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# Intellectual property, privatization of knowledge and the (vanished) university's autonomy

XXVII BIENNIAL COLLOQUIUM OF THE ITALIAN  
ASSOCIATION OF COMPARATIVE LAW (AIDC), May  
2023

Roberto Caso



# One view of the cathedral...

- What is the (Open) Science for?
- What is the University for?
- European ambiguities: lessons from pandemic (e.g., vaccines & IP)

# Outline


1. Academic freedom, democracy and human right to (open) science
2. European contradictions on the public/private boundaries: IP, innovation, progress of knowledge, democracy
3. Making public and democratic science

# 1. Right to (open) science (2020)

- 11. The right enshrined in article 15 (1) (b) encompasses **not only a right to receive the benefits of the applications of scientific progress, but also a right to participate in scientific progress.** Thus, it is the right to participate in and to enjoy the benefits of scientific progress and its applications.

United Nations E/C.12/GC/25

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 **Economic and Social Council** Distr.: General  
30 April 2020  
Original: English

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**Committee on Economic, Social and Cultural Rights**


**General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)\***

# 1. Right to (open) science (2020)

- 60. [...] **intellectual property can negatively affect the advancement of science and access to its benefits** [...]. It is necessary to tackle these three problems in order to ensure that intellectual property promotes the research and innovation crucial to the full enjoyment of economic, social and cultural rights without undermining these rights.

United Nations E/C.12/GC/25

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# 1. Freedom, autonomy and right to science

- Freedom of expression and information
- Academic freedom and autonomy → democracy
- **Right to (open) science** (art. 15 International Covenant on Economic, Social and Cultural Rights)

# 1. Kantian roots of the human right to (open) science (1784-1785-1797)

## Kant

- **Copyright is not property**
- Work (of authorship) as **public dialogue** between author and public
- Public use of reason



# 1. Mertonian roots of the human right to (open) science (1938-1942)

## Merton

- **Communism**
- Universalism
- Disinterestedness
- Skepticism





# 1. Merton (1988)

- The Matthew Effect in Science, II: Cumulative Advantage and the Symbolism of Intellectual Property
- «[...] even in a capitalistic society, of publishing one's work without being directly recompensed for each publication have made for the growth of public knowledge and the eclipse of private tendencies toward hoarding private knowledge (secrecy), still much in evidence as late as the seventeenth century. **Current renewed tendencies toward secrecy,** and not alone in what Henry Etzkowitz has described as "entrepreneurial science," will, if extended and prolonged, **introduce major change in the institutional and cognitive workings of science».**

# 1. Ambiguities: RTS vs.[and] OS [Yu 2022]



The screenshot shows the SSRN website interface for a paper. At the top left is the SSRN logo. To its right are navigation links: Product & Services, Subscribe, Submit a paper, Browse, Rankings, Blog, and Coi. Below these are three buttons: 'Download This Paper' (with a PDF icon), 'Open PDF in Browser', and 'Add Paper to My Lib' (with a star icon). The main content area features the title 'Can the Right to Science Reduce the Tensions Between Intellectual Property and Human Rights?' in bold. Below the title is the subtitle 'A HUMAN-CENTERED APPROACH TO HEALTH INNOVATIONS: RECONCILING INTELLECTUAL PROPERTY WITH HUMAN RIGHTS, Lisa Biersay, Thomas Pogge and Peter K. Yu, eds., Cambridge University Press, 2024, Forthcoming' and the source 'Texas A&M University School of Law Legal Studies Research Paper No. 22-56'. At the bottom of the content area, it says '14 Pages • Posted: 16 Nov 2022 • Last revised: 25 Apr 2023'. Below the content area, the author's name 'Peter K. Yu' is listed, followed by 'Texas A&M University School of Law' and 'Date Written: November 10, 2022'.

- «Despite the high hopes of public health advocates and scholars that the right to science will provide a new human rights tool to resolve the tensions and conflicts between intellectual property and human rights, General Comment No. 25 **does not definitively provide such resolution**».



## 2. Intellectual Property (WIPO, WTO): a Western Neocolonialism

[https://it.wikipedia.org/wiki/Apocalypse\\_Now](https://it.wikipedia.org/wiki/Apocalypse_Now)

## 2. Pseudo-IP → control of data, machines and infrastructures

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- Paracopyright
- Sui generis right
- Trade secret as IP
- Data exclusivity
- Contract + de facto control of data
- Etc.

