytical outlook, conflicts point to the core of social and political phenomena worthwhile to study. Most of the dominant branches of modern social theory can be traced, although with numerous modifications and extensions, to the social conflicts raised around economic resources. It is mistaken for sociologists to seek to restrict the scope of their discipline to non-economic areas. The conditions for the emergence of a comprehensive and coherent economic sociology is not to accept the boundaries between disciplines. As Bourdieu has bluntly asserted, sociology and economy deal with the same objects (social relations) (Bourdieu, 2002).

We have seen in this paper the underlying logic of some globalisation and legal dynamics which conceal a rich variety of discourses and philosophical/political positions. The goods at stake and the scope of IP rights are crucial aspects social theory should pay attention to. The study of these alleged only legal and technical conflicts are a great challenge for sociological theory nowadays. Perhaps, the comprehension and accurate grasp of globalisation processes lie with the understanding of the conflicts it generates (due to the social costs arising). The contested character of these economic, social, technological and communicative phenomena and the attempt to define norms to govern the world can be highlighted better in the proposed approach:

“Although the cosmopolitan legal justifications of IPRs have some salience, this is undermined when the social costs of instituting the propertisation of knowledge are accorded too little weight in global political processes. The lack of an established and extensive global polity is in direct contrast to the extensive interactions and structures that have been developed across the global system, specifically the emerging global market for knowledge –and information-related goods and services” (May, 2003).
Bibliography


Marx, K. (X[1844]) The economic and philosophic manuscripts ??


online version: http://www.copyrighthistory.com/index.html


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The Guardian, June 5 2003 “That’s fighting talk”
News.com, June 6 2003 “Fighting for a new Net copyright deal”