

**ACCESS TO KNOWLEDGE
IN THE AGE OF INTELLECTUAL PROPERTY**

edited by
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Virtual Roundtable on A2K Strategies: Interventions and Dilemmas

Amy Kapczynski and Gaëlle Krikorian

*with Harini Amarasuriya, Vera Franz, Heeseob Nam,
Carolina Rossini, and Dileepa Witharana*

A2K could be described as an emerging social movement or as a fundamentally disjointed and dynamic coalition. Perhaps more precisely, the A2K movement might be understood as characterized by the series of actions and arguments that are taking shape as groups develop overlapping agendas and coordinated actions in the conceptual space previously mapped using the concept of “intellectual property.”

As the A2K movement has evolved, it has also increasingly gained recognition for its creativity and productivity. The movement has made connections between groups from very different contexts that occupy different places on conventional ideological spectrums. It works with and against governments, intergovernmental organizations, and industry. It mobilizes as well as troubles the rhetorics of law and markets. Those involved in the A2K movement also regularly make choices about organizational, conceptual, and strategic issues, with different groups taking sometimes substantially different approaches.

The following “virtual roundtable” was put together via e-mail to create space for a conversation on these issues and to provide a further sense of the stakes and divergences within the A2K movement. (See the “Virtual Roundtable on A2K Politics” in this volume.) Questionnaires were sent to five individuals who represent different approaches and involvements in the movement. Their responses were gathered and organized in a single document to facilitate the perception of the variety of opinions. As with the “Virtual Roundtable on A2K Politics,” what follows does not intend to give an exhaustive account of the variety of positions and thoughts that exist in the movement, but give a sample of different perspectives that go through it.

The four perspectives represented here are those of Vera Franz, senior program manager at the Open Society Institute’s Information Program, where she launched and heads the Program on Intellectual Property Rights Reform; Heeseob Nam, a

patent attorney with the organization Intellectual Property Left; Carolina Rossini, an intellectual property attorney and innovation policy scholar, currently a fellow at the Berkman Center at Harvard University coordinating the Industrial Cooperation Project and the coordinator and main author of the Brazilian Open Educational Resources Project: Challenges and Perspectives, funded by the Open Society institute; and Dileepa Witharana, a senior lecturer at the Department of Mathematics and Philosophy of Engineering of the Open University of Sri Lanka who is currently involved with an interfaculty study of intellectual property rights and access-to-knowledge initiatives in Sri Lanka with Harini Amarasuriya, a doctoral student in Social Anthropology in a joint PhD programme with the University of Edinburgh and Queen Margaret University.

QUESTION 1 How would you describe the strategies and tactics that you have adopted regarding intellectual property and/or A2K issues? Has the A2K movement developed strategies that are particular to this coalition, or to activism at this point in history, from which other groups might learn? Do you see an evolution in the modus operandi and tactics of the A2K movement?

QUESTION 2 Where did the A2K movement learn its strategies? From where or whom could it learn?

QUESTION 3 The architecture of the A2K movement makes law central, because the rubric of the coalition is arguably “intellectual property”—a legal construct. Legal institutions (the World Trade Organization [WTO], the World Intellectual Property Organization [WIPO]) and legal mechanisms (open licenses, creative-commons licenses, compulsory licenses) are key locations for A2K interventions. The A2K movement also operates very often in the register of legal argumentation—that is, treating as its main opponent a theory of intellectual property that is commonly advanced in legal circles, a theory of intellectual property as an entitlement for creative labor or as an “incentive for innovation.” A2K groups must thus regularly reckon with the influence of law and legality and develop an ethic or set of strategies appropriate to the challenge of operating in a legal context. How do you reckon with the constraints and/or attractions of law? Do you encounter tensions between mobilization through law and mobilization against law, and if so, how do you deal with these tensions? Should the A2K movement be understood as responding to a set of commitments, principles, or ethics that exist beyond the text and interpretation of law, that should guide the writing and interpretation of law? If so, what are these, and where do they come from?

QUESTION 4 What is your position toward institutions of governance and, more generally, toward those who govern?

QUESTION 5 Do you have a specific attitude toward the private sector? Can governments and industry be considered part of the A2K coalition? Should they be?

QUESTION 6 How would you describe A2K—as a movement, a coalition, an aspiration, or what? Does the A2K movement represent a simple pooling of resources or a coalescence of actions and initiatives that are facilitating the creation of an original form of action? Do coordinated or aligned actions with other “A2K” groups represent an important aspect of your work? How should A2K groups relate to one another?

QUESTION 7 Do you draw a distinction between short-term and long-term strategies? How does or should the A2K movement mediate between the pressing needs of the short term and the need for a vision and strategy of long-term change?

QUESTION 8 Do you see the strategies of A2K actors merely as acts of resistance to the agenda and profound successes of the movement for greater intellectual property restrictions? Is the A2K movement predominantly an attempt to “domesticate” or “balance” the existing intellectual property system, or does the movement advocate for more thoroughgoing alternatives to this system?

QUESTION 9 Do you see tensions or struggles for power between the A2K movement’s various components? If so, how do you interpret these in terms of the shape or governance of the movement and the prospects for the future?

QUESTION 10 Some characterize A2K as an elite movement, shaped primarily by NGOs, academics, and government actors and by agendas set predominantly in the Global North. Are these perceptions accurate? Does the A2K movement have or aim for a broad base of nonexpert participants? How are people who are not professional A2K actors to participate in priority setting and campaigning?

VERA FRANZ

QUESTION 1 The much-quoted analogy to the environmental movement that’s used to describe the strategies and tactics of the A2K movement I think still holds true. The main achievement of the A2K movement is that it has made people aware of a common resource—the knowledge commons—that needs to be protected by keeping it “common” and free. The main task of the A2K movement is to monitor and promote the health of our knowledge ecology, that is, to watch the precarious balance between private and common knowledge resources. This means mainly two things: Monitor and push back intellectual property rules that endanger the knowledge commons and promote the knowledge commons by planting seeds that everyone out there can grow. Yochai Benkler gives a wonderful account of the knowledge commons in *The Wealth of Networks*.¹

In terms of strategy, two main things come to mind: First, it was critical that the A2K movement was able to unite very different stakeholders under one umbrella: librarians, free-software developers, video activists, access-to-medicines campaigners, digital-rights advocates, consumer groups, teachers and students, the visually impaired, and many others. “A2K” as a term was broad and vague enough to bring all these people together, and at the same time, the term captured a concern that everybody shared: the quest for a balance between private and common knowledge resources.

