



**THEME TWO(B)**

*New Windows — New Insights*

DISCOURSES AND PARADIGMS





## *Information Society Discourse, Innovation, and Intellectual Property*

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**ABSTRACT (EN):** This paper examines the discursive relationship between intellectual property rights (IPRs), innovation, and theories of the information society. Using Norman Fairclough's method, Critical Discourse Analysis, this paper examines how the idea and rhetoric around an emerging information society have been used by neo-liberal policy-makers to strengthen IPRs. The paper argues that information society theorists such as Daniel Bell and Manuel Castells extol the benefits of innovation while failing to substantively address the issue of IPRs. Through their writings they present the process of innovation as a nominalized entity obscuring questions of agency and the power relations involved in production of information. More importantly, such writings have naturalized the concept of an information society making it appear as common sense and ideologically neutral while obfuscating the role of IPRs. In turn, policy-makers have used the positive and seemingly value-free discourse on the information age as a means of framing the need to strengthen IPRs. This paper includes a specific examination of two major policy documents produced by the Canadian government that were part of the recent copyright reform process.

**RÉSUMÉ (FR):** Cet article examine la relation décousue qui existe entre les droits de la propriété intellectuelle (DPI), l'innovation et les théories de la société de l'information. En utilisant la méthode d'«analyse de discours critique» de Norman Fairclough, cet article examine comment l'idée et la rhétorique autour d'une société de l'information émergente ont été uti-

lisées par les responsables politiques néolibéraux pour renforcer les DPI. L'article soutient que les théoriciens de la société de l'information tels que Daniel Bell et Manuel Castells prônent les bénéfices de l'innovation tout en omettant d'aborder les problèmes de DPI de façon substantielle. Dans leurs écrits, ils présentent le processus d'innovation comme une entité nommée, ce qui cache les questions d'« agency » ou capacité d'agir, et de relations de pouvoir impliquées dans la production d'information. Plus particulièrement, ces écrits ont adapté le concept de « société de l'information » en le faisant paraître comme le bon sens et idéologiquement neutre, tout en masquant le rôle des DPI. En retour, les responsables politiques ont utilisé le discours sur l'ère de l'information, positif et apparemment ne reflétant aucune valeur, pour donner un cadre au besoin de renforcer les DPI. Cet article comprend un examen particulier de deux importants documents de politiques produits par le gouvernement canadien qui firent partie du récent processus de réforme du droit d'auteur.

## A. INTRODUCTION

Over the past forty years an increasing number of commentators from academia, industry, the media, and government have declared that broad political, economic, and social changes taking place demonstrate the emergence of a new type of society generally called the “information society/age.”<sup>1</sup> Information society theorists point to the declining role of manufacturing in advanced economies and the corresponding rise of service and informational industries as evidence of a shift away from industrial capitalism. Concomitant with the increasing economic importance of the informational sector has been an increased emphasis on the part of governments and industry to provide greater protection for intellectual property, which has resulted in a series of international initiatives including the *Agreement on Trade-Related Aspects of Intellectual Property Rights*<sup>2</sup> and the World Intellectual Property Organization Internet treaties.<sup>3</sup> More importantly, information society dis-

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1 Kenneth Carlaw et al., “Beyond the Hype: Intellectual Property and the Knowledge Society/Knowledge Economy” (2006) 20:4 J Econ Surveys 632. The authors list thirteen different names used by a variety of authors to describe the information age/knowledge economy at 669–90.

2 *Agreement on Trade-Related Aspects of Intellectual Property Rights*, 15 April 1994, 1869 UNTS 299, 33 ILM 1197 [TRIPS].

3 *WIPO Copyright Treaty*, 20 December 1996, 36 ILM 65 (entered into force 2 March 2002) [WCT]; *WIPO Performance and Phonograms Treaty*, 20 December 1996, 36 ILM 76 (entered

course has facilitated neo-liberal policy-making by creating a body of discourse that obscures questions of agency, obfuscates power relations, and masks crucial, ideologically loaded assumptions about the nature of innovation and the information age. This paper explores the relationship between discourse and intellectual property policy and highlights the importance of critical discourse analysis as a method in intellectual property scholarship.

