

and therefore vulnerable—versions of the ideas to which he is opposed. One may, for example, take the view that human reason is largely reflective in its character, that it typically plays a critical rather than a constitutive role, and also that our hopes for improving things (and one can, surely, think of more that is open to improvement than dentistry and plumbing) are best made by way of piecemeal experimentation.

More seriously, Gray's argument sometimes seems to me poor. He often seeks to settle an issue with a neat turn of phrase, or offers quick dismissals of views that would have to be engaged with much more carefully if they were to be criticised effectively. Above all, what really

annoyed me was his attitude towards science. Of this as an attempt to discover truth he is critical; but at the same time he has no hesitation about drawing upon its specific findings when they seem to bolster the ideas that he favours. And when they don't—well, scientific criticism is disregarded. Gray writes: 'Critics of

Gaia theory say they reject it because it is unscientific. The truth is they fear and hate it because it means that humans can never be other than straw dogs.' Clearly, a theory may be worthwhile even if it is not scientific. But one wonders whether Gray has any grounds for accepting this one, other than that it fits his pessimistic vision that we are but straw dogs.

But what, you might wonder, of Gray? For this is, indeed, the same man who wrote *Hayek on Liberty*, and was one of the most acute

contemporary theorists of classical liberalism. Briefly, Gray was always a complex thinker, who, even while he embraced liberalism, was personally pessimistic, and had an attachment to aspects of traditional life and popular culture of a kind that may be undermined within a liberal market economy. Intellectually, he progressed through different justifications of liberalism, rejecting them in turn after he had embraced them, but was left impressed by Berlin's value pluralism, Oakeshott, and—for a long while—Hayek's arguments about markets and information. Intellectually, Gray shifted from liberalism to an espousal of conservatism and certain ecological themes. He favoured a pluralism of traditions, and wrote *False Dawn* against market-based globalisation. Politically, he abandoned the British Conservatives (whom he thought intractably wedded to market liberalism) for Labour, because he believed that they could better safeguard tradition. Alas for Gray, Labour was itself

changing into market-oriented New Labour. After a short period when Gray fancied himself as one of Tony Blair's 'gurus' of the 'third way', and a flirting with 'new' or 'welfare' liberalism, his underlying pessimism seems to have won out, as is seen in the present book. Gray, however, is still a fairly young man. One can only wonder what will come next.

Reviewed by Jeremy Shearmur

Copy Fights: The Future of Intellectual Property in the Information Age

Edited by Adam Thierer and Clyde Wayne Crews Jr

2002, Cato Institute, 295pp
US\$19.95, ISBN 1930865252

THERE are a number of past and upcoming developments which will enhance the topicality of intellectual property rights in Australian public discourse.

Firstly is the recent Eldred decision of the US Supreme Court which revolved around a challenge to the constitutionality of the Copyright Term Extension Act (CTEA). The CTEA elicited opposition from prominent economists across the political spectrum from Kenneth Arrow to Milton Friedman because the incentive effects of copyright term extension to existing (and deceased) creators were infinitesimal relative to the additional costs to consumers and future creators wanting to build on earlier works. However, the Supreme Court decided that irrespective of its merits or lack thereof, overturning the CTEA would have involved the Court too much in the minutiae of policy. In essence Eldred means the US Congress has carte blanche to extend copyright terms indefinitely.

Secondly are the ongoing negotiations between US and Australia on a possible Free Trade Agreement (FTA), which may involve some degree of regulatory harmonisation between the two jurisdictions. Given US proclivities to export its model of strong copyright protection to other jurisdictions (as evidenced by its discussions with Taiwan over a similar free trade agreement) this is a hazard that Australian negotiators should take account of given the



confirmation by Eldred of the US copyright lobby's new found strength.

Thirdly, the Federal Government is expected to conduct a review this year of the *Copyright Amendment (Digital Agenda) Act 2000* (DAA) which is essentially Australia's response to the challenge of enforcing copyright in the digital world. This will create further opportunities to tinker with Australian copyright law not already present from the FTA negotiations.

In light of all these developments, *Copy Fights* is a timely collection of essays on the challenges raised by intellectual property with particular reference to the opportunities for the dilution of its protections created by digital technology. The collection is an extremely balanced one which seeks to give roughly equal representation to all points of views, but for this same reason the essays are of mixed quality. There is a substantive section



devoted to the theoretical basis of intellectual property rights, one on updating copyright law for the digital age, a section devoted to the Digital Millennium Copyright Act (the provisions prohibiting the circumvention of technological devices encrypting or otherwise protecting copyright works in Australia's DAA are essentially a 'milder' version of the DMCA); a short section on digital rights management (which has been heralded by some market-oriented thinkers as a contractual 'laissez-faire' solution to the struggles over copyright) and another short section on business method patents.

While each section has at least one good and substantive essay, I have a few quibbles.