Second, I think the alliances and coalitions that the movement built with the private sector were critical. Claims about human rights and the public interest get you only so far. Once companies such as IBM, Google, Sun, AT&T, HP, and others joined the chorus, governments started to listen more carefully. It started to dawn on policy makers that those “A2K businesses” substantially contribute to U.S. competitiveness and GDP and would have to shut down in a world of maximalist enforcement of intellectual property rights.

In terms of changes over time, if anything, the A2K movement has become more mature and sophisticated in its work. The strategies haven’t fundamentally changed, but the demands have gotten more concrete. For example, while in the beginning the quest was for a more balanced copyright regime and stronger limitations and exceptions to copyright, at this point, the movement is asking the WIPO to adopt a Treaty for the Visually Impaired within the coming two years.

QUESTION 2 The movement from the very beginning was joined and led by experienced campaigners, originally active in other fields, and they brought with them effective strategies. This ensured campaigns were of highest quality. And those experienced campaigners taught young A2K activists important skills. I was able to witness how several young people grew into professional activists over time—an absolutely wonderful thing to see!

QUESTION 3 The A2K movement is eclectic in many ways, and that’s true of how it views the role and centrality of the law. The part of the movement that is focused on, for example, the reform of the WIPO takes the rule of law as its starting and end point. By changing legal norms, it tries, among many other things, to improve access to medicines for the sick and access to knowledge for the visually impaired. The law in that sense is the main tool in the toolbox. Very importantly, these legal changes, in addition to better access, bring about new more open models for the creation and remuneration of knowledge-based goods. Think GNU/GPL, think Creative Commons, think the Medical Innovation Prize Fund, or even the idea of an alternative compensation system for musicians. And it’s not better access that is the revolutionary development here. It is those new and more open

challenge the centrality of the law and argue that social practice, rather than the law, will best guide us toward a better future.

QUESTION 4 Working for the Open Society Institute, I obviously believe in the rule of law, and I hence respect the institutions that shape and enforce the law. That said, if a Soviet dissident would have followed the law, he would never have known the “freedom” he was so desperately seeking. This is to say that we should always and at every moment question institutions of governance and those who govern. So no, I don’t trust them. I am not saying anything new here, but basically, let’s build on our values and use common sense when engaging in public-policy debates.

QUESTION 5 Can governments and industry be considered part of the A2K coalition? While governments and industry are not part of the A2K movement as such, many of them are very close allies. Everyone who rejects a “maximalist IP” regime and engages in this struggle is an ally. In fact, we have many examples of successful issue coalitions between civil society, governments, and businesses that prove this point. Take the campaign against an overbroad WIPO Broadcast Treaty or the effort to strengthen limitations and exceptions to copyright. To be sure, these alliances between the different sectors are not always easy and might even cause temporary friction. But I firmly believe that we can bring about the change we are seeking only by working closely with everyone who shares the same vision and goals.

QUESTION 6 A2K is probably all of it—an aspiration, a movement, a coalition. One can best think of it as consisting of concentric circles. The outer, largest circle unites all those who share the aspiration or vision of a healthy knowledge ecology, one where the commons thrives and occupies an important place. The next circle closer to the center gathers the actors that came together, initially around the A2K Treaty, which are committed to making it, or a version of it, a reality. Some people were instrumental in getting this movement off the ground, but it is not led by any one entity or person at this point, and new actors join as they feel this work is relevant to them and they want to make a contribution. Finally, within the innermost circle, concrete progress is being achieved in the form of issue coalitions, which form around concrete threats and opportunities. They spring up organically and may include NGOs, academics, governments, and industry. They share a concrete goal and get on with the work. Some are more public than others. All of them wage a concrete, modest, yet important fight in terms of the bigger picture. In a way, this inner concentric circle is driven by networked actors that jump into action when and where needed.

QUESTION 7 Very clearly, one always needs to think about short-term and long-term strategy and vision. I would argue that the A2K movement is better at

short-term engagement, responding to immediate threats and opportunities. Some players have identified a longer-term vision, but it is not always clear what the strategy for implementing this vision is. I would argue that one of the weaknesses of the A2K movement is the vagueness of a longer-term strategy. Because time is a luxury, the longer term is forgotten in the daily heat of smaller fights. In a world of radical uncertainty, it is not easy to come up with a long-term strategy. But again, we need to improve and make time for longer-term thinking. The development of the European Patent Office's Scenarios for the Future was a good step in the right direction.² Following up on the EPO's work, we used A2K3, the Third Access to Knowledge Conference, in Geneva in 2008, for a retreat type brainstorming exercise trying to clarify the vision and strategy for where we want to go. This is only the beginning. More work needs to be done.

QUESTION 8 The A2K movement is about both resistance to overbroad intellectual property rules and alternatives to them. Resistance is born out of necessity. It's the response to a crisis. But also and more importantly, A2K is about radical alternatives to the maximalist intellectual property regime. It's simple—we can't keep fighting all the small fights forever. Civil society has limited resources and time. And unlike human rights, I think this is an issue that can be fixed. Once we are able to push through fundamental reforms such as, for example, the Medical Innovation Prize Fund and R&D Treaty, we won't need to fight against extended data exclusivity, patent-term extension, and more generally, dangerous intellectual property chapters in free-trade agreements, where our ability to influence the course of action is minimal.

QUESTION 9 Tensions within the A2K movement? In the early days, I was amazed by how excellent the collaboration between groups in the A2K movement was. With the maturing of the movement—and of the proposals put forward—differences in opinion and strategy have emerged. I guess anything else would be a surprise. This is an eclectic movement, and debates and disagreements will be an integral part of it.

I am not sure one can actually speak of "governance" of the movement in the traditional sense. For example, nobody has ever dared to trademark the term "A2K." And there is no need to enforce its use. It's a vision that you join in because you share it. "Organized chaos" would probably be one way to describe the movement's modus operandi: It is a distributed network, and every node can take action and focus on what it thinks is the highest priority at any given moment. The more urgent the cause or compelling the idea, the more nodes in the network will join and amplify the movement's voice.

QUESTION 10 I agree that A2K is an elite movement shaped to a large extent by civil society and industry in the Global North. In the beginning, I struggled a lot with that notion, because I thought this movement needs to be more global and bottom-up. But I came to realize that this movement is different from others, yet I think this is changing as we speak.

Some thoughts on why the movement started out as it did: When the movement started out, the vision was broad, general, and sometimes abstract. And the issues were new to many of us. It took some time to zoom in and identify the concrete problems one could mobilize around, in all parts of the world. I think a first important success is the fact that the global community of the blind has now joined the movement, and we are together trying to solve the concrete problem of access to knowledge for the visually impaired through a WIPO Treaty that will mandate strong limitations and exceptions for the visually impaired.