This paper examines the treatment of intellectual property within the writings of information society theorists Daniel Bell and Manuel Castells, and contrasts their work with that of David Harvey, whose scholarship is critical of the idea of the emergence of an information age. The paper employs the methodology of Critical Discourse Analysis (CDA) developed by Norman Fairclough and argues that at the textual level, information society discourse obscures questions of agency in emphasizing innovation. Discursively, Bell's work has created an intertextual chain linking it with other information society theorists. Most importantly, information society discourse serves a specific ideological purpose by hiding the assumptions that underpin the concept of an information society and makes such a vision of the future appear as common sense. Using CDA, the paper specifically examines how Canadian policy-makers have used information society discourse to strengthen copyright law by looking at recent science and technology policy documents.<sup>4</sup>

## B. INFORMATION SOCIETY THEORY AND DISCOURSE

Discussions about information society theories tend to start with Daniel Bell's 1973 book, *The Coming of Post-Industrial Society: A Venture in Social Forecasting*,<sup>5</sup> despite the fact that more critical works on the subject predate Bell's.<sup>6</sup> While scholars such as Machlup and Porat had previously identified

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into force 20 March 2002) [WPPT].

- 4 Industry Canada, *Mobilizing Science and Technology to Canada's Advantage* (Ottawa: Industry Canada, 2007), online: Industry Canada [www.ic.gc.ca/eic/site/icgc.nsf/vwapj/SandTstrategy.pdf/\\$file/SandTstrategy.pdf](http://www.ic.gc.ca/eic/site/icgc.nsf/vwapj/SandTstrategy.pdf/$file/SandTstrategy.pdf) [Industry Canada, *Mobilizing Science*]; Government of Canada, *Improving Canada's Digital Advantage: Strategies for Sustainable Prosperity* (Ottawa: Industry Canada, 2010), online: Government of Canada Publications [http://publications.gc.ca/collections/collection\\_2010/ic/Iu4-144-2010-eng.pdf](http://publications.gc.ca/collections/collection_2010/ic/Iu4-144-2010-eng.pdf) [Canada, *Digital Advantage*].
- 5 Daniel Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting*, anniversary ed (New York: Basic Books, 1999) [Bell, *Coming of Post-Industrial*].
- 6 Samuel E Trosow, "The Ownership and Commodification of Legal Knowledge: Using Social Theory of the Information Age as a Tool for Policy Analysis" (2004) 30 *Man LJ* 417 at 420–21.

the increasing economic importance of the information industries,<sup>7</sup> Bell extended this idea by arguing that the changes affected not only economics but also culture and society.<sup>8</sup> Although the idea of a new information age has been approached by numerous academics,<sup>9</sup> common themes permeate the literature: a social revolution comparable to the social changes experienced in the Industrial Revolution, the emergence of a new post-industrial/information economy, a shift in political practices and the nature of community, and the decline of the state.<sup>10</sup> To support their claims, theorists often point to changes in the prevalence of *information and communications technologies* (ICTs), occupational shifts away from manufacturing, the increasing economic value of information, the pervasiveness and importance of networks (both social and technological), and an increased emphasis on the production and interpretation of signs and symbols.<sup>11</sup> While a number of scholars emphasize the degree to which the modern society represents a break from industrial capitalism, a diverse body of critical literature suggests that many of the overarching and most significant themes of industrial-capitalism are still present in the information society.<sup>12</sup> Information society proponents tend to engage in naïve technological determinism and information exceptionalism, which overemphasizes the role of information in modern society while downplaying the fact that information has been significant throughout history.<sup>13</sup>

Despite the contested academic discourse, the concept of an information society has had a powerful influence on policy-makers from Japan,<sup>14</sup> to

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7 Fritz Machlup, *The Production and Distribution of Knowledge in the United States* (Princeton: Princeton University Press, 1962); Marc Uri Porat, *The Information Economy: Definition and Measurement* (Washington DC: US Department of Commerce, Office of Telecommunications, 1977).

