



Das Kapital, part 2: labour v capital v intellectual capital

IP rights could help the US find a way out of current economic difficulties. But only if a new class of stakeholder is recognised first

The fruit derived from labour is the sweetest of all pleasures Luc De Clapiers

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Who owns creativity – those who create or those who buy the work product? In the US, the ongoing screenwriters' strike is threatening to bring prime-time television to its knees over the issue of who gets paid out of the residual royalties for entertainment IP rights. It's been 18 years or so since the last writers' strike. That lasted six months and cost the industry around half a billion dollars. Back then, that was real money.

Since then, a small revolution has taken place in the distribution and transmission of entertainment. It is called the internet. Part of the problem there is that getting paid at all is difficult. Further, not only is the means to measure for royalties owed difficult, it is compounded by the problem of figuring out who is the payer.

As *IAM's* readership knows, legally this is not much of an issue. Under the law, the general principle is that creators own their creative work. Contract law permits creators to assign or sell those rights to others. Using registered creative works without a licence is infringement, something which the judiciary can terminate by injunction or compensate by awarding damages. What is interesting is how strategies may, or should, change with respect to the control of intellectual property.

Intellectual capital, after all, is the real gold of the knowledge economy. This raises a much older debate because intellectual capital, which arises from intellectual property and is a creation of the human mind, most certainly is labour. So in the new debate between labour and capitalist, who should control the intellectual capital of the new economy?

The 90th anniversary of the Russian revolution is a reminder that the interests of the working class have been, at best, erratically served by their political advocates. Chinese communism is fast emerging as the

poster child for developing world capitalism. American unionism has been in serious decline for three decades. On a scorecard basis, the capitalists should be the natural gatekeepers for intellectual property rights.

But alas, there is the recognition problem for intellectual capital. In spite of the public acclaim for the value of intangibles, there is scant evidence that any more than 10% of it has been managed and transformed from intellectual capital to financial assets. This is hardly a scorecard of competency or excellence. The economics of progress relies on innovation and it would be nice if the capitalisation of innovation could integrate better into the continuum of modern life.

The acrimonious debate between the interests of labour and the owners of capital did not begin with Karl Marx and did not end with the 1989 fall of the Berlin Wall. Innovation, in its technical sense, has tended to be more generous to the capital markets. One of the measures of usefulness in a patent is whether labour can be saved by the invention. This clearly cuts into the labour slice of the economic pie.

On the other hand, technical innovation can enable larger segments of the labour market to be engaged in enterprise because the skills once obtained by trade apprenticeship can be embodied in devices where such expertise is an embedded attribute. The problem with such labour enabling utilities is the tendency of the capital markets not to enlarge the domestic employment but rather to export the innovations overseas to the lowest possible wage base. But neither has organised labour shown enlightened insight into the changes wrought by innovation. Witness the persistence of coal tenders on electric diesel trains.

In market economies like the United States, two-thirds of activity is attributed to consumers. Consumers, in turn, rely mainly on wages and credit to maintain their consumption. For well over a decade, American wages have been stagnant or, by some measures, have actually declined. The American economy, more so than its developed economy partners, has relied on pluralistic real property ownership to drive an asset-equivalent saving rate. The saving rate, in turn, is a reflection of pluralistic wealth

accumulation and is the most effective counterweight to the socialisation of public welfare and excessive taxes.

For the first time since the Great Depression of the 1930s, American savings are in actual decline. The exploding default rates on sub-prime mortgages, a symptom of excess credit in a wage constrained economy, both illustrate and exacerbate the limitations of traditional consumer economics. Can intellectual property rights make a difference? That may depend on whether we are ready to recognise a third stakeholder in the modern economy, which we might call creativity capitalists.

The concept of a creative class is not new – Richard Florida has written extensively on it – and it is somewhat controversial. For our purposes, a creativity capitalist is a worker that creates a knowledge work product. Sometimes this is a full-time occupation, like that of a screenwriter or research scientist, but sometimes it is a derivative result of an observant worker who intermittently improves a product or a work process.

Whether full time or part time, creativity capitalists do more than is expected when reflected by a temporal wage. A derivative of the work process must be an intangible of persistent value, such as a patent, copyright or trademark. The reason for them being in a bargaining process is to make sure the asset that is created can either be marked to market or reserved for future capitalisation. The reason that neither business nor labour should represent this interest is because their current track records are so dismal in value recognition for intellectual property.

Who knows what might result from such tripartite bargaining sessions. Cooperatives of creativity capitalists? Retirement funds built on royalty streams? Hybridisations of entertainment and technical IP? Of course, there's the sloganeering value. Here's one: intangibles workers of the world unite!

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