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WTO-RECOLONIZATION OR REFORMATION

Lawrence Surendra

It is very appropriate that in the context of the AMIC's 8th Annual Conference Theme, 'Asia- Information Poor to Information Rich - Strategies for the 21st Century', a session is devoted to looking at the WTO. This session is intended to examine questions such as, how far have restrictive or discriminating regulations on cultural products been eased or abolished to promote trade liberalization under the WTO agreement? Is the WTO Agreement a tool for Western domination of world trade in audiovisual services and satellite communication, and for cultural hegemony over the third world? There are very important and relevant questions today.

Before I begin to answer these questions and put the WTO to critical examination, I would like examine three interrelated issues and which are central to the discourse on communication and information namely, technology, trade and culture. A proper examination of the WTO cannot be made or the deficiencies and problems with the WTO addressed, unless the WTO is placed within such a larger context. More importantly, it is very difficult to analyse or understand contemporary problems and potentials without taking into consideration the very important triad of technology, markets or trade and culture.

Technology is often the critical link between culture and the market or trade. The moment we take up technology, especially in the context of what we today call Information and Communication technologies, we also realise that we are in the midst of the simultaneous use and applications of not just different stages of technologies but different kinds of technologies. Especially in Asia, we find ourselves in a situation where, all three media - the print media, the satellite television or electronic media and the internet or cybermedia all are in use and each of them play an important role, though the latter the electronic forms seem to dominate and give the impression of taking over. It is necessary to acknowledge, this simultaneity in the use of the different technologies of communication if we are to have some clarity about how the communication technologies are being used, how they can be used and how they are likely to be used. We also need to place the development of these technologies in some historical perspective. This is absolutely essential if, we are to have some reliable road maps for the future and if our societies are to charter their way as sensible and humane entities, through the seductions of technology, the confusions, conflicts, pains and joys of culture and the promises and tall claims of the market.
In terms of technology and history, we need for a moment to cast ourselves back a little, a mere five centuries or so back to the days when printing technology came on the scene in the West, in Europe. At the time printing technology came on the scene in the last decades of the 15th century and the first decades of the 16th century, only a few people could read and write; printing technology itself was very cumbersome and complicated, from paper production to actual printing, yet it became very popular. For our purposes here, what is relevant to us in looking at the early history of printing technology is basically two issues. Firstly the early attempts to regulate the technology or the laws that proliferated around print technology and its products and secondly the links between printing (as one of the early communication technologies) and language. I am restricting myself to the history of print technology in Europe not merely because that history is more abundantly available but doing so provides us also with a good contrast between the history, Europe and the West went through, and the stances that they are now taking today at the end of the 20th century, on matters vital to communication and information technology in developing societies in particular and on the globe as a whole.

A mass of draconian legislation appeared in France and England, not only to restrict and control the books domestically but also protectionist legislation to defend themselves from books that poured over their borders. But it did not really serve the purpose, they were generally ignored and a big trade in underground books and tracts developed. Though then as perhaps also now, if anyone was caught, it was small entrepreneurs, little presses who paid the price but the big printing dynasties were never touched. The relevance for us today is that laws were used then to control access and against the popular desire and need for greater democratic access to knowledge and information. With reference to the second aspect, the links between printing and language, we find the consolidation of national languages, the vernacular as it were and the decline of Latin. At the same time, some written languages of the Middle ages disappeared or became only spoken languages. The policies of the rulers of that time, as a part of centralising monarchies were directed towards a unified national language. French which was by the 18th century pre-eminent as an international language could never fully occupy the place left permanently left vacant by Latin, nor could it later on, as is the reality today, stand up to the challenge posed by English.

The lessons from the days of the advent of print technology in the 14th, 15th and 16th century, to today's world of satellite TV and cyber technology, is centrally the question of access and freedom. In an earlier undemocratic age, the key question was how to control both access and freedom. Today, when that is not possible especially in democratic systems and societies, the rhetoric generally is that access should be democratic, but the process of articulating and defining the 'the rights', which should be an integral part of the democratic access question, the market takes a more dominating position. Similarly, the issue of freedom, is not that of the citizens rights, but that of the freedom of the market and the freedom
as a consumer. Complex issues are simply reduced to questions of how to provide access and regulate access through "the market".

It is in examining the routes of regulation, through the market, that proprietary questions, such as those of protecting the intellectual property of the technology provider, the creator, author and so on come up. It is in such a route also that institutions such as the WTO place themselves in a dominating position and begin the business of privileging the market over all other institutional arrangements and the market discourse over all other discourses.