8 Robert Babe, *Telecommunications in Canada: Technology, Industry, and Government* (Toronto: University of Toronto Press, 1990) at 248.

9 Frank Webster, *Theories of the Information Society*, 3d ed (London: Routledge, 2006), provides an overview discussion of the range of information society theories, at 8–31; see also Christopher May, *The Information Society: A Skeptical View* (Cambridge: Polity, 2002) at 1–12; Carlaw, above note 1 at 669–90.

10 May, above note 9 at 12–16.

11 Webster, above note 9 at 8–21.

12 May, above note 9 at 149–50; Webster, above note 9 at 6–7 and 270–73.

13 Trosow, above note 6 at 440; Webster, above note 9 at 12.

14 Webster, above note 9 at 10.

the European Union,<sup>15</sup> the United States,<sup>16</sup> and Canada.<sup>17</sup> Information society rhetoric was used by Thatcher and Reagan in the 1980s as a part of their neo-liberal policies that transferred increased power from the state to private enterprise through deregulation and privatization.<sup>18</sup> Information society rhetoric has been popular in Canada for decades. In 1981, a Canadian Department of Communications report entitled *The Information Revolution and Its Implications for Canada* noted, “the information revolution is unavoidable.”<sup>19</sup> A 1996 Canadian policy document on the Internet entitled *Building the Information Society* stated, “[t]he first challenge facing Canadians is to facilitate Canada’s transition into the knowledge society.”<sup>20</sup> Globally, the International Telecommunications Union hosted two world summits on the information society in 2003 and 2005.<sup>21</sup> Though the idea of an information society is conceptually rich, policy-makers, like information society advocates, have tended to adopt a narrow and simplistic, technologically determinist approach privileging information and communications technologies.<sup>22</sup> More importantly, information society discourse has

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- 15 European Commission, *Digital Agenda for Europe*, online: European Commission <https://ec.europa.eu/digital-agenda>.
  - 16 United States, “U.S. Delegation Cites Consensus on Key Information Society Issues” (10 December 2003), online: America.gov Archive [www.america.gov/st/washfile-english/2003/December/20031210163112rellufj0.6401483.html](http://www.america.gov/st/washfile-english/2003/December/20031210163112rellufj0.6401483.html).
  - 17 Industry Canada, *European Union — Canada Joint Statement: Electronic Commerce in the Global Information Society* (Ottawa: Industry Canada, 2008), online: Industry Canada [www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00386.html](http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00386.html); Industry Canada, *Canada — United Kingdom Joint Statement on Global Electronic Commerce and E-Government* (Ottawa: Industry Canada, 2008), online: Industry Canada [www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00387.html](http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00387.html); Industry Canada, *Canada — Costa Rica Joint Statement on Global Electronic Commerce* (Ottawa: Industry Canada, 2008), online: Industry Canada [www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00382.html](http://www.ic.gc.ca/eic/site/ecic-ceac.nsf/eng/gv00382.html); Industry Canada, *Convergence Policy — Backgrounder* (Ottawa: Industry Canada, 2010), online: Industry Canada [www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf05267.html](http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf05267.html).
  - 18 Nick Dyer-Witheford, *Cyber-Marx: Cycles and Circuits of Struggle in High-Technology Capitalism* (Urbana, IL: University of Illinois Press, 1999) at 22.
  - 19 Canada, *The Information Revolution and Its Implications for Canada* by Shirley Serafini & Michel Andrieu (Hull, QC: Department of Communications, 1981) at 13.
  - 20 Canada, Information Highway Advisory Council Secretariat, *Building the Information Society: Moving Canada into the 21st Century* (Ottawa: Industry Canada, 1996) at 3.
  - 21 International Telecommunications Union, *World Summit on the Information Society* (2012), online: International Telecommunications Union [www.itu.int/wsis/index.html](http://www.itu.int/wsis/index.html).
  - 22 Ajit Pyati, “WSIS: Whose Vision of an Information Society?” 10:5 *First Monday* (2 May 2005), online: First Monday <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/1241/1161>.

been employed to advance neo-liberal policies including ratcheting up intellectual property protection.

