

Academic Freedom and the Ownership of Knowledge

by Café Dissensus on September 15, 2016



By Lawrence Liang

The assault on academic freedom via the use of speech curbing laws, the rise in the ‘structural adjustment’ of higher education to make it more professional (a thinly veiled euphemism for making it more market-friendly) and the increased privatization of learning are the common complaints that one hears of the threat to academic freedom and to the independence of universities as critical

spaces. What we do not hear enough of is how the ownership of academic knowledge and the politics of academic publishing are also seriously corroding an ethos of collegiality and knowledge sharing which was critical in shaping the imagination of the university.

In 2011, three publishers – Oxford University Press, Cambridge University Press, and Taylor, Francis and Routledge – sued Delhi University and a photocopy shop on its premises for unauthorized distribution of course packs to students – claiming \$100,000 (6 million rupees) in damages. The shop, Rameshwari Photocopiers, was given space on the campus of the School of Economics following an open tender, with an agreement that it would copy 3000 pages free of cost for the college library in lieu of payment of a licensing fee. The Faculty, in turn, could prescribe course material which could be taken from the library (or other sources) by students and submitted to the photocopy shop. The shop would then circulate the combined photocopied materials to the students at a rate of Rs 0.40 per page.

In their complaint, the publishers argued that Rameshwari was reproducing and issuing unauthorized copies of their publications for a commercial purpose and that such circulation did not amount to “fair dealing” under Indian law. Unlike US law, where “fair use” involves a process of triangulating among different factors such as the “purpose and character” of the use (e.g., parody or educational use), the substantiality of the reproduction, and the effect on the commercial market for the original, Indian “fair dealing” follows the UK tradition in requiring specific statutory language for exceptions. The case quickly became a litmus test for what constituted fair dealing when it came to photocopying academic materials, and the final arguments for the case have been made, and we are awaiting the judgment of the Delhi High Court in the matter.

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While the legal case has largely been based on an interpretation of the fair dealing exceptions under the Indian Copyright Act, the case has thrown up a much wider set of issues about the ownership of academic knowledge and its control at the hands of a small set of publishing oligarchies. In a protest organized by students at Delhi University, a large number of academics and authors (including those whose copyright – according to the petition – had been infringed) signed photocopies of their texts and handed it over to the librarian. It also prompted Aditya Nigam to demand the bootlegging of education as one of the ways of fighting against the privatization of academic knowledge by academic publishers.

In a public meeting on the Delhi University photocopy case, Sudhanva Deshpande, an independent publisher, noted that the model of academic publishing had completely transformed in the last decade. If earlier the idea was to produce books which would be bought by students, the first shift was to move away from a low cost high volume model to a high cost low volume model where the main buyers would be institutions such as libraries and research centres rather than individuals.[i] The publishing industry is marked by an opacity which is troubling and while working on the Delhi University case, we received an anonymous email from an insider working with a leading academic press which revealed more damning practices to us.[ii]

The gist of his critique is as follows:

1. Publishing companies have no qualms about violating copyright when it serves their interests. Aspiring – but unqualified – authors in positions of influence at Indian universities routinely get published by leading publishing companies. Some of these books are heavily plagiarized from books by other publishers and even, without attribution, from Wikipedia – which publishers so readily dismiss with contempt – a fact which everyone in the industry chooses to ignore. Publishers publish these manuscripts with minor changes in language to skirt the issue of copyright; this involves re-writing sentences. This is tantamount to copyright violation in spirit, if not in letter.
2. Education boards are corrupted by the influence of sales managers from publishing companies. It is not uncommon for unpublished books, only in the manuscript stage, to appear in the recommended list of university syllabi. It used to be the case that the syllabus for a course was framed first, and then books matching the syllabus are recommended. These days, the reverse happens – syllabi are framed from the contents of a book by a favoured publisher. What goes in the book is dictated by self-appointed editors at these publishing companies.[iii]
3. Publishing companies are concerned with selling their books to the syllabus review committees and not the students. Prices are sometimes kept artificially high for the simple reason that multinational companies do not want to be seen selling their books at the “cheap price-points” of their Indian competitors.