Although the theory section is excellent in the philosophy department (in particular the essay by Tom Palmer is outstanding though I fundamentally disagree with its conclusions), it lacks a technically sophisticated but accessible discussion of the fundamental economics of intellectual property upfront (though there is an excellent piece by Stan Liebowitz later in the collection on the economics of digital rights management which

has a good wrap-up of some of this). I note this not merely out of professional self-interest but because when one gets to the actual nuts and bolts of discussion of copyright policy, it is frequently conducted in the utilitarian discourse of economics, so that introducing this box of tools early would be helpful to

the non-economist reader to aid his or her critical examination of the occasionally (and understandably) over-hyped claims of the some of the activists from one lobby or another who have been thrown together among the legal and other scholars in this eclectic collection.

Another minor complaint is the section on business patents. This is a genuinely interesting area which would also have merited a good contribution from a theoretical perspective or one summarising the public policy literature on the issue in addition to the perspectives of the practitioners provided in that section.

The general dilemma being addressed in the book can be summarised as follows:

The non-rivalrous nature of intellectual property means that there is no natural scarcity attaching to it ex post; that is, after it has been produced. The expressions which would be subject to copyright protection can, in its absence, be 'used' by other writers simultaneously in the way that physical objects cannot. It is argued that this lack of scarcity ex post prevents authors from getting adequate returns from their efforts in the absence of specific laws which allow them to set terms and conditions on the use of their works and in particular, its reproduction in other works. Thus all intellectual property in essence involves the creation of artificial scarcity—the law assigns to the author the power, subject to certain qualifications, to dictate the conditions of dissemination of the intellectual property produced. Of course, this creation of an artificial scarcity also creates what economists refer to as allocative and productive inefficiencies. Costs are higher than they could have been and some of these costs consist of resources diverted from other valuable uses.

At the same time, this tradeoff between 'access' and 'incentives' is more complex than the dichotomy suggests because future works may build on earlier works so that the very same artificial scarcity which is meant to facilitate appropriate rewards and hence incentives for current creators also increases the 'input costs' of new creators. Yet another complication is that the longer the copyright term, the more costly the process of establishing claims to ownership (whether for purposes of litigation or to create

new works from older works) will be. Throw into these complications the gigantic 'copying machine' possibilities of the internet, the equally powerful possibilities for improved 'digital locks' through rights management software and the additional issues raised by the economics of 'shrink wrap' contracts over cyberspace and one can begin to understand the truth of Hayek's argument that:

As far as the great field of the law of property and contract are concerned . . . we must above all beware of the errors that the formulas 'private property' and 'freedom of contract' solve our problems . . . Our problems begin when we ask what ought to be the content of property rights, what contracts should be enforceable, and how contracts should be interpreted.

Needless to say, this anthology doesn't solve any of these problems and one wouldn't expect it to, but it does make a noteworthy contribution to the discussions yet to come.

Reviewed by Jason Soon

Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide

Pippa Norris

Cambridge University Press,
2001, 303pp, \$49.95,
ISBN 052 100 2230

THE NOTION that some people have less access to the internet than others is almost always guaranteed to cause concern amongst those for whom equality of access to any

resource is a priority. Even those who are generally sympathetic towards letting markets, rather than governments, decide on the allocation of manufactured resources often express sympathy for reducing the gap between the digital haves and have-nots.

Pippa Norris, of Harvard University, has authored a well-written and surprisingly easy-to-read book, unlike many academic texts, on the subject of the 'digital divide'. Norris begins by setting out the different diffusion theory arguments. Namely, how will new technology spread within societies? Will technology be a 'leveller' or will it merely reinforce existing social and economic divides?

Norris then, through significant empirical studies, examines the divide within nation-states and among nation-states before going onto discuss the effects of digital takeup by governments, political activists and the use of digital technology by the general public as a means of political and social discourse and activity.

Norris' findings are, on one level, not surprising. The internet, like most new technologies of their day (such as the telephone, radio and television), has initially been the preserve of those who can afford such luxuries. However, diffusion of new technologies over time has become quicker, at least among wealthier countries.

Norris' book, *Digital Divide, Civic Engagement, Information Poverty, and the Internet Worldwide* tends to focus on the gap between nation-states and reaches the view that serious gaps between the

richest and poorest nation-states remain and are unlikely to narrow in the medium-term. Norris seems to sympathise with those who see this information gap as being a bar to development of poorer countries. After all, since so much information is found on, and commerce takes place via, online-communications systems, those without access will find themselves excluded from

the brave new digital world of education, commerce and civic participation.

One of the problems in this otherwise excellent 'state-of-play' text is that Norris is a little too uncritical of the popular 'the information gap exacerbates poverty' argument. She seems to agree with James

Wolfensohn of the World Bank, who she quotes as saying 'The digital divide is one of the greatest impediments to [economic] development.' This view, which Norris does not challenge, is an exaggeration.

The lack of digital resources in poorer countries is a symptom of lack of infrastructure, poverty and general underdevelopment caused by corrupt governments and bad economic and regulatory policies. In many of these countries, the key to development is government reform of basket-case economies, reduction of corruption, implementation of transparent pricing regimes and the removal of barriers to foreign investment. Without these reforms, communications infrastructure, along with other basic building blocks of a comfortable society, such as electricity, gas and water grids are unlikely ever to be built and maintained for any significant