Discursive analyses of both information society literature and intellectual property cases are not new. Numerous articles have examined the general connection between information society discourse and neo-liberalism,<sup>23</sup> but these articles do not focus specifically on the role of intellectual property. Conversely, discursive analyses focusing on intellectual property have also been conducted. These studies have investigated the rise of the term *intellectual property* itself<sup>24</sup> and the rhetorical shift of describing infringement of intellectual property rights as “piracy” and “theft.”<sup>25</sup> James Boyle has identified the role of romanticized rhetoric on authorship in supporting the ratcheting up of intellectual property protection within information society discourse.<sup>26</sup> Christopher May has examined the connection between information society discourse and neo-liberalism, noting that these two use the promise of innovation and the potential for economic growth as a means to justify greater intellectual property protection.<sup>27</sup> While the analyses of both May and Boyle are useful in revealing the discursive connection between intellectual property, innovation, information society discourse, and neo-liberalism, the subject remains understudied and under-theorized. CDA is particularly well suited to theorizing how discursive practices are both influenced by and influence the productions of texts, as well as examining the dialectical relationships between discursive practices and social practices. There have been some studies specifically theorizing the connec-

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23 See, generally, Norman Fairclough, *Language and Globalization* (Routledge: London, 2006) at 47–50; Norman Fairclough, “Language in New Capitalism” (2002) 13:2 *Discourse & Soc* 163; John M Budd & Douglas Raber, “Discourse Analysis: Method and Application in the Study of Information” (1996) 32:2 *Inf Processing & Mgmt* 217 at 217; Bernd Frohmann, “Discourse Analysis as a Research Method in Library and Information Science” (1994) 16:2 *Lib & Inf Sci Res* 119 at 122–26; Ian Goodwin & Steve Spittle, “The European Union and the Information Society: Discourse, Power and Policy” (2002) 4:2 *New Media & Soc* 225 at 233–42; Leah A Lievrouw, “Our Own Devices: Heterotopic Communication, Discourse, and Culture in the Information Society” (1998) 14:2 *The Inf Soc* 83.

24 Harry First, “Controlling the Intellectual Property Grab: Protect Innovation, Not Innovators” (2007) 38:2 *Rutgers LJ* 365; Mark A Lemley, “Property, Intellectual Property, and Free Riding” (2005) 83:4 *Tex L Rev* 1031 at 1033–39.

25 Siva Vaidhyathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity* (New York: New York University Press, 2001) at 11–12; Jessica Litman, *Digital Copyright* (Amherst, NY: Prometheus, 2001) at 85–86.

26 James Boyle, *Shamans, Software, and Spleens: Law and the Construction of the Information Society* (Cambridge: Harvard University Press, 1996) at 107.

27 May, above note 9 at 165–66.



tion between information society discourse and the resultant policy changes in New Zealand<sup>28</sup> and Romania using CDA,<sup>29</sup> but the Canadian situation remains understudied. Critical discourse analysis is a useful mechanism for not only investigating why information society proponents fail to fully account the role of intellectual property in their theories, but also examining how and why information society discourse has proved so effective in advancing neo-liberal policies. The following section briefly describes Norman Fairclough's approach to CDA with a focus on the role of ideology and assumptions in discourse.

### C. ASSUMPTIONS AND IDEOLOGY IN CRITICAL DISCOURSE ANALYSIS

Though there are a wide variety of approaches to studying language, Norman Fairclough's approach to CDA is particularly useful for studying discourse surrounding the information society.<sup>30</sup> CDA does not suggest that "everything is discourse" and posits a dialectical relationship between language and society where each is co-constitutive of the other.<sup>31</sup> Importantly, Fairclough's approach is critical in that it seeks to address social wrongs,<sup>32</sup> which make it particularly useful for focusing on how entrenched political and economic powers use discourse to advance their own interests through hegemony.<sup>33</sup> Furthermore, CDA is methodologically reflexive in acknowledging that no textual analysis can be objective, but more importantly in allowing interpretations of text to be connected into larger areas of social life.<sup>34</sup>

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28 Shirley Leitch & Sally Davenport, "The Politics of Discourse: Marketization of the New Zealand Science and Innovation System" (2005) 58:7 *Human Relations* 891.