Freedom and access are defined by the rules set by the market. The market then becomes or is in danger of becoming the sole arbiter globally with regard to decision making on critical issues relating to freedom, access, rights, and cultural choices amongst others. Most importantly, the market is seen as the sole route through which critical questions and decisions relating to development, whether it be economic, political, cultural or social are to be evaluated and decided. It is in such a process that Trade and World Trade takes priority over all other considerations. It is therefore also not accidental that the organization dealing with World Trade, namely the WTO is also the organization that seeks to position itself as the central institution and key player in global affairs.

In such a background culture becomes an issue of critical concern to all developing societies; especially the freedom to have and make the choices relating to issues of culture and cultural rights. Firstly, cultural contexts and culturo-historical approaches in dealing with issues of IPR must be recognized. A purely market driven strait-jacketed intellectual property approach, tends to deny all cultural diversity and reduces all of culture to one norm, one standard, that of western intellectual property. Here the Western industrialised countries forget their own history and the divergences even within them on the approaches to intellectual property, its recognition and protection. The present Western and particularly US obsession with enforcing an uniform, intellectual property standard regardless of history, culture, stage of development of a country can be critiqued from several viewpoints of unfairness, double-standards and even hypocrisy. Time does not permit me to elaborate on all of this, but I shall take just two examples of how, behind all the facade of trying to develop a level playing field and common standards of protection globally, the West and the US in particular undermines global systems of governance in these areas and adopts hypocritical double standards.

The first example relates to how the WTO, which is only an international Trade treaty organization, is constantly pushed to the forefront with reference to intellectual property rights issues. First UN institutions such as UNESCO were attacked and undermined. Now, subtly there is an undermining of the role of WIPO by making it follow the agenda of the WTO and not set its own agenda. The WIPO is an inter-governmental organization, which is much better placed to consider all issues related culture, education and imbalances in access to
technology. Ensuring that issues of democratic access and rights does not involve a form of global apartheid, with one standard for the West and other for developing countries, requires not just a trade organization as a regulator of the global market dealing with issues of innovation, creativity and technological development. An equally strong role is required to be played by other agencies and organizations that represent the public interest and creative communities. Even today close to five years after the Marrakesh agreement that founded the WTO, analysts believe that intellectual property issues was best dealt with at WIPO and not in the form of TRIPS at WTO. Matter of fact, some have even gone further and hold the view that TRIPS could very well turn out to be the Achilles heel of the WTO. Going by what is currently the state of affairs at the WTO, this could very well be true.

The other example is in relation to the unholy and unethical haste of West and the US in dealing with developing countries with reference to intellectual property issues. China provides us a good example, in that it is at least providing some resistance, to the attempts of the West to homogenize and remove all diversity in cultural and economic terms, globally.

Given time constraints, only two instances from the Chinese case, will illustrate the hypocrisy and double standards that the West adopts, in the matter of intellectual property protection and what standards should be adopted. Firstly, the US insisted that China should join the Universal Copyright Convention and preferably the Berne Convention as well and accordingly enact copyright laws internally. This was done inspite of the fact that the Universal Copyright Convention itself was created in the 1950s, in the first place to draw America into an international copyrights agreement and interestingly because America was resisting coming into the copyright fold. The irony is that America, which resisted for over a century to join the Berne convention was pushing China to join the Berne Convention. This also not withstanding the fact that even though America finally joined the Berne Convention, it still does not fully implement it. Interestingly again, the West and the US in particular which in the context of human rights decries the criminal justice system in China wants the use of the very same system that it decries to enforce criminal sanctions with reference to infringements and violations of copyright and other intellectual property protections. This is true for other developing societies as well.

It is this context in which we have to situate the attempts through TRIPS in the WTO to enforce a more uniform, global regime on intellectual property. The attempt is to universalise a Western and US norm than to harmonise the different systems and regimes prevalent through negotiation and compromise. This is not even considered because the pressure from the industry within the developed societies is very strong. It is industry that wants the WTO route and strengthening of the IP regime within the WTO and not the scientific or literary and creative community globally and those who know the value of the public domain and the contributions it has made. Industry in the face of criticism from the scientific and
creative community, hides behind arguments of promoting trade and letting markets regulate. In actual effect what we have seen and are seeing is that while powerful developed countries have through the WTO are trying to enforce a global standard for intellectual property protection, within and between them they been raising their protectionist barriers and adopting a defensive mentality to preserve the dominating position of their existing technology exporting firms. What the industry and those who drive technology want to do is to restrict the public domain and put as many obstacles to the public domain. This is done so private entities especially powerful transnational entities such as TNCs can be the beneficiaries.