## 2. EU. Danger of death! Don't touch IP & pseudo-IP

- + IP = + innovation
- E.g. Making the most of the EU's innovative potential An intellectual property action plan to support the EU's recovery and resilience  
COM/2020/760 final



# 2. Surveillance Publishing and data analytics of the Intellectual Monopolies (2019-)

Surveillance Publishing

SPARC\*

LANDSCAPE  
ANALYSIS

The Changing Academic  
Publishing Industry –  
Implications for Academic  
Institutions

## Stop Tracking Science

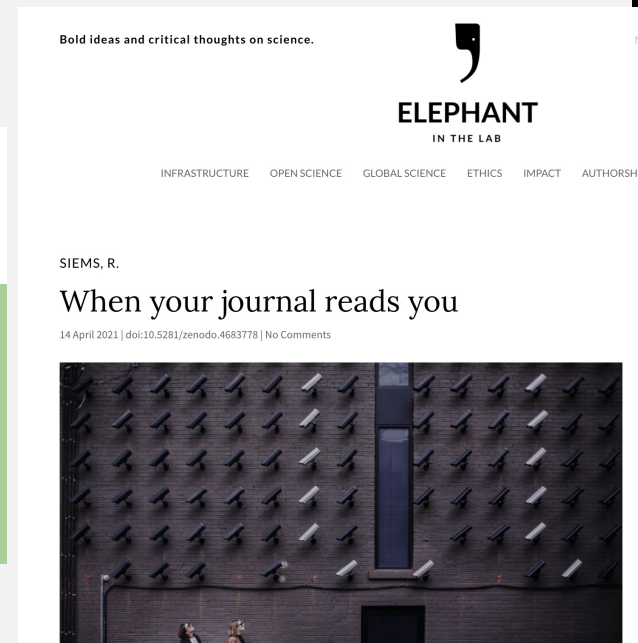
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*A working paper, under review*

The major academic publishers have made collection and trading of data about the research interests of individuals, groups and research institutions their new business model. Data about your scientific activities are collected in real time across the research workflow. The publishers take notes and sell the knowledge about you to third parties. This business model is in direct opposition to academic freedom. We have to stand up against these corporations!

Stop Tracking Science!



## 2. Karen Maex (January 8th 2021)



- [...] And so **private companies continue to enlarge their role** while the public character of our independent knowledge system is further eroded.
- [...] **What applies to the future of democracy applies equally to the future of universities** and of independent education and research as vital building blocks for the organisation of knowledge. We cannot simply leave the future of knowledge to the corporate boardrooms.

# 2. Patents (trade secrets) and vaccines



The screenshot shows the Zenodo website interface. At the top, there is a blue header with the Zenodo logo, a search bar, and links for 'Upload' and 'Communities'. Below the header, a light blue banner reads 'Celebrating our 10th anniversary! Send us your birthday greeting here.' The main content area features the date 'May 24, 2021' and two tags: 'Journal article' and 'Open Access'. The title of the article is 'Pandemia e vaccini. L'irrisolvibile antagonismo tra scienza aperta e proprietà intellettuale'. The author is listed as 'Caso, Roberto'. The abstract text is as follows: 'This paper aims at critically addressing the issue of intellectual property in the biomedical and health fields, focusing on the equitable and rapid distribution of anti-COVID-19 vaccines on a global scale. The main allegation is not new: open science is incompatible with policies aimed at extending and strengthening intellectual property. However, this same thesis deserves further attention in relation to the ongoing public debate and national and international policy choices. The paper starts from the refutation of the arguments in favour of private patents on vaccines (paragraph 2), then it provides an overview on of the debate on downstream policies (paragraph 3) and discusses some upstream policies (paragraph 4); some conclusions follow (paragraph 5).'. Below the abstract, there is a paragraph in Italian: 'Questo scritto intende affrontare criticamente il tema della proprietà intellettuale in campo biomedico e sanitario, con particolare riferimento alla questione dell'equa e rapida distribuzione su scala globale dei vaccini anti-COVID-19. La tesi di fondo non è nuova: la scienza aperta è inconciliabile con politiche di estensione e rafforzamento della proprietà intellettuale. Pur non essendo nuova, la tesi merita un approfondimento in relazione al dibattito pubblico in corso e alle scelte politiche nazionali e internazionali. Si prenderà le mosse dalla confutazione degli argomenti a favore di brevetti privati sui vaccini (paragrafo 2), per poi offrire una sintesi del dibattito sulle politiche a valle (paragrafo 3), discutere alcune politiche a monte (paragrafo 4) e infine svolgere alcune conclusioni (paragrafo 5).'