29 Norman Fairclough, *Critical Discourse Analysis: The Critical Study of Language*, 2d ed (Harlow, UK: Pearson Education, 2010) at 505–20 [Fairclough, *Critical Discourse Analysis*].

30 Norman Fairclough, *Analysing Discourse: Textual Analysis for Social Research* (London: Routledge, 2003) at 4 [Fairclough, *Analysing Discourse*]; Goodwin & Spittle, above note 23 at 230.

31 Norman Fairclough, "Critical Discourse Analysis and the Marketization of Public Discourse: The Universities" (1993) 4:2 *Discourse & Soc* 133 at 134 [Fairclough, "Marketization"]; Norman Fairclough, *Language and Power*, 2d ed (Harlow, UK: Pearson Education, 2001) at 19 [Fairclough, *Language and Power*].

32 Norman Fairclough, "A Dialectical-Relational Approach to Critical Discourse Analysis in Social Research" in Ruth Wodak & Michael Meyer, eds, *Methods of Critical Discourse Analysis* (Los Angeles: Sage, 2009) at 163.

33 Fairclough, "Marketization," above note 31 at 136.

34 Fairclough, *Analysing Discourse*, above note 30 at 14–15.

Fairclough's approach to CDA employs a three-dimensional framework that facilitates both a micro-level analysis of text and a macro-level examination of how discourse affects social practices.<sup>35</sup> The three hierarchical dimensions of CDA are text, discursive practices, and social practices whereby texts, discursive practices, and social practices are connected through dialectical relationships.<sup>36</sup> With regard to texts, analysis focuses on vocabulary, grammar, syntax, and sentence coherence with specific attention to how texts represent or obfuscate agency.<sup>37</sup> The specific element of textual analysis that is the focus of this paper is Fairclough's idea of nominalization where processes are represented entities.<sup>38</sup> For example, when globalization is depicted as an entity rather than a process it obscures the agents at work in globalization. With regard to the second dimension of CDA, discursive practices examine how texts are produced and consumed. This paper will focus specifically on the concepts of intertextuality and interdiscursivity, which examine how texts and orders of discourse are used to shape the production of texts.<sup>39</sup> Intertextuality is a discursive practice whereby pieces of previous texts are assimilated into the creation of new texts.<sup>40</sup> An extension of the concept of intertextuality is the idea of interdiscursivity where discursive practices established in one order of discourse influence a second order of discourse.<sup>41</sup> For example, Fairclough notes that some university job advertisements are interdiscursive, blending the discourse of education with commodity advertising discourses.<sup>42</sup>

The final element of CDA is an examination of how discursive practices influence social practices. Fairclough's approach to the role of assumptions and ideology in discourse are particularly useful in this regard. Assumptions play a central role in influencing social practice. When texts (and their authors) contain assumptions that are not made explicit, they convey value systems and as such can be seen as doing ideological work.<sup>43</sup> Fairclough argues, "[i]deologies are closely linked to language, because using language is the commonest form of social behaviour, and the form of social behaviour

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35 Norman Fairclough, *Discourse and Social Change* (Cambridge, UK: Polity, 1992) at 86.

36 *Ibid* at 73.

37 *Ibid* at 75.

38 *Ibid* at 182.

39 *Ibid* at 84–85.

40 *Ibid* at 84.

41 *Ibid* at 85.

42 Fairclough, *Critical Discourse Analysis*, above note 29 at 102–04.

43 Fairclough, *Analysing Discourse*, above note 30 at 58.

where we rely most on ‘common-sense’ assumptions.”<sup>44</sup> Fairclough argues that the way through which ideological assumptions are conveyed in discourse is through a process known as *naturalization*.<sup>45</sup> He states, “in the naturalization of discourse types and the creation of common sense, discourse types actually appear to *lose* their ideological character.”<sup>46</sup> Thus, when texts contain assumptions that are not made explicit they contribute to a body of discourse that appears over time to be “common sense” and value free; however, when such discourse is taken for granted as neutral it succeeds in hegemonically conveying the ideological position of entrenched elites.<sup>47</sup> Fairclough’s approach to discourse analysis is particularly well suited for assessing how information society proponents’ lack of attention to intellectual property issues naturalizes particular ideological assumptions and provides a discourse tool for advancing neo-liberalism.