Also, it is always easier to mobilize successfully around a current, rather than a possible future problem. And the A2K movement is very often about preventing a bad future or creating a new future that is not always easy to imagine for a nonexpert. The fight against the WIPO Treaty for Broadcasters, Cablecasters, and Webcasters is a good case in point. Related to this, piracy alleviated many of the problems caused by a restrictive copyright regime in developing countries. And important parts of the developing world were not on-line yet, and yet so many of the A2K fights relate to the Internet. Both of the latter two factors are changing. Antipiracy enforcement is getting more serious, and the developing countries are moving on-line. Hence, issues with which the Global North was concerned, such as for example Internet service providers liability, are fast becoming an issue in the South.

On a more general level, I recently participated in an interesting discussion with developing country participants about open-access journals. Northern groups have for years successfully advocated for things like the National Institutes of Health Open Access Policy.³ Many of us thought that the South would follow suit. However, Southern representatives have concerns around possible exploitation of Southern knowledge by Northern commercial companies, and they view open-access journals as one potential means for this type of exploitation. This is to say that the A2K movement has much more work to do here. The world is complex, and it is a big mistake to assume that the South will blindly follow a Northern logic.

All of this means that the A2K movement has absolutely to focus on getting more Southern players involved. The time is right for that more intensive engagement with and by the South. Whether A2K will ever become a fully fledged grassroots movement, I don't know. It will in certain instances, with certain campaigns. But I also think that to win important fights, you do not necessarily always need the masses on the streets. You need highly committed people with deep technical

and strategic knowledge, from all parts of the world, who can effectively work the corridors of power and, where appropriate and possible, mobilize the masses.

HEESEOB NAM

QUESTION 1 My group—IPLeft—was established in 1999 by members of social-movement organizations who were concerned about the ever increasing monopolistic control of private enterprises over information and knowledge. We believed that a monopoly on social assets such as information and knowledge had been institutionalized and systemized by the intellectual property system, following a trend rooted in global capitalism. The intellectual property system plays a central role in information capitalism by making knowledge and information private property and commodities that can be produced and exchanged in the market, thereby causing problems such as the digital divide, conflicts with basic human rights, growing gaps in the distribution of wealth between rich and poor nations, and the nondemocratic governance of social assets.

In terms of strategies and tactics, our aims thus are not simply to criticize the current intellectual property system. We also strive for a society where knowledge and information are free, not commodities, and can be freely created and used as social assets to be shared universally among people.

Among the challenges and obstacles we have faced is the widespread assumption framing the issue that the protection of intellectual property is beneficial for our nation's competitiveness. Actually, this assumption lacks theoretical and practical justification in local contexts such as Korea, which has long been a net importer of intellectual products. However, it has prevailed in the administrative branches that are in charge of intellectual property matters and that have governed the intellectual property agenda. In addition, intellectual property issues are too arcane to be grasped by the public and even by legislative and judicial policy makers. Those in other administrative branches and in the National Assembly neither fully understand the meaning and implications of the intellectual property issues nor have sufficient resources to take part in decision-making processes. This is why the internal governance of those branches of the government concerned with intellectual property matters remains in the hands of a narrow group of experts in intellectual property issues who subscribe to the assumption that intellectual property protections are beneficial.

The notion that stronger intellectual property protections are good for our society is reinforced by global intellectual property rules and the influence of ideas promoted by Korea's major trade partners, the United States, the European Union, and Japan. Most domestic intellectual property norms have been discussed

and determined in the context of international trade. In this process, the primary focus of policy makers is on increasing our nation's competitiveness in the global economic wars. But this concern with competitiveness is a narrow concept confined to issues of economic growth, or, more accurately, to the international competitiveness of domestic corporations. No other values are considered or seriously taken into account by policy makers. Meanwhile, they view maximalist intellectual property norms as international standards that were successfully implemented by our industrialized trade partners in the globalized economy and therefore as something on which they can rely, as well.

Under these circumstances, our tactics are twofold: within the government, debating with policy makers (mainly in the administrative branch) and lobbying the legislative branch and in society at large, mobilizing social and cultural movements in favor of workable models of knowledge production and dissemination that don't rely on the intellectual property protection. For the purposes of the first tactic, it is necessary to frame the issue differently, showing that contrary to the reigning assumption, enhancing access to knowledge without relying on the stronger protection of intellectual property rights also serves the progress of the national economy and that the narrow concept of corporate competitiveness may lead to unintended consequences that are harmful to the proper production of socially needed knowledge.

The A2K movement is helpful in pursuing these two tactics in that it changes the horizon of global discussion, especially at the WIPO, which is a central forum for the global intellectual property norms. International movements that can be categorized under the rubric of A2K have evolved to provide a counterframe that covers overall intellectual property norms and is not specific only to some particular intellectual property issues.

But I would like to point out a possible limitation for the A2K movement that is related to an element crucial for its success: the localization of the global movement. The framing of A2K discussions as a debate between the Global North and the South can raise obstacles to A2K mobilizations in middle-income countries that occupy the ground between the wealthy, powerful countries and the poor and less developed ones. For instance, some delegations from middle-income countries downplay A2K discussions because they believe they are driven by the South for the purposes of getting more money from the North. These delegations regard the issues raised by the A2K movement as having little relevance to their nations. This may marginalize nations that could play a leveraging role in the global discussion and may make it more difficult to move A2K issues higher on the agenda in marginalized regions.

QUESTION 2 In terms of sources for strategies for the A2K movement, I think that resisting the TRIPS Agreement has been decisive in the evolution of A2K. Farmers' groups and access-to-medicine campaigners have long struggled against intellectual property maximalism. They've achieved something great. For instance, the Doha Declaration is a great success. The activists mobilized during the struggles against intellectual property maximalism came to understand that they have interests in common with other groups fighting against the intellectual property maximalism in sectors such as education, libraries, software, privacy, freedom of expression, and so on. The A2K movement is a result of efforts to bring together diverse groups against a common enemy. However, achievements such as the Doha Declaration solved only some of the problems: It redressed some of the imbalances of practices and intellectual property norms between the North and the South. It addressed problems in a specific sector, but it did not tackle the underlying mechanism of global intellectual property systems.

QUESTION 3 In general, an approach that is centered on the law entails both opportunities and constraints. Social reform through the law can be a useful strategy in that the legitimacy of the reform can be easily established and the reform can be sustained by the regulatory nature of the law. Considering the fact that intellectual property norms have been extended to cover a wide range of fields and have had important economic, social, and cultural consequences, it is partly inevitable that the movement would concentrate on the legal aspects of intellectual property issues for the purpose of short-term reform. Moreover, in consideration of the fact that policy options at the national level are highly constrained by the norms created in international legal institutions such as the WTO and WIPO, it is a necessity to concentrate on legal issues.