It is necessary that we recognize the importance and contribution of the public sphere and its importance to the vitality of all civil societies. Markets can arrogantly assume all that societies need is consumers. The reality however is that any civilized society needs citizens as much if not more than mere consumers. It is citizens who make up for active civil societies, which in turn can ensure the presence and effectiveness of institutions needed even for the market to function in a manner that is transparent, fair and accountable and where special interest groups do not take unfair advantage through unscrupulous means. With reference to the public domain and cultural dimensions of creativity and innovation, a few remarks are in order. Firstly, many cultures, see mutually beneficial relations between creativity and the public sphere. There is an obligation to relate to the public sphere and in turn there is a spin off in terms of creativity and innovation both for the individual and the group. However in a globalized world, there is somehow an assumption that 'cultural questions' relate only to the consumption aspect of culture and not the production aspect also. We take for granted that the disappearance of culture relates only to the issue of dominance of particular cultures and their products or for example, the hegemonic presence of certain entertainment and other products, especially through TV from just a few centres of media and related cultural production.

This whole new phenomenon of consumption through new communication and information technologies which the market and the global markets promote, of course promotes certain dominant forms to the detriment of others. There is a trap, a catch-22 type of situation, where dominant centres of technology use their dominance to promote cultural forms that originate from these dominant centres. Other centres of culture and cultural forms can then take an overly reactive and defensive attitude, to protect their cultures and cultural forms, but this can be a superficial reaction and land up only dealing with the peripheral aspects of the threat. Whereas the processes are more fundamental and deeper.

It is more than just the forms of cultural threats superficially in terms of mass entertainment and so forth. Deeper processes are at work. As Edward S. Herman and Robert W. McChesney, authors of 'The Global Media: The new missionaries of corporate capitalism' point out, even more critical is the model that is sought to be imposed and generalised. This model is the model of commercialisation, based
on the view that commercialisation and commoditisation is superior to all other forms of exchange, dissemination and consumption. A view that may well be true for items of physical consumption, though even here with reference to food and ensuring food security for vulnerable populations, the market cannot be entirely depended on. Nonetheless, the market and the commoditisation model is extended to other areas such as culture, cultural production, the products of culture, the appreciation and absorption of culture. Culture becomes one more item in the lists of consumerism and consumer culture. Such a view is not entirely because the philistinism of the market holds sway in such decision making, but it is the arrival of powerful transnational conglomerates whose growth and power that dictates such a view. The WTO as an organized expression of these interests represents glaringly the pitfalls and contradictions of being an agency that primarily carries out the briefs of transnational corporations acting through their governments. In such a context one can also understand why the major forces behind the WTO did not want the WTO brought under the rules of the United Nations, which in a global democratic sense still has the potential to represent the global public domain. The latter is another matter that we do not have time to deal with here.

To understand how the dominant and stronger players use the WTO system, which seems designed for them, let me cite the WTO's "landmark" telecommunication agreement. It was signed by 68 countries representing 90% of the World Telecommunications business of US $600 Billion per annum. It was the involvement of the largest global telecom firms, that led to the conclusion of the deal. Though it has been projected as a liberalization of telecommunication, the negotiations depended basically on how the three major players, the U.S., the European Union and Japan, attempted to protect their own domestic firms. Matter of fact in 1996, the US postponed negotiations partly to seek time and find ways to protect "the powerful Motorola Corporation's digital satellite system from European competition".

A similar pattern was seen earlier in the GATT negotiations on Agriculture, where the three powerful blocs, US, Europe and Japan negotiated each in their interest and came to an agreement, thus putting in place rules for agriculture for the rest of the world as well. A related agreement is the WTO-TRIPS regime for seeds and consequently for plant and plant genetic variety. This regime threatens the very same natural bio-diversity which in the first place gives rise to the useful plants and seeds that the WTO-TRIPs regime seeks to protect. The hurry to protect private transnational interest and that of organized lobbies that stand behind plant breeder conventions such as UPOV is undermining the very natural bio-diversity on which plant breeder innovation is based. In a very short sighted sense it is only the "innovation" of the latter as "intellectual property" the WTO seeks to protect. The Bio-diversity Convention at times stand frozen in the face of the momentum that commercial interests have kept up with regard to their narrow agendas. This in spite of the fact that the world that the Bio-diversity Convention speaks to is a very important world and so crucial to the very future of humanity. The diversity of
cultures is so critically related to the diversity of nature. Equally, the diversity of nature is inextricably linked to that of cultural diversity. There is more here than the market shares of leading corporate entities and their mergers into bigger and bigger conglomerates globally.