The next part of this chapter examines the information society theories of Bell and Castells with a specific focus on how these authors extoll the information age for ushering in a new wave of innovation, but fail to account for intellectual property. Their implicit assumptions about the benefits of innovation, without an analysis of intellectual property, are contrasted with the work of Harvey who is critical of the idea of the emergence of an information society. In particular, this section will emphasize how, at the textual level, the process of innovation is nominalized in the work of Bell and others, and how, through intertextuality, Bell’s work goes on to influence the writings of Castells. Following this discussion, the chapter concludes by examining how the nominalized concept of innovation is interdiscursively used in recent Canadian policy documents, and ultimately how the naturalized information society discourse is used to advance the strengthening of copyright in Canada.

## D. DANIEL BELL’S POST-INDUSTRIAL SOCIETY

Although Bell was not the first to broach the subject of the emergence of a new society and a break with industrialism, his work represented a substantive break with previous efforts due to its size and systematic nature,

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44 Fairclough, *Language and Power*, above note 31 at 2.

45 *Ibid* at 76.

46 *Ibid* [emphasis in original].

47 Fairclough, *Analysing Discourse*, above note 30 at 58.

and has had considerable influence on policy-makers.<sup>48</sup> Bell's work was not a prediction of where society was headed, but a forecast based on extrapolating existing trends in the late 1960s and early 1970s.<sup>49</sup> While he has accumulated numerous critics over the past forty years, Bell continues to remain relevant and was one of the top ten most cited living social science authors in the past decade.<sup>50</sup>

Bell claims that post-industrial society is characterized by a fundamental shift in the treatment of knowledge. Unlike the industrial era where knowledge is used to coordinate the production of goods, he argues that society will move towards a system where codified theoretical knowledge is used to determine and direct change, noting that in modern science-based industries such as computers and electronics, production of goods is dependent on theoretical advances in scientific knowledge.<sup>51</sup>

Bell is aware that intellectual property rights are an issue in the information society, though he describes them as "mundane."<sup>52</sup> For Bell, patents and copyrights provide an incentive to undertake intellectual work, but these rights are weak given the relative ease with which they are infringed upon or circumvented.<sup>53</sup> Bell is cognizant of the public good nature of information, but underappreciates how easily this public good becomes commodified or of the role played by governments in facilitating such commodification. He correctly predicts the rise of new knowledge-based industries, but crucially does not account for the role of intellectual property in the production and distribution of intellectual goods.<sup>54</sup> While he views information as a source of power, his analysis is weakened by failing to see that informational power is greatly influenced by intellectual property.<sup>55</sup> Bell's writings also nominal-

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48 Webster, above note 9 at 31–33; Robert Hassan, *The Information Society: Cyber Dreams and Digital Nightmares* (Cambridge: Polity, 2008) at 52; Bell, *Coming of Post-Industrial*, above note 5 at ix–x.

49 *Ibid* at 4.

50 "Relative Ranking of a Selected Pool of Leading Scholars in the Social Sciences by Number of Citations in the Social Science Citation Index, 2000–2011" (n.d.) online: University of Southern Carolina Annenberg <http://annenberg.usc.edu/Faculty/Communication/-/media/73EE18E8CC9140A28F46C8E49F85C78D.ashx>.

51 Bell, *Coming of Post-Industrial*, above note 5 at 20 and 25.

52 *Ibid* at 176; Daniel Bell, "The Social Fabric of the Information Society" in Tom Forester, ed, *The Microelectronics Revolution: The Complete Guide to the New Technology and its Impact on Society* (Oxford: Basil Blackwell, 1980) at 537 [Bell, "Social Fabric"].