However, the strategy of pursuing reforms through law has limitations, because the law is an expression or a reflection of power relations in a given society, indirectly, if not directly. Therefore, the A2K movement can hardly change the essential elements of intellectual property without including broader cultural, political, and social movements. Individuals, as social entities, can change the existing social structure. However, this is possible only when they identify and use the political opportunities open to them and turn their cultural constraints into opportunities. The recent shift of U.S. courts toward the weaker protection of patent rights and the advent of the Obama administration, for example, may offer an opportunity to alter U.S. foreign policy on intellectual property matters. Collective actions not directed at changes in the laws should be encouraged as cultural movements. The Creative Commons and open access movements are good examples of such mobilizations. A model for the production of knowledge

on the basis of democratic and socially planned systems such as the democratic planned participatory socialism (DPPS) model proposed by David Kotz is an even better example.⁴

QUESTION 4 My attitude toward institutions of governance and the governing class is that I think the governing power is owned by the capitalistic class—the transnational corporations. Although the nation-state and international or inter-governmental organizations play key roles, the internal actors are transnational corporations.

QUESTION 5 We need coalitions with both the private sector and governments. I believe that unless governments and industries are members of the A2K coalition, we cannot accomplish what we are trying to do. The structures imposed on us are too strong and powerful, and unless or until the A2K movement overturns capitalism or fundamentally changes the capitalist world, we need the support of sympathetic voices from mainstream groups. Moreover, reform of the intellectual property laws is impossible without the participation of those in government.

QUESTION 6 How we describe the A2K movement may depend on how we move forward. I believe it should be a form of social movement. To bring together diverse groups under the umbrella of A2K, we may need to design a more general ideational frame. I don't know if "access to knowledge" can be the one we need. It appears to me that access to knowledge is more a means than an end. Unlike the environmental movement, in which the catchwords of environment conservation can easily be linked to the end—our survival—A2K seems to need discursive link to an end. Why do we need access to knowledge? For innovation or culture? For empowerment? Or for ensuring human rights?

QUESTION 7 We already have short-term and long-term strategies. Changing the mandate of WIPO through the Development Agenda, harmonizing copyright limitations and exceptions, patent-system reforms, and establishing global strategy and action plans for the development of drugs for neglected diseases may be categorized as short-term strategies. The proposed Medical Research and Development Treaty is a candidate for a long-term model, as long as it changes the existing price-incentive mechanism to a DPPS system where all of the interest groups take part in every cycle of innovation.

As Susan Sell suggested in *Private Power, Public Law*, structural opportunities and constraints need to be exploited in both short-term and long-term strategies.⁵ Existing structures offer either constraints or opportunities to those who are seeking to change the structure in some way. In this regard, structural changes in the global economy and institutional changes, for instance, altering the attitude of the

U.S. Supreme Court on patent issues, need to be analyzed and pursued in more systematic ways.

QUESTION 8 I think the A2K movement already advocates thoroughgoing alternatives to the current intellectual property system and is on the right track. The World Intellectual Property Organization Development Agenda and World Health Organization Medical Research and Development Treaty are good examples. Seeking radical changes in intergovernmental institutions is not a good strategy. Gradual changes can lead to a radical reform in the long run.

QUESTIONS 9 AND 10 I agree that the agendas of the A2K movement are set predominantly by NGOs and academics in the Global North, but I think that the issue of “for what” they’re set matters more than “by whom” they’re set. For more participation by nonexperts and more importantly by grassroots individuals and organizations, we may need a larger conceptual umbrella—for instance, human rights perspectives on intellectual property.

Many scholars and commentators have identified a conflict between intellectual property rights and human rights. A comprehensive human rights framework still requires further elaboration, and coherent solutions to address the conflict between the two norms need to be proposed and examined. In order to develop a comprehensive and coherent framework for human rights approaches in global intellectual property policies, I would suggest establishing a link between international human rights organizations and international intellectual property institutions such as WIPO and the WTO/TRIPS Council. For instance, WIPO and the TRIPS Council could establish special standing bodies mandated to assess and monitor their activities and their operating treaties and to evaluate what are the possible or actual effects on human rights. Such assessments and monitoring could be carried out by consulting with other international human rights organizations and made public regularly.

CAROLINA ROSSINI

QUESTION 1 I have primarily adopted strategies and tactics that are familiar from the worlds of political economy and law—I do a lot of research on the foundations of the issues, and I have worked on legal tools (contracts and policy analysis) that achieve some of the goals of the A2K movement, such as Creative Commons licensing and open-innovation legal frameworks. I have also used some traditional pedagogical tools as a law professor, including regular e-learning courses, class syllabus and content creation, and the hosting of conferences and workshops around topics central to A2K issues such as copyright, open access and open educational



Public funeral for digital rights management (DRM) organized by the Harvard College Free Culture group, May 24, 2008, <http://www.hcs.harvard.edu/~freeculture/blog/> (Christina Xu, <http://creativecommons.org/licenses/by-sa/2.0/deed.en>).



resources, open innovation, and distributive innovation and its effects on patent law and policy and cooperation and technology transfer agreements. These are strategies that are not specific to the A2K coalition, but rather more traditional strategies related to capacity building and awareness raising.

I think the A2K movement has clearly learned some lessons from several other movements, however. The environmental movement—and actually, the human rights movement—bring aspects of both political economy and direct protest action to bear on global public opinion, and that dual-aspect approach can be seen reflected in the legal work of James Boyle, Yochai Benkler, and Lawrence Lessig, as well as at FreeCulture.org and other more activist groups.

My hope would be that we could follow Boyle's call of an environmentalism of the public domain and learn to work together a little more, though not to formalize that working together through defined governance structure. I mean more a common agreement on philosophy and an agreement to spend more time on common problems than on intermovement disagreements. There is some internal personal conflict between people and organizations in the movement, which is not so unusual in a broad and diverse coalition of stakeholders, but it would be better if we could all agree we are working toward a common goal of more access to knowledge and focus our energy on those who oppose us, rather than on those of us within the movement with whom we disagree on matters of degree, rather than matters of importance. We also could learn from the growth of on-line communities and their associated governance norms and dispute-resolution alternatives, on which the recent work of Yochai Benkler and others at the Berkman Center focus. Transparency and cooperation are core values for the success of the movement.