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He concludes that academic publishing, as it stands, is a fundamentally unethical business. Nowhere is this more evident than in journal publishing, where the publisher collects money from the author for publishing, gets it peer-reviewed for free, and collects more money from the readers. While this may appear to be a problem that particularly plagues the global south, even in the most elite universities in the world there is a recognition of the crisis. The historian and librarian at Harvard University, Robert Darnton disclosed that Harvard could not afford the price of electronic journals and the pricing strategy of databases made universities “fiscally unsustainable” and “academically restrictive”.[iv] According to Darnton, “We faculty do the research, write the papers, referee papers by other researchers, serve on editorial boards, all of it for free...and then we buy back the results of our labour at outrageous prices.” Darnton has since become a champion of open access publishing and made a compelling case for why leading universities which are subsidized by public money ought to ensure that all their academic production should be available in the public domain. Citing Harvard’s experiment with open access as a success, Darnton calls it an attempt “to realize an old ideal, a republic of letters in which citizenship extends to everyone.”[v]

Darnton’s invocation of the idea of academic restrictions invites us to think about what academic freedom may mean in the context of the rise of intellectual property norms governing the sphere of knowledge production, and how we need to rearticulate the radical potential of the university as a space of freedom, not just of thought – but also freedom from property norms that threaten to convert all universities into factories of thought. This is the key question that animates Corynne McSherry’s examination of the politics of IP in universities.[vi] McSherry turns to the original ideals of a university and locates it within a Kantian ideal, in which what mattered the most in a university education for Kant was the idea of freedom. It is a freedom defined in terms of freedom of thought, and freedom from control, initially from the state and partisan political interests, but she also defines the idea of freedom in the contemporary context as as one that needs to be freed from business interests.

In his *Conflict of the Faculties* (1794), Kant positioned the university as the embodiment of “thought as action toward an ideal” – the ideal being the production of a national culture and a reasoning subject to serve as its vehicle. This basic formulation would serve as the template for the creation of the modern university system. For Kant, philosophy, which was the site of pure, rational and disinterested reason, was the necessary grounds on which one had to build the vision of a university, and the production of the autonomous liberal citizen depended in turn on the existence of the university as an autonomous, freely reasoning entity.

According to Kant, only reason can critique reason, so no outside body, including the state, could possibly judge the university. “It is absolutely essential that the learned community contain a faculty that...having no commands to give, is free to evaluate everything.” The university for Kant was a critical site for the creation of the public domain, and he interestingly contrasted this with Art, music, and literature which for him transformed common resources into privately owned expression, moving from the public to the private and back again. University research on the other hand concerned itself with the transformation of the common (e.g. nature) into the specific (e.g. facts about nature).

McSherry traces the development of the Kantian ideal of the university from the German universities through the emergence of the American research university in the nineteenth century, which unites the Germanic principles of reason and autonomy with a commitment to empirical social inquiry drawn from English liberalism. This union was facilitated by the emergence of a new vision of liberal education.

In the post World War I period, we begin to see the instrumentalizing of the university, with university research being enlisted in war efforts – but that enlistment was still a sporadic one, organized by individual scientists rather than by institutions. But the period does herald a closer relationship between academic science and business, with departments relying on financial aid from business and philanthropic foundations to supplement the meagre financial resources they were allotted. There were significant concerns expressed about what this meant in terms of the rise of instrumental research, and what would happen to the Kantian ideal of ‘pure reason’ and most scientists tended to decry the turn to utility in their work. It is however with the cold war that we see the greatest integration of the university

towards instrumental research, and by now it is widely accepted that many universities act as the laboratory of technical and scientific invention which feeds almost directly into corporate exploitation. A representative example is Yale's license of the compound d4t to BMS for the manufacture of anti retroviral drugs which has earned BMS upto 15 billion dollars and Yale received \$40 million in royalties.

What is interesting for me is how the ideals of the university seem to map on to concerns that we see in intellectual property as well. The two institutions share a common epistemic regime, and like the fundamental dualisms upon which they rest (public/private, idea/expression, fact/artifacts, reason/utility), a change in one necessarily results in the reconstitution of the other.

What significance does the expansion of IP as a mindset and as a business model within universities mean for our exploration of the question of Open Access and the academic 'Community'? Lewis Hyde, in his revisiting of Marcel Mauss in the context of knowledge production, cites Jonathan Kind, a geneticist at MIT, who remarked that "In the past, one of the strengths of biomedical science was the free exchange of materials, strains of organisms and information....But now, if you sanction and institutionalize private gain and patenting of micro organisms, then you don't send out your strains because you don't want them in the public domain. That's already happening now, people are no longer sharing their strains of bacteria and their results as freely as they did in the past."

There are 2 things that seem to be invoked in Kind's observations about the change in the nature of knowledge production, a loss of a spirit of Collaboration or Collegiality on the one hand, and the threat to a way of doing science which depended on an ethos of generosity.