One argument in the face of scenarios I have outlined earlier is to say that developing countries can play off the opposing interests between developed countries and thus determine the advantages they can get out of these negotiations. The fact however is that not only is the space for such manoeuvres small but "the principles of liberalization and privatization are non-negotiable" and which developing countries have to enforce at any cost. This adherence to the gospels of privatization and liberalisation under the auspices of global capital must be done by poorer developing countries whatever be the consequences of such decisions for their own long term development and implications for their technological base.

The WTO also, as in the case of environment does not allow any protection in the name of culture. The US in particular has refused to allow national governments taking steps in the interest of their citizens, with regard to the media. For example, the WTO ruled in January 1997 that Canada cannot impose any special taxes or tariffs on US magazines to protect Canadian periodicals. The negotiations leading up to the more recent WIPO treaties (1996) relating to copyright, performances and in the background of the WTO-TRIPS agreement have shown how the developed countries, especially the US and EC flex their muscle, in such negotiations. The WIPO Diplomatic Conference to sort out problems relating to rights of performers and phonogram producers, was used by the EC and the US to introduce new treaties relating to databases and make their first moves with regard to the 'Digital Agenda'. The arrival of digital technology has also opened up, greater possibilities and freedom for accessing digital data for example. Though access has been restricted using "firewalling" and encryption technologies, yet it has been felt legal restraints are needed to govern access to data bases, whether through the Internet or otherwise.

In this as in other cases the WTO-TRIPS triggered agenda to keep increasing the level of intellectual property protection, and on the terms set by the developed countries, involves, "a clash of what is protection of the public good versus protection of private intellectual property". In the case of the data bases issue, the scientific community in the US as the world over, decried such attempts to restrict free flow of knowledge, privatise access and put curbs on the public domain. Similarly the attempts, in the wake of digital technology, to expand the rights of publishers and copyright owners tends to significantly reduce the scope of traditional doctrines such as fair use and similar privileged transactions, while expanding the rights of publishers and copyright owners. Cultural communities, if one can use such a word and communities of communicators, must realise the long term threats and act with other communities to loosen the over-layering of
laws to thicken the protections that are being offered in the name of protecting "private intellectual property".

Pamela Samuelson, writing with reference to such developments in the US, says, "Not since the King of England in the 16th century gave a group of printers exclusive rights to print books in exchange for the printers' agreement not to print heretical or seditious material has a government copyright policy been so skewed in favour of publisher interests and so detrimental to the public interest'. It is also interesting to note that the 1996 WIPO copyright treaty for the digital age, adopted in 1996, states clearly in its Preamble, "the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research, and access to information, as reflected in the Berne Convention".

The point however is to understand the new reality that is upon us and is unfolding further. The new reality of a world highly skewed in favour of the private interest, especially of a gigantic transnational kind, and often at the detriment of larger public interest. It is this new reality that the WTO seeks to fundamentally promote and install for all time. Discussions on the strengths and flaws of the WTO need to recognize this and go beyond its fundamental biases, inherent structural limitations and warped vision. This is especially necessary when attempting to understand what is happening at the world of culture and communications and especially when creativity, innovation and diversity are to be engendered. The WTO's philosophy, drawn generously and deeply from the neo-mercantilist and neo-imperialist board room strategies of the world's major TNCs, will by its own logic lead to a world lacking in diversity, a world devoid of a vibrant public sphere or public domain and perpetuation of the historic and structural inequities of the world today. This can happen only at very high costs to future generations and the severe handicapping of present generations.

Whatever is happening at the WTO today, whether it be colonization or reformation is but a small prelude to the more tragic acts to follow, in the theatre of the absurd called World Trade and Intellectual Property Protection. The market place has been forgotten for the market. The spontaneity of the market place of ideas, cultural exchange, innovation and people--real human beings, represented by the public sphere is deliberately and gradually being sapped of its vitality and condemned to die. We need urgently, especially in the world of nature, culture and communication to re-establish the importance of this space of human interaction and exchange. We need to realise the importance and critical value of 'the public sphere' to future generations and see ways of revitalising and protecting it from private transnational corporations greed and venality.

There is much to be done by educational institutions, public interest bodies and even private entities, including the media and those who believe in real competitive policies that produce a level playing field and not a situation where the strong are protected further and at the cost of the weak. Prof. Robert White, President emeritus of the US National Academy of Engineering, (in the context of
restricting data base access) recalling Curran's principle of more than 200 years, "eternal vigilance is the price of liberty" said, "the same can be said of the integrity of science". One can extend his words and say, that the same can be said with regard to the integrity of culture, communication, creativity and the diversity of culture and cultural forms. The WTO in its present form poses a grave hazard, danger and risk for a common humanity in the 21\textsuperscript{st} century.

Madras
1\textsuperscript{st} July 1999
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