QUESTION 2 The current organizations that are seen as part of the A2K movement have given it its character. You have elements from civil society that come from the AIDS/HIV movement of the 1990s turning into access-to-medicine discourse and student movements such as FreeCulture doing cause-based activism and bringing a public-interest conscience to courses of law, communications, media, and medicine. You also have lawyers who moved from the entertainment, telecommunications, and biotech industries to develop A2K strategies based on lobbying strategies, as the WIPO Development Agenda and also the open-access movement may show. In this sense, the movement can be considered a result of a convergence of old movements and new movements that found a common point for discussion and discourse building.

QUESTION 3 As a lawyer, I am perhaps the wrong person to ask about whether the centrality of legal struggles in the A2K movement is a good idea! However, it is true that we too often battle in the world of the law, and the law is frequently

designed in a way that favors those already in positions of power, such as the content owners. Additionally, policy makers and lawmakers look abroad to replicate the solutions they find there. The recent international emulation of the Bayh-Dole University and Small Business Patent Procedures Act, which gave universities, small businesses, and nonprofits intellectual property control over the results of government-funded research, is an example. Thus, law can be an answer, but also a problem.

In regard to the A2K movement, there are perhaps two segments. The first would see the goal as an almost complete change in the system. This could include both the A2K Treaty, which does involve a lot of work with lawyers, WIPO, and international governments, but also the direct activism of the Defective by Design and FreeCulture groups. This group could also include those who want to reform the international conventions and treaties around copyright and who challenge the national legal implementations of those treaties and conventions. We could attribute to this group the recent efforts on exceptions and limitations to copyright and patent rights currently under discussion at WIPO.

The second group would be those who are working to make the effect of the current system less bad, using the system we have to achieve open goals today even before international legal change is achieved. This would be groups such as Creative Commons, the Free Software Foundation, and Cambia in Australia. This set of groups is definitely based on using legal tools as a practical method to make life better for people during the long struggles to change the laws and treaties. These and others try to provide standards that will make things more interoperable and transparent and try to foster cooperation in different sectors. They attempt to make the right to participate in culture and science a reality.

However, as the A2K debate evolves, the line between the two segments is becoming less and less clear. The increasing collaboration between groups and their openness to a diversity of voices, including the participation of the Global South, has brought an incredible maturity to the movement, which is reflected in much more complex and sustainable proposals.

QUESTION 4 My attitude toward institutions of governance and those who govern has been shaped by the fact that the majority of my life has been lived in countries with established or new democracies. In all cases, I believe that government plays a crucial role in balancing power within the society through mechanisms of representation. I also see the use of political instruments that may be able to open the opportunity for a more concrete societal participation in the decision-making process. This is true internationally, as well, via multilateral forums where governments, through decision-making processes within international organizations, have allowed increasing participation by civil-society organizations in multilateral arenas.

Other institutions of governance, such as international organizations, are also necessary to provide multilateral and possibly transparent forums for negotiation and policy making. Thus, in general, I think they are necessary. However, as in any institution of governance, mechanisms of checks and balances are crucial. These organizations can be and often are captured, which means that their benefits are very dependent on the willingness of our movement to engage within them, observe them, and so on.

QUESTION 5 I think a great part of the private sector has tended to be antagonistic to the A2K coalition, because the majority of business models that relate to A2K are based on control, and not on sharing. Business is still learning how to be open and how to make money for its investors. But there are clearly some business models that would allow companies to be part of the A2K coalition. Open-access publishers in science that use the Creative Commons attribution license, known by its acronym CC-BY, would probably meet that definition, and in 2008, the top two corporate open-access publishers created more than \$15,000,000 U.S. in revenues without relying on control. We also observe these changes toward open business models in the music and textbook industries, with the innovative company Flat World Knowledge, but I think most of the private industrial models would have to be service models, and not control models, to qualify.

Governments are a hard question, because “government” is a complex entity that is very reliant on local factors, and thus it is hard to make general statements about it. Australia’s government has endorsed open licensing and membership in the global digital commons for its publicly funded content. Brazil is one of the leaders of the WIPO Development Agenda and has recently proposed discussions on exceptions and limitations to patents at WIPO. The Brazilian government is also playing an important part in fostering the use of open-licensing schemes for content (open-access and open educational resources) and software. But does that make them part of the coalition? I don’t know. It definitely makes Australia and Brazil friendly places for the movement and for coalition work, but it is also something that can change in a single election or with the change of leaders at the ministries.

QUESTION 6 Is A2K a movement, a coalition, an aspiration? For now, I think A2K still is a movement. There is still no clear ecosystem in place. Organizations still do not recognize other organizations that are clearly adopters of the same agenda, and you do not meet all people you would expect to meet at the annual conferences. Maybe this is a matter of dispute for funding, maybe this is a matter of a top-down approach, or maybe it is just because the movement is in its youth.

I consider myself a network maker, in addition to my role and professional focus in academia, capacity building and advocacy. By this I mean that I believe in

people working together, and I believe that alliances and the recognition of diversity inside the movement is a plus, and not a minus. In all steps I take, I try to recognize common efforts and agendas and to integrate people and projects with my projects or point out possible collaborations and opportunities among projects I see within the movement. I also try to connect pieces of my professional and personal networks that represent different segments of the A2K movement to each other, such as the open-access movement to the open-education movement or those engaged in socially responsible licensing work to the patent reformers or the access-to-medicines groups. Personal connections between different groups who follow the same general philosophy can be a powerful way to coordinate us that does not require the strong powers of governance and that also therefore cannot be captured. This, however, also has its downside, because the strength of personal networks can be used to exclude divergent or new opinions.

QUESTION 7 Short-term strategies do not have to diverge from long-term strategies. Specific tactics may vary, but not the final goal. We have tools that allow us to opt out of the current system and to build capacity outside the imbalances of copyright and closed access and closed sources, and those are good short-term tools and strategies. It is immoral to have a strategy that says we should not use tools that help people gain immediate access to health information, cultural information, and scientific innovation. So we have to think about the actual needs of people as a key part of our strategy, short-term and long-term, and the reality is that A2K issues as such are not a part of lots of people's lives, but having clinics that have recent clinical documents about AIDS or access to genetic testing or generic medicines is a part of people's lives. Thus, strategies can help in this context to ease immediate pressures and problems.

But in the long term, we have to maintain pressure on the international conventions and treaties and on the effect of those in national policy and law. We can do that successfully if we stay together as a movement. Again, I'm basing my thoughts on Boyle's metaphor of the environmental movement. The short-term strategies of recycling locally or composting organics are similar to the licensing strategies of Creative Commons and the Free Software Foundation, but the strategy of thinking globally about carbon emissions, the Kyoto protocols and the negotiations on climate change and how these relate to innovation and access to knowledge and technology is more similar to treaty discussions. We need a big enough strategy to integrate both of these approaches. Otherwise, we risk not only dividing ourselves, but letting those who oppose the coalition generally find ways to attack both short-term and long-term strategies by pointing only at our divisions and thus not responding to the realities of our arguments.