- «This paper aims at critically addressing the issue of intellectual property in the biomedical and health fields, focusing on the equitable and rapid distribution of anti-COVID-19 vaccines on a global scale. The main allegation is not new: open science is incompatible with policies aimed at extending and strengthening intellectual property. However, this same thesis deserves further attention in relation to the ongoing public debate and national and international policy choices. The paper starts from the refutation of the arguments in favour of private patents on vaccines (paragraph 2), then it provides an overview on of the debate on downstream policies (paragraph 3) and discusses some upstream policies (paragraph 4); some conclusions follow (paragraph 5).»



## 2. Promotion of public health or access to medical technologies (Contreras 2021)



The screenshot shows the SSRN website interface. At the top, there is a navigation bar with the SSRN logo and links for 'Product & Services', 'Subscribe', 'Submit a paper', 'Browse', 'Rankings', and 'Blog'. Below the navigation bar, there are two buttons: 'Download This Paper' and 'Open PDF in Browser', along with a star icon and the text 'Add Paper to'. The main content area displays the title of the paper: 'In the Public Interest' - University Technology Transfer and the Nine Points Document – An Empirical Assessment. Below the title, it indicates the paper is from the 'University of Utah College of Law Research Paper No. 476' and '12(2) U.C. Irvine L. Rev. 435 (2023)'. It also shows the page count (79 Pages), the posting date (27 Dec 2021), and the last revised date (17 Apr 2023). The author's name, 'Jorge L. Contreras', is highlighted in yellow, and his affiliation, 'University of Utah - S.J. Quinney College of Law', is listed below. The date written is 'December 21, 2021'.

- «Through a review of 220 publicly available university technology licenses signed both before and after the adoption of the Nine Points document, this article finds that while the document prompted the expansion of educational and non-profit research using patented university technology, **it resulted in few changes relating to the promotion of public health or access to medical technologies**».

# 3. Intellectual monopoly capitalism (Pagano 2014)

*Cambridge Journal of Economics* 2014, **38**, 1409–1429  
doi:10.1093/cje/beu025  
Advance Access publication 4 August 2014

## **The crisis of intellectual monopoly capitalism**

Ugo Pagano\*

The last three decades have witnessed the emergence of a new species of capitalism. In spite of marked differences between its national varieties, a common characteristic of this species can be found in the global monopolisation of knowledge. This monopolisation involves hierarchical relations among firms and between capital and labour, because the capital of some firms includes the exclusive ownership of much of the knowledge used in production. Since the 1994 Trade-Related Aspects of Intellectual Property Rights agreements, the growing commoditisation of knowledge has extended the role of closed science and closed markets at the expense of open science and open markets. The intrinsic long-term dynamics of this species of capitalism is increasingly characterised by financialisation, inequality and stagnation. In order to exit from the current crisis, we must change many features of intellectual monopoly capitalism and rely on an eclectic approach that draws insights from liberal, Keynesian and Marxian traditions.

*Key words:* Intellectual monopoly, Great Recession, Financialisation, Eclecticism  
*JEL classifications:* B52, E11, E12, F55, G01

- Inequality
- Stagnations

# 3. The Fall of the Innovation Empire (Gold)

*Cambridge Journal of Economics* 2014, **38**, 1409–1429  
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*Key words:* Intellectual monopoly, Great Recession, Financialisation, Eclecticism  
*JEL classifications:* B52, E11, E12, F55, G01

- «The article examines the empirical literature of the last century to document the decline. This literature suggests that the cost of research and innovation is increasing exponentially, that researcher productivity is declining, and, third, that these two phenomena have led to an overall flat or declining level of innovation productivity. The article then turns to three explanations for the decline – the growing complexity of science, a mismatch of incentives, and a balkanization of knowledge».