53 *Ibid* at 512.

54 Bell, *Coming of Post-Industrial*, above note 5 at 79.

55 Bell, "Social Fabric," above note 52 at 515.

ize the process of innovation. For example, Bell writes, “[t]he post-industrial society, it is clear, is a knowledge society in a double sense: first, the sources of innovation are increasingly derivative from research and development . . .”<sup>56</sup> In this statement Bell obfuscates the human agents involved in innovating. The combination of the uncritical treatment of intellectual property and the nominalization of innovation serve a specific ideological purpose. They create a body of discourse in which the process of innovation is nominalized. By nominalizing innovation, the role of a system of exclusionary rights is obscured.

In addition to nominalizing the term innovation, Bell’s work contains assumptions that assist in naturalizing information society discourse. He assumes a technologically determinist viewpoint and a naïve optimism.<sup>57</sup> Bell vehemently rejects the suggestion that he is a technological determinist;<sup>58</sup> however, his claim is undermined by his own writing, for example, “[t]echnology has created a new class . . .”<sup>59</sup> and “[t]echnology has created a new definition of rationality . . .”<sup>60</sup> Even innovation is technologically determined as he posits, “economic innovation and change are directly dependent upon new technology,”<sup>61</sup> again eliminating the human element in innovation. Bell’s technological determinist framework precludes critical questions from scrutiny such as who selects the new technologies to be developed and who benefits from their diffusion. In turn, his determinism facilitates naïve optimism. Bell’s optimistic assessment of the role of the knowledge elite has proven a powerful mechanism at garnering adherents as well as critics.<sup>62</sup> In claiming that the political, economic, and cultural spheres are separate and distinct entities, Bell is able to focus on the technological changes while ignoring the pervasiveness of capital across all areas of life.<sup>63</sup>

However, it is specifically because of these shortcomings that Bell’s analysis has proven so palatable for policy-makers. He assumes that because

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56 Bell, *Coming of Post-Industrial*, above note 5 at 212.

57 *Ibid* at 41 and 43.

58 *Ibid* at xviii.

59 *Ibid* at 189.

60 *Ibid*.

61 *Ibid*.

62 Michael H Harris, Stan A Hannah, & Pamela C Harris, *Into the Future: The Foundations of Library and Information Services in the Post-Industrial Era*, 2d ed (Greenwich, CN: Ablex, 1998) at 11–12.

63 Dan Schiller, *How to Think about Information* (Urbana, IL: University of Illinois Press, 2007) at 20; Webster, above note 9 at 37–38.

patents and copyrights are easily circumvented they are not a significant source of economic power for rights holders. Bell's general optimism and his technological determinism appear to suggest that for whatever problems post-industrial society may engender, some technological innovation exists to solve such problems. Furthermore, in addition to nominalizing innovation and naturalizing the idea of an information society, Bell creates a discursive foundation on which both scholars and policy-makers will borrow, further naturalizing the concept of the information society. The next section examines the discursive connection between Bell's writings and that of Manuel Castells.

## E. MANUEL CASTELL'S NETWORK SOCIETY

Although Manuel Castells's writings on the network society and informational capitalism are different from Bell's conception of a post-industrial society, the two are intertextually linked, despite Castells's clear rejection of Bell's thesis.<sup>64</sup> Castells's writing has a commanding scope, with *The Information Age* trilogy spanning nearly 1,500 pages. Of all authors on the topic, his work is the most encyclopedic and to the uncritical eye, it appears the most persuasive.<sup>65</sup> Castells places technological innovation and information at the centre of his theory of the emergence of a network society stating that innovation is the "primordial function" of the new economy.<sup>66</sup> Like Bell, the process of innovation is nominalized, demonstrating the intertextual link between the two authors. Though Bell contends that theoretical knowledge is displacing capital and labour in post-industrial society as the axial principle in society, Castells adopts a slightly different approach arguing that entrepreneurial innovation, not capital, is driving the Internet economy.<sup>67</sup> By placing innovation at the centre of his theory, Castells makes an implicit assumption that innovation is overwhelmingly positive, and that the mechanisms that facilitate innovation, including intellectual property, are also beneficial by extension.