Parody of iTunes billboard directed at the digital rights management (DRM) restrictions used by Apple among others (<http://n3wjack.net/>).

QUESTION 8 The majority of current strategies of A2K actors—even some that may be seen as positive—are, in the end, primarily resistant. This is not a terrible thing in some ways, but it also reflects the power of the movement for greater intellectual property restrictions in controlling the debate. Arguing against an intellectual property maximalist approach is probably more a reaction to strong intellectual property restrictions than it is a uniquely derived strategy. It is hard to separate the two sides of this same coin.

Each organization that can be considered part of the A2K movement has its own history, but even some that took positive actions for generating something new, such as the Creative Commons or recent efforts on innovation metrics not based just in patents, appeared as reactions to the nearly permanent extensions of copyright duration or the centrality of patents. Also, I have not yet seen true and consistent proposals of more thoroughgoing alternatives to this system. Some proposals on alternatives to patent systems, such as the creation of a prize system, are thoughtful options. However, I do not see how any of them can be applied in the context of poor countries, for example.

Finally, civil society and academe operate at a different pace in comparison with government and business. This may be a result from a lack of consistent funding or from the nature of business models, but it also reflects a gap in capacity in terms of training, research, and organization. This implies that we will always be behind and reacting.

There are some technically oriented approaches that have the potential to transcend the intellectual property debate advanced by people both inside the A2K coalition and outside, especially in the area of semantic computing. This represents ideas and knowledge in formats that are less likely to be creative expressions and thus less likely to be considered in the framework of intellectual property rights. If this approach is successful, we can have a debate about knowledge that is less situated inside the intellectual property discourses framed by Disney, for example, because Disney cares more about controlling its properties than about semantic computing, and thus there is more rhetorical space to develop positive agendas.

But because the movement was indeed created inside the framework of intellectual property rights, these kinds of approaches can actually be hard to get endorsed inside the coalition, because they do not fit the coalition's own preferred frames of rhetoric. Similarly, we tend to see problems with intellectual property rights everywhere and thus reach for intellectual property rights solutions, when if we could instead see technical solutions, or business solutions, or capacity-building solutions, we might find better answers. We should be more interdisciplinary in our conception of both the problems and the solutions, and we should look for ways to escape the old structures of intellectual property rights debates that force us to fight powerful forces advocating increases in intellectual property rights. This could be part of the movement that would be really valuable, to help get out of the intellectual property rights position and create interdisciplinary knowledge sharing inside the coalition.

QUESTION 9 I see tensions in the movement, and as I said before, these may be caused by disputes over scarce resources, as well as by the desire to establish oneself as a novel thinker, and being a "regular part of the movement" is not sufficient to do that. However, tensions are not necessarily bad things, since we need to allow the emergence of new organizations, groups, and positions that can bring diversity and creativity to the movement. We should be avoiding the consolidation of an A2K "aristocracy." The minute we begin to talk about movement governance, it stops being a grassroots movement and begins to entrench power inside structures.

QUESTION 10 I agree that A2K is an elite movement mostly shaped by Northern players. However, if you listen closely to some of these players, mainly research institutes and NGOs, you will find a Southern voice in almost all of them. Also, in recent years, organizations from the Global South have gained a voice in specific issues, such as access to medicines. However, these may still be considered the voices of an "elite" from the South. This might be due to the fact that some core strategies of the movement still ask for skills that are not well distributed in

society. Taking this into consideration, core players of the A2K movement have a moral duty to include, in any action, an element of capacity building and network building. For this to happen, the movement needs to be able to recognize the vocabularies of the human rights movement, of the environmental movement, of the civil rights movement, and be able to build links that can guarantee a broader social legitimacy.

DILEEPA WITHARANA AND HARINI AMARASURIYA

QUESTION 1 In order to describe the strategies and tactics we have adopted regarding intellectual property and A2K issues in Sri Lanka, I need to begin with a brief survey of the A2K movement there. In Sri Lanka, there are several organizations, groups, and individuals who engage with what could be described as A2K-related issues concerning intellectual property rights. However, the term “A2K” is not established as yet, and those who are involved in this type of work do not necessarily recognize or realize that they are part of a common movement to ensure access to knowledge. The Open University of Sri Lanka, which is conducting a study on the issue, recognizes both “formal” and “traditional/informal” knowledge as knowledge that is under threat by the intellectual property rights regime and identifies a range of organizations, groups, and individuals who are involved in different ways in ensuring A2K. Most prominent are the existing or emerging initiatives one could call a “free and open-source software (FOSS) movement,” an “antiglobalization movement,” and a “seeds movement.”

The FOSS movement in Sri Lanka mostly consists of experts in software who contribute to the development and spread of free and open-source software, although it can be argued that the potential membership is much larger than this. With the passing of the Intellectual Property Act in 2003 and the gradual implementation of that law since 2006–2007, there is a growing realization among academics, students, researchers, the media, and the general public who use PCs that they will not be able to afford software under the existing intellectual property rights regime. As a result, several universities, schools, state institutions, and NGOs are converting to FOSS.

The Sri Lankan antiglobalization movement, however, is not a movement in the true sense, but consists of several Colombo-based NGOs and their network of community based organizations (CBOs) spread across the country. They engage with A2K issues through their strong critique of free-trade mechanisms and the privatization of and granting of monopoly rights over intellectual contributions. The antiglobalization movement has yet to incorporate the term “A2K” into its discourse or to identify their role in protecting A2K per se.

The seeds movement is a movement whose work in safeguarding access for farmers' rights to use seeds as a public good would lead to safeguarding access to traditional knowledge (A2TK) in agriculture. Intellectual property rights are not the first or the only threat to accessing traditional knowledge in agriculture. The so-called "Green Revolution" has played a major role in the disappearance of traditional seeds and hence of the traditional knowledge that was protected and embodied in traditional seeds.⁶ Intellectual property rights, however, pose the next serious threat to A2TK in agriculture. A strong lobbying group consisting of several influential and prominent lawyers, activists, and a few civil-society organizations works in this area, defending A2TK in agriculture from already implemented laws. When the Intellectual Property Bill was introduced in 2002–2003, it was challenged by these groups before the Supreme Court as being unconstitutional. The challenges resulted in the exclusion of microorganisms from patenting except for transgenic organisms and the inclusion of flexibilities, including parallel imports and compulsory licensing, in the current patent law. This in fact has led to the strange scenario of the section on patents in the Intellectual Property Act of 2003 being much more progressive than the section on copyrights from an access point of view. Education about the implications of intellectual property rights on A2TK in agriculture is spreading in Sri Lanka, while a movement to save and share traditional seeds initiated among several NGOs and farmer groups has been growing. More and more farmers in villages realize and are worried about the loss of traditional seeds in the face of the use of commercial seeds that have flooded the market since the Green Revolution.