# 3. Upstream policies: public/private

- Designing roles of public and private sectors
- Designing roles of university and public research institutions
- Designing IP and pseudo-IP

# 3. Making public and democratic science

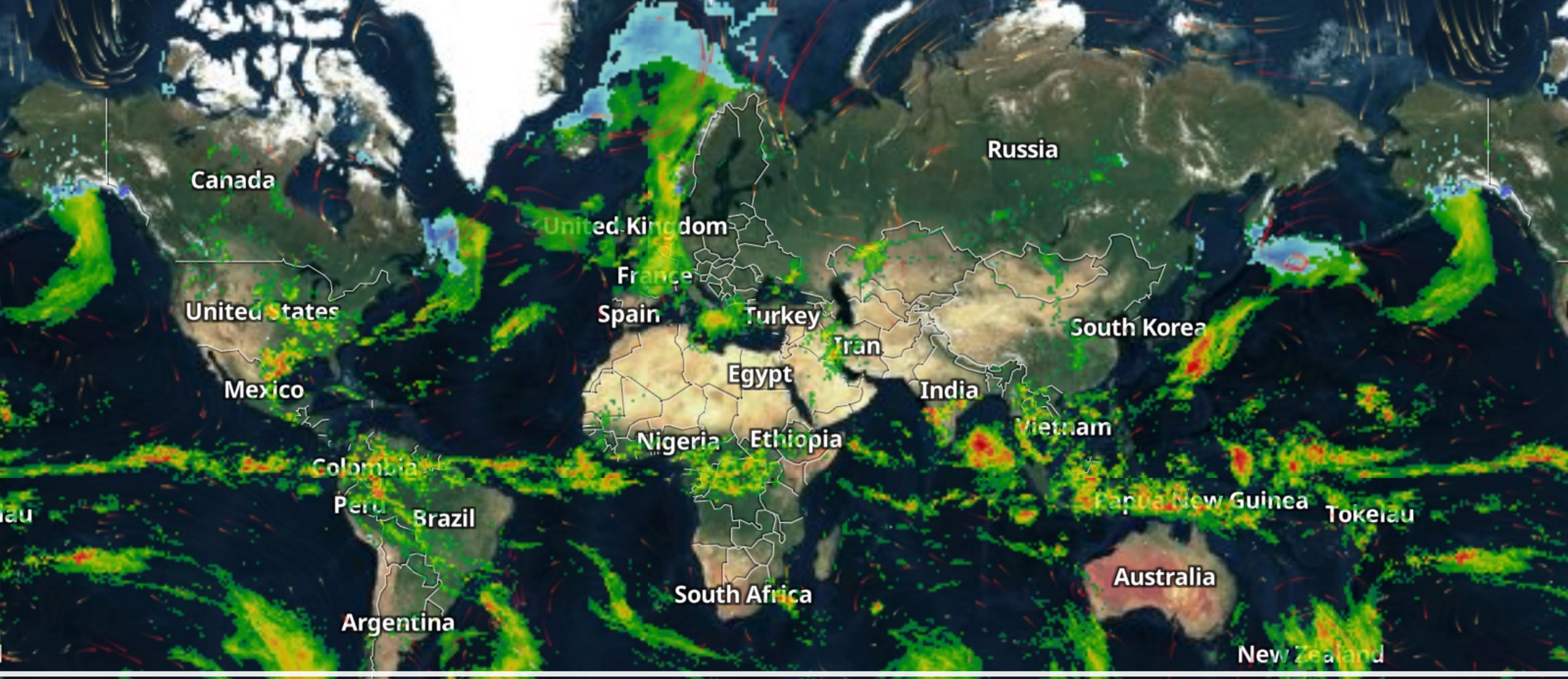
- Building public data management **infrastructures** based on **open standards** (for text, data and code)
- Reforming **research assessment**
- Investing in **education** (→ ethics) of the new generation of scientists and citizens
- Reforming **Intellectual Property** → **patent law** → **copyright law** → unmasking **pseudo-IP**



# A different view of...

The Cathedral





Thanks!

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- R. Caso [2020], [The academic copyright in the age of commodification of scientific research](#), in SCIRES-IT – SCientific RESearch and Information Technology, [Volume 10, Special Issue \(2020\) Open Science: New models of scientific communication and research evaluation](#)