1. Academic Freedom and Collegiality

One of the primary virtues valued within the academic community has been that of academic freedom and collaboration; what does this consist of, and in what ways is it related to the question of openness? David Downing says, "Collegiality has been historically linked to academic freedom. The implicit premise seemed to be that we had to be "free" to be collegial: free to pursue truth and knowledge as liberal subjects seeking our own self-development, and free to manage our own time with respect to the autonomy granted our teaching and research efforts. To this extent, collegiality was a non-contractual but widely shared value of respecting those freedoms among our many different colleagues."[\[vii\]](#)

One of the prerequisites of this space of freedom was also a freedom from the constraints of property, since property spoke the language of hostile takings and appropriation. Downing says, a permanent space of non-property was created, a 'knowledge commons' that could legitimate private property in expression and invention – remembering that the (re)creation of a private domain of intangibles was and is justified by the existence of a public domain. Downing traces the shift that has happened in recent times where collegiality becomes standardized as a depoliticized meritocracy and where commoditized knowledge (as intellectual property) and its ownership became the barometer for measuring academic freedom. With the decrease in state funding for research, academics are encouraged to be more 'innovative', to be more 'productive' and to generate more resources for themselves which will assist them to buy time and consequently freedom from the university.

For Downing, this narrow conception of freedom via a negative liberties framework of non-interference and ownership has totally evacuated the idea of academic freedom and collegiality of any radical potential that it has. Produce academic knowledge as intellectual property according to our standards, and you will be rewarded with tenure and promotion, and you will be free. But genuine forms of freedom are not something awarded after the fact of teaching or research. It's the other way around: freedom is actively produced by inquiry, learning, imagination, interaction. Freedom is constitutive of genuine education, not a reward for the good behaviour of educators.

The signposts of our times include the rise of "academic capitalism", the commonplace existence of Intellectual Property Agreements that facilitate technology transfer from university to corporations, and the use of law to grant universities the right to seek patents in the same way as private enterprise. As the public domain shrinks under the increasing pressures of capital, both collegiality and academic freedom, which have historically

provided for the defense of a realm of non-property and non-capital, are now being turned around: the discourse of intellectual property and the ownership of knowledge are now being used “to define and defend academic freedom.”

According to Corynne McSherry:

“The contest for the meaning of academic freedom is taking place on shifting ground according to novel rules . . . the conflation of property rights and ‘academic rights’ participates in a set of discourses which offer to replace the hierarchies of the academy with the inequalities of the free market, discourses in which freedom can only be understood to mean ‘individual free enterprise.’”

Those who have the most academic freedom are those faculty, who own the most intellectual property: knowledge workers are subordinated to knowledge owners: “academic freedom is increasingly treated as commensurate with ownership of intellectual property.” Downing urges us to resist acceding to these destructive forces and suggests that we reclaim a politics of collegiality – rhetorically and politically – to articulate a new politics of the production of knowledge and ownership. We need to urgently acknowledge that amongst the various terrains of contest over higher education in India, we are increasingly going to see a rise in this American style reward system.

In 2008, for instance, the Indian parliament introduced “The Protection and Utilization of Publicly Funded Intellectual Property Bill, 2008” or what was popularly referred to as the Bah Doyle Act of India. Like its US counterpart, the Indian law was introduced with the presumption that there was a need “to provide incentives for creativity and innovation”, to facilitate “commercialisation of intellectual property created out of public funded research and development,” to “increase the responsibility of universities, academic and research institutions to encourage students, faculty and scientists to innovate, to raise royalty income” and to “minimise dependence of universities, academic and research institutions and other recipient organisations for Government funding”.^[viii]

If one of the rallying cries of the free software movement was the idea of free as in free speech and not free as in free beer, it is time for us to articulate a radical politics of freedom in academic practice, or free as in academic – and where would one begin if not with our own knowledge production?

[i] See also, Sudhanva Deshpande, “Whose copy, whose right?”, *The Hindu*, September 19, 2012

[ii] See, “Anonymous, Academic Publishers – An Insider’s perspective”, *Kafila*, September 19th 2012, available [here](#).

[iii] See also, Garga Chatterjee, “Free knowledge versus freedom of the market”, available at [here](#).

[iv] “Harvard University says it can’t afford journal publishers’ prices”, available [here](#).

[v] Robert Darnton, “The case for open access”, available [here](#).

[vi] Corynne McSherry, *Who Owns Academic Work?: Battling for Control of Intellectual Property*. Harvard University Press, 2003.

[vii] David Downing, “Academic Freedom as Intellectual Property: When Collegiality Confronts the Standardization Movement”, *Symplokē*, Vol.13, Nos.1-2, 2005

[viii] For a critique of the proposed law, see the discussions around it at [Spicyip.com](#)

Bio:

Lawrence Liang is an independent lawyer and researcher who worked with the Alternative Law Forum, which he helped co-found. He also moonlights as a film and media scholar. He has recently finished a book on libraries and the future of reading, and completing another one on law and justice in Indian cinema. He writes for a number of places including *e-flux* and *Kafila*, and has taught and lectured at many universities in India, the US, and Europe.

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