In addition to these three trends, access to traditional knowledge in health can also be identified as a component of an A2K movement. A2K in health in Sri Lanka is mainly expressed as resistance to gene piracy in local plant varieties—the smuggling out of the country and patenting of local plant varieties, mainly in the United States, Japan, and Europe—that are historically used in treating patients. Work is also being done by a few individuals in the medical field and their organizations in relation to intellectual property rights and the health industry with regard to drugs, patents, and the pharmaceutical industry. However, the work is conducted mainly in the English language and targets special and limited audiences.

There are as yet no self-conscious links between the FOSS movement, the anti-globalization movement, and the seeds movement, reflecting the fact that these issues have not been conceptualized as a part of the broader issue of monopoly rights provided by the intellectual property rights regime over intellectual contributions.

The study and advocacy campaign conducted by the Open University can be considered one of the first attempts to conceptualize all these mobilizations under

the overall theme of A2K in Sri Lanka and an opportunity to watch a local A2K movement in the making.

That said, players who can be considered part of the Sri Lankan A2K mobilization can be seen using a range of strategies. From our own experience at the Open University, defining the A2K movement in the broadest possible sense is itself a useful strategy. We define the A2K movement as a loose alliance of hundreds of actors, each playing his or her own role in distinct areas. This approach, we believe, will inject a strong dose of confidence that will help participants play their respective roles more effectively. But it also creates a need, or at least the space, for a collective entity to play a role as coordinator and to highlight the A2K aspects of each group. From a Sri Lankan perspective, it is too early to comment about an evolution of *modus operandi*.

QUESTION 2 In terms of shared strategies, the FOSS initiative in Sri Lanka is very much a part of the global FOSS movement. The Free and Open Software Community in Sri Lanka (<http://foss.lk>), the Lanka Linux User Group (<http://www.lug.lk>), TLC, the Linux Centre (<http://thelinuxcenter.lk>) and LSF, the Lanka Software Foundation (<http://www.opensource.lk>) can be identified as the main actors of the Sri Lankan FOSS movement. The small, Colombo-based FOSS community is spreading slowly within the country. It is very much linked with the global FOSS movement and in fact has made significant contributions for the development of FOSS. The introduction of transaction protocols, disaster-management software initiated after the tsunami, reliable messaging protocols, operating systems to address the issue of lack of support for the Sinhala language unicode system, and applications bundled with Linux distributions are some of the contributions.

The antiglobalization movement also is not a Sri Lankan product in its general content and strategies. Its themes, activities, focus, and sources of information are very much dependent on international resources. The members of the movement consist mainly of NGOs and depend heavily on funding from international sources. They operate as members of regional and global networks and hence are guided by the themes and work plans established at the international level. Some of the campaigns of the antiglobalization movement go unnoticed as a result of a lack of awareness by the general public of the themes based on which these campaigns are organized. Expertise on issues is generally developed by participation in regional and international forums, and what we see in Sri Lanka is the application of those on the ground in building Sri Lankan cases. The work, however, in some cases has resulted in sustainable initiatives. Some of the academic research conducted originally was initiated by NGOs and was facilitated by NGO funding. Some of the political parties incorporated action against adverse effects



World Intellectual Property Organization comic on trademarks (<http://www.wipo.int/freepublications/en/>).

of globalization as a result of the initial work done by NGOs. There is, however, a long way to go to see an antiglobalization movement that is sustainable and that operates on an agenda originated from local concerns.

The seeds movement can be seen as a mixture of international and local influences. Surprisingly, the practice of saving traditional seeds, which one would expect to be a natural concern of Sri Lankan farmers, needed to be reintroduced to farmers with the facilitation of external funding channeled through local NGOs. The mind-set created by the Green Revolution that considers high-yielding varieties to be profit makers made the exercise of reintroducing the saving and cultivating of traditional seeds difficult. In contrast, protests against biotheft and biopiracy were spontaneous and considered by the Sri Lankan public to be national issues to which they could relate to easily. The public memory of mass-scale theft during the 450 years of colonial occupation may have played a role with regard to this.

The strategies of intervention by some of the activists and groups working on intellectual property rights and seeds seems to follow a strategy different from that of the general seeds movement consisting of many of the foreign-funded NGOs. While NGOs prefer to maintain minimum engagement with state mechanisms and political parties, these activists and groups have not been averse to

working with such mechanisms and parties. The links they maintain with the state and with political parties have allowed them access to inside information and influence in the formulation of policies and legal texts.

One important reason they have this access is their ability to isolate the issue in question and to focus only on it when engaging with the government and state structures. For example, the stand of the government or political parties on achieving peace in Sri Lanka was not taken to be a barrier to dealing with it on other issues, such as intellectual property rights and seeds. The minimum engagement by NGOs with the state, and sometimes their hostility to it, on the other hand, and their disregard of political parties as influential actors can be traced back to their ideology of identifying “civil society” as a distinct and an exclusive category and a model of righteousness and justice and hence to their claim to occupy the moral high ground in their interventions. NGO involvement is also confined to the boundaries of the mandated projects for which money is received. The long-term commitment that is required to form a movement is not provided by project funding that has short-term goals. Funding has also created a situation where work is not done after the evaporation of funding, leaving many of the initiatives abandoned at the end of the project term. Voluntarism, which should be an essential item in forming a movement, is hence hard to find.

QUESTION 3 On the issue of the A2K movement and the law, there is a need to establish A2K as a right irrespective of the existence of the intellectual property rights regime. In the Sri Lankan context, there are many other important barriers that restrict A2K other than intellectual property rights. Two such important barriers include a serious lack of infrastructure facilities that have no significant link to intellectual property rights issues (libraries, electricity, computers, and so on) and language barriers that result from the fact that knowledge is comprehensively available only in the colonial language of English. Therefore, A2K needs to be a movement that reaches beyond a legalistic focus and beyond intellectual property rights.

Moreover, laws are made by people, and hence they can be changed by people. A2K should be understood as a movement that exists beyond the texts and interpretations of the law. A dialogue on A2K should be based on principles and values, rather than functioning as a mere response to existing intellectual property rights law. The values of equity and justice provide a solid ground for the A2K movement to stand on its own, rather than becoming a mere response to intellectual property rights issues. UN conventions and chapters on fundamental rights in the constitutions of individual countries provide legal, ethical, and moral grounds to expand the scope of the A2K movement to address a whole range of barriers—barriers that also include intellectual property rights.