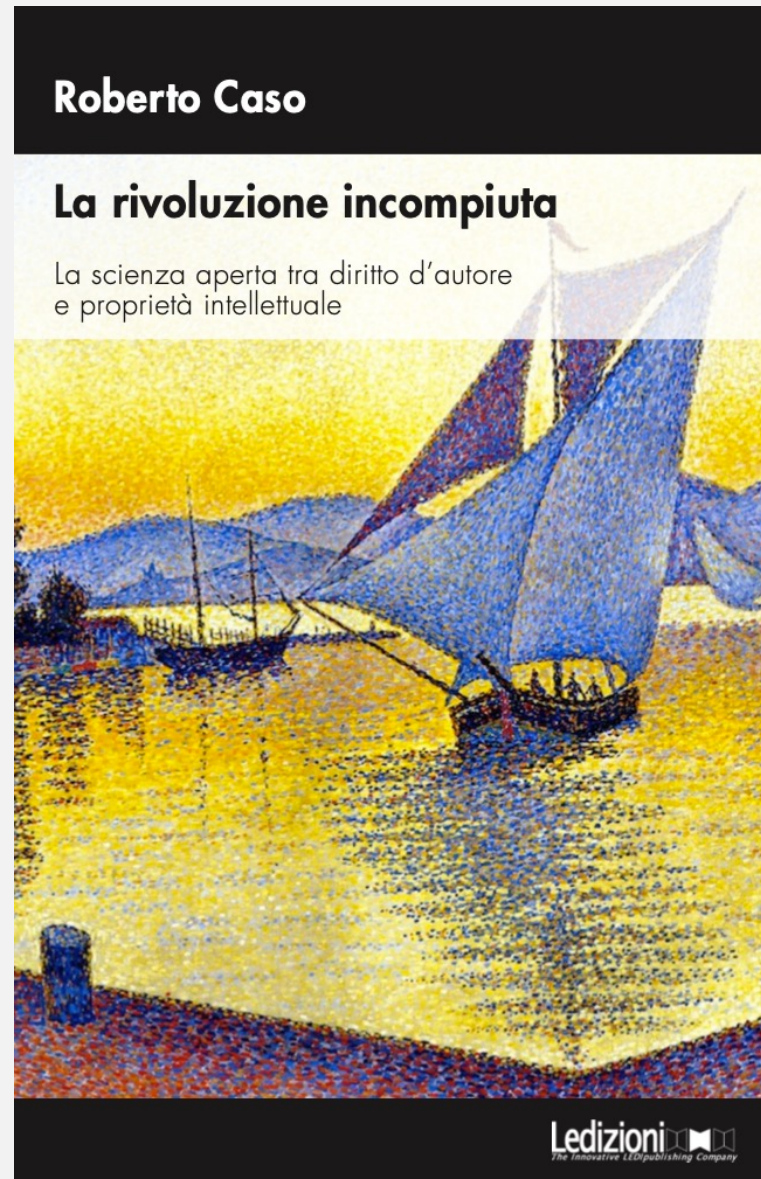


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- R. Caso [2021], [Pandemia e vaccini. L’irrisolvibile antagonismo tra scienza aperta e proprietà intellettuale](#), versione 2.0, 23 maggio 2021, [Trento LawTech Research Paper series nr. 44](#), in [Rivista critica del diritto privato](#), nr. 2/2021
- R. Caso, M.C. Pievatolo [2023], [A liberal infrastructure in a neoliberal world: the Italian case of GARR](#), forthcoming in [Journal of Intellectual Property, Information Technology and Electronic Commerce](#), 2023, Zenodo, <https://doi.org/10.5281/zenodo.7561821>

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- R. Caso, [La rivoluzione incompiuta. La scienza aperta tra diritto d'autore e proprietà intellettuale](#), Milano, [Ledizioni](#), 2020
- <https://zenodo.org/record/3588071#.ZAx6HrTMK3J>



# Abstract

«The contradictions afflicting the relationship between the human right to science and intellectual property ought to be investigated with reference to one of the most important centers of production and dissemination of scientific knowledge: the university.

On the one hand, actions promoting open science inside the universities are increasing, on the other, privatization of knowledge in academic research is encouraged. Privatization of scientific knowledge grows along with the current research assessment system and intellectual property framework as well as with the pseudo-intellectual property regime, i.e., forms of exclusivity aimed at controlling data and infrastructures. This is particularly true in the European Union, as demonstrated, even during the pandemic era, by its firm intellectual property strategy for resilience and recovery.

This twofold approach in policies regulating the relationship between science and intellectual property represents a critical contradiction if it is believed that universities should play a relevant, autonomous and independent role from politics and market. In other words, there is precisely ambiguity if one keeps distinct the spheres of public and private, and of the non-profit sector and the commercial sector. On the contrary, if the university is seen as instrumental to political and commercial interests, there is instead a typical convergence: the privatization of basic research therefore represents the physiology of the relationship between university and business, and the boundaries between public and private, i.e., between university and business, are inevitably blurred. Indeed, the latter vision, which corresponds to the dominant idea of academic capitalism, materializes concrete risks for democracy, multiplying inequalities, fueling conflicts (even geopolitical ones), and even hindering the technological innovation itself. Two examples give an idea of the risks produced by the dominant vision: scientific publications and university patents in the biomedical field.»

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