

## **The Intellectual Property as a newgood ( Paola M. Manacorda, CNEL<sup>1</sup>)**

In September 2009 CNEL launched a research project aiming at evaluate the role of innovation in helping the Italian enterprises to recover from the current economic crisis. According to the CNEL role, the project has been shared with social partners ( whose representatives. are members of CNEL), advised by university scholars, discussed with many different industrial stakeholders.

The results of the project aim to suggest policies and, according to the CNEL mission, will be addressed to Government and Parliament.

The project assumes four main focuses, that are:

- .monitor the current crisis, through continuous reports from research teams
- .evaluate the needs to improve the skills of human capital in innovation processes
- .underline the role of networks, both traditional and technological, in spreading knowledge
- .underline the value of intangible assets, called “newgoods.”

The so called newgoods consist in a special kind of knowledge, separated from its physical support. This kind of good is intangible, easy to distribute and reproducible. An important characteristic of a newgood is the fact that , being created by many authors, like persons, companies, users, it is not scarce, but rather abundant and, most important, it is not exhausted when used, but rather augmented. Its reproduction and circulation do not cost, even if its creation has a definite cost.

A typical newgood is Intellectual Property.

### **The traditional way to protect the Intellectual Property**

Traditionally, industrial IP has been protected and distribute through defensive tools, like patents, licenses, copyright.

These tools are no longer suitable for the newgoods who circulate on electronic networks, due to their intangibility and easy replicability, and to the fact that the new digital networks are global and almost uncontrollable.

Thus, a new approach is necessary to let the innovation circulate without punishing its original creator, especially for the industrial IP.

One of the ways through which the industrial IP can be successfully spread are the **technical standards**. They represent an essential tool for interoperability between companies in the same or in different industrial sectors, even on global markets.

A technical standard aims to achieve not an exclusive position on a definite market, associate to an economic advantage, but rather a leading position on a market, and it is addressed not to competitors but to cooperators in the production

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process. It must be publicly available, could be implemented by everyone and its definition should be based on a broad consensus and a cooperative approach.

### **Three different approaches to the IP value**

As far as the IP value is concerned, we can see three different approaches, based on different social and economical premises.

The first one is a **repressive approach**, whose aim is to punish everyone who downloads from Internet protected works, free of charge or without the permission of the IP owner. The main result of this approach is the well known French law named HADOPI<sup>2</sup>, issued in 2009, which assumes that after three warnings, a user who continues to download protected goods from the networks without paying the required fee, can be disconnected from the network. The law has been discussed for long time in France and in other countries, and its efficacy has been recently assessed by a research team.<sup>3</sup> In fact the law, strongly supported by the leading industries of the music sector, is technically difficult to enforce, due to the fact that it is necessary to monitor any access to the network, that is very costly. Furthermore there are doubts about its legality, due to the fact that in many countries (e.g. Finland) the access to the network is considered a basic civil right. Obviously, the illegal download is not considered a basic civil right itself, but if the punishment for the second consists in the denial of the first, some problems arise. Most important, the HADOPI law resulted in a strong social unacceptability, rousing loud protests, not only from young people.

The second approach can be defined as a **"regulated approach"**. It is based on the well known Digital Rights Management (DRM) that can be considered perhaps the best effort to balance property rights and accessibility. The system, based on codes that allow to recognize the single user and his right to access, is a powerful tool of competition among the audiovisual industries. According to this goal, it consists in different systems, not interoperable among different codes and different devices (walled gardens). This lack of interoperability is punitive for users and, what is worse, restraints markets. A further disconcerting element of DRM is the coexistence of different business models: free, pay for single use, subscription, subsidy by advertising etc. Finally, the payment system should become more simple and homogeneous. Nevertheless, the DRM system continues to be strongly supported by the industries and, therefore, by Governments, which fear the collapse of traditional physical distribution of works. Also the European Union endorses this solution.

The third approach can be called the **"common goods"** approach. Based on the well known "common goods" theory, this approach affirms that knowledge is by definition a "common good", like water, land and air. According to this statement,

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<sup>2</sup> HADOPI is the name of the French Authority charged of the enforcement of the IP protection law, issued in France in September 2009.

<sup>3</sup> A research conducted in March 2010 by the Rennes University in France shows that only 15% of the people using the peer-to-peer procedure stopped to do so, but 2/3 of them moved to alternative procedures, not covered by the law. The number of "pirates" is slightly increased. Finally, since half of the pirates buy legally on the net, closing their connection could result in restraining the markets. ([www.key4biz.it/files/000132/00013293.pdf](http://www.key4biz.it/files/000132/00013293.pdf))

access to knowledge must be free, since its circulation has no costs and improves the creation of further and more advanced knowledge. The “common good” approach is very unpopular among the industries and very popular among young and “alternative” people. Its ground philosophy is the so called “gift economy”, born in the USA in opposition to the wide “market driven” culture.

As a result, a movement arose, aiming at affirming the right to exchange the intangibles on the network.

Some authors (musicians, writers, and others) joined this philosophy and allowed their works to be free accessed and exchanged on the net, according to some rules. (the main rule being that the work can't be used to earn money).

With an articulated licence system, the “common licences”; the work can also be modified and used to produce further knowledge.

The common goods approach is really simple to use, socially well accepted, but a question remains about the way through which the creation can be valued. Many people (not only companies) feels that the lack of remuneration could lead to a declining production of creative works.

### **A success case of industrial property Common Goods approach: the Arduino processor**

In recent years a small electronic Italian firm, Arduino, posted on Internet the whole design of a new processor, with an “Open Hardware” approach. The design can be used freely, under a Common Licence, and can be modified as well as improved. Only the mark Arduino must be quoted in all new products based on the processor.

The question is: how could the inventors remunerate their work?

There were many positive results. First of all, the company sold a big amount of processors. Secondly, the inventors are highly requested as consultants for new products based on the processor. Thirdly, a new community is born, as well as an award for the best product based on the processor.

The Arduino processor is an example of a new kind of remuneration, which includes also the achievement of a leading role in a market for the inventor.

### **Final remarks**

The Intellectual Property value is a challenge since Internet allows a wide circulation of intangible goods. A suitable solution, which could balance property rights and wide access to works, lies at the cross of four dimensions:

.the **law**, which should rely on general principles rather than on rigid rules, and on a “contractual” approach, in order to let the user establish its needs and goals in accessing the property, and therefore to let him establish how much he is willing to pay

.the **technology**, which should assure the maximum of interoperability, in order to enlarge the markets and to let the user move from one system to an other and among the different platforms

the **markets**, which could invent new products and services , in a competitive but not monopolistic world

Finally, **the social practices**, that means that companies should become aware that the knowledge increases through its use, that it is possible to learn from the users, and therefore users have rights. By converse, even the “gift economy” presupposes a “loyalty” by the users, that means not to use a free good to earn money.

Therefore, an effort to establish a balanced approach to this problem requires a systemic, multistakeholder cooperation, at international level, involving multidisciplinary skills, and capable to create a wide social and cultural consensus.