QUESTION 4 At a fundamental level, the objectives of A2K and the objectives of the private sector are not in harmony with each other and in fact conflict in many occasions. A2K is about rights, while the main and the only drive behind private sector is profit. In fact, the intellectual property rights regime we see today is not a result of hard-fought campaigns by the public for the protection of their intellectual contributions, but mainly a result of advocacy by multinational software and pharmaceutical companies to enhance their profits. The origin of the A2K movement can be traced back to the date when intellectual contributions were made private property, thereby opening space for profit making.

Governments, on the contrary, as the institution responsible for formulating laws and policies and implementing plans, have a strong role to play in A2K and should be coalition partner of the A2K movement. As the mechanism that has the primary responsibility for ensuring basic rights for all citizens, there is nothing theoretically to prevent a government becoming a coalition partners of A2K. However, the fact that most governments do not work in the interests of the public needs also to be noted. Thus, it is also vitally important for the public to be aware of and motivated to protect and fight for their interests.

QUESTION 6 A2K could be a movement, a coalition, an aspiration and also a right. Bringing all groups involved with A2K issues under one A2K umbrella and getting them to communicate with each other is important because that will make them realize that A2K as an essential right of people that is being violated in many ways and on many fronts and that mobilization for A2K should not be limited to countering the monopoly power of, for example, Microsoft in software. It would also make them realize that there are many others involved in many ways with the movement and that it is necessary for these groups as a collective to overcome their feelings of disempowerment.

The seeds movement in Sri Lanka provides a good example of coordinated action. Activists on the ideological, legal, and farmer fronts complement each others' work, mobilizing people, advocating, safeguarding legal spaces in court battles, and saving and sharing local varieties of seeds.

QUESTIONS 7 AND 8 It is too early to comment on future strategies within the Sri Lankan context because there is no A2K movement as such, but movements that have A2K components within their overall aims as described above.

QUESTIONS 9 AND 10 The question of the governance of the A2K movement is bound up with the status of knowledge itself. If one investigates the history of knowledge generation and how knowledge is used as a tool of power by some over others, knowledge itself could be identified as a tool of elite domination. The questions of what knowledge is, which forms or types of knowledge are superior, and

the issue of the domination of a particular type of knowledge over others have pervaded human history. Categorization of some forms of knowledge as “formal” and some other forms as “informal” or “traditional” reflects this reality. Treating Western medicine as formal knowledge and treating the science of local medical practice as traditional knowledge is a good example. This categorization of formal and traditional knowledge has brought the practitioners of Western medicine to the center while leaving local medical practitioners at the periphery.

However, the legitimacy of a knowledge system does not necessarily depend on its ability to explain things or its use value. Attaining formal status is a process that involves power. The science of local medical treatment, which can be considered to be holistic in approach and far superior in logic, with minimal side effects, is considered “traditional” as a result of global power dynamics. The practice of the intellectual property rights regime in considering published knowledge as valid prior knowledge and in offering intellectual property regime flexibilities only for “scientific research” (as is the case in Sri Lankan patent law) makes holders of formal knowledge elites and denigrates the holders of traditional knowledge. Within such a context, it is important that when we refer to the term “A2K,” we ask “Access to *what* knowledge?” And access for whom?

In fact, A2K itself can be understood as an elite movement, depending upon how we define knowledge and how we identify modes and approaches through which knowledge is formulated and accessed. For example, computers and the Internet still do not play a significant role in Sri Lanka in accessing formal knowledge because of the simple fact that a majority of the population do not have access to computers, and even when computers and Internet access are available, many find it difficult to use them productively because of the unavailability of material in local languages and because they still find it culturally alien, even when language is not a problem. For the majority of people who work with nature and who access knowledge through reading newspapers, chatting with fellow villagers, listening to the radio, and attending various social forums, sitting in front of a computer and accessing information in an unfamiliar language is rather a strange and complicated exercise. The use of computers and the Internet by school teachers and university academics still remains low due to this, as well. Narrowing the scope of A2K to FOSS itself can be understood as a way of rendering it the movement of an elite, from that point of view.

The theory of A2K must be constructed on the recognition that the separation between “formal” and “traditional” knowledge is a manifestation of power relations more than anything else and that informal and traditional knowledge still plays a significant role in the lives of everyone, and not just in Sri Lanka. Traditional knowledge in agriculture, health care, human-resource management,

communications, water management, stress release, and so on are examples of knowledges still in use, some significantly and some to a lesser degree.

These traditional knowledges, however, are under threat for a range of reasons. Traditional seeds provide a good example. Traditional knowledge in agriculture is held by farmers. This knowledge is mainly saved in traditional and local seeds and planting material passed from generation to generation between farmers. When this transmission of seeds and planting material is threatened, access to traditional knowledge in agriculture is also threatened. That is the case today. However, it is also important to recognize that safeguarding traditional and informal knowledge does not imply bringing the process of disseminating traditional knowledge into formal modes and mechanisms. Asking farmers to publish their knowledge of agriculture so that the exceptions to intellectual property rights available for “prior art” can be obtained, for example, is in fact equivalent to a proposal for removing farmers from their cultural context. Otherwise, even traditional and informal knowledge becomes an elite product. Sometimes the very process of identifying and classifying traditional and informal knowledge can alienate it from the communities where it was located and accessed.

NOTES

- 1 Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (New Haven, CT: Yale University Press, 2006).
- 2 “The project was meant to consider what the patent system might look like in 20 years time, in order to gain greater clarity about the threats and opportunities the future might present. The purpose of scenarios is to examine possible uncertainties that might arise in a complex and turbulent environment. By deploying this methodology, a wider view can be taken and more relevant questions can be asked.” European Patent Office, “Background to the Project,” available on-line at <http://www.epo.org/topics/patent-system/scenarios-for-the-future/background.html> (last accessed January 12, 2010).
- 3 For more on this policy, see National Institutes of Health, “NIH Public Access Policy Details,” available on-line at <http://publicaccess.nih.gov/policy.htm> (last accessed January 12, 2010).
- 4 See David M. Kotz, “Building Socialism Theoretically: Alternatives to Capitalism and the Invisible Hand,” *Science and Society* 66, no. 1 (Spring 2002): pp. 94–108, available on-line as “Socialism and Innovation” at http://people.umass.edu/dmkotz/Soc_and_Innovation_02.pdf (last accessed February 10, 2010).
- 5 Susan K. Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge: Cambridge University Press, 2003).
- 6 See Roberto Verzola’s essay “Undermining Abundance: Counterproductive Uses of Technology and Law in Nature, Agriculture, and the Information Sector” in this volume.