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64 Manuel Castells, *The Information Age: Economy, Society and Culture, Volume I—The Rise of the Network Society*, 2d ed (Oxford: Blackwell Publishing, 2000) at 218–19 [Castells, *Network Society*].

65 Webster, above note 9 at 98 and 265.

66 Manuel Castells, *The Internet Galaxy: Reflections on the Internet, Business, and Society* (Oxford: Oxford University Press, 2001) at 100 [Castells, *Internet Galaxy*].

67 *Ibid* at 56.

Castells provides several critical and valuable insights as a theorist. He recognizes the importance of the pursuit of profit in driving innovation, arguing that it is the primary motive in the Internet economy.<sup>68</sup> He is also critical of this facet of the information age, arguing that it is accompanied with a focus on immediate gratification, workaholicism, superfluous consumption, and a diminished emphasis on family and personal relationships.<sup>69</sup> He highlights the dangers of growing inequality and most importantly the limitations of a culture of excess, centred on individual self-interest.<sup>70</sup> He also acknowledges the ideological hegemony of neo-liberalism in the 1990s.<sup>71</sup> While Castells offers some important insights, his under-analysis of intellectual property serves to naturalize the role of intellectual property in the information age.

Like Bell, Castells fails to analyze intellectual property in a substantive manner. His failure to include a discussion of intellectual property in his *Information Age* trilogy has been described as a fundamental flaw.<sup>72</sup> This omission is particularly troubling because innovation is a central topic in Castells's work. In *The Rise of the Network Society* he argues that the two factors driving innovation are research potential, the ability to engage in research, and specification ability; the application of research to a specific problem.<sup>73</sup> He does not address the role of intellectual property in incenting innovative activity. When he does address intellectual property his treatment is more passing than substantive. In *The Information Age* trilogy he notes that intellectual property "rights are a key factor in the development of the knowledge economy, but at the same time, their strict enforcement becomes a major obstacle for the redistribution of wealth in the planet."<sup>74</sup> Unlike Bell's analysis that assumes the weakness of intellectual property protection, Castells does identify a problem created by intellectual property, but it is his only analytical comment on intellectual property in a nearly 1,500-page theory of the information age. Besides this reference to how

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68 *Ibid.*

69 *Ibid* at 58–59; Manuel Castells & Martin Ince, *Conversations with Manuel Castells* (Cambridge: Polity, 2003) at 37.

70 Castells, *Internet Galaxy*, above note 66 at 276 and 278.

71 Castells, *Network Society*, above note 64 at 143–44.

72 Felix Stalder, *Manuel Castells: The Theory of the Network Society* (Cambridge: Polity, 2006) at 204.

73 Castells, *Network Society*, above note 64 at 296–97.

74 Manuel Castells, *The Information Age: Economy, Society, and Culture, Volume II—The Power of Identity*, 2d ed (Oxford: Blackwell, 2004) at 363.

intellectual property rights inhibit wealth distribution, he makes only two other passing references to the subject in his trilogy.<sup>75</sup> He claims that innovation depends on access to knowledge that is openly available,<sup>76</sup> and that the primary issue around innovation is how to harness it without limiting creativity and research.<sup>77</sup> Though these are critical issues, he fails to see through these analyses by including a discussion of intellectual property. In omitting a substantive discussion of intellectual property, Castells's discourse undertakes ideological work by naturalizing the role of intellectual property in the information society.

Castells's later writings contain a few direct references to the role of intellectual property that are more critical in nature. He notes that intellectual property is central to profit making in the economy, and that the balance between users' and creators' rights is being lost.<sup>78</sup> He describes the debate over the role of intellectual property as a key battle, and also concludes that Internet business models based around intellectual property cannot succeed as they will be supplanted by some sort of alternative.<sup>79</sup> However, he fails to complete this analysis by demonstrating how alternatives will triumph. Castells's 2005 essay "The Network Society: From Knowledge to Policy," contains a critical paragraph on intellectual property:

Creativity and innovation are the key drivers of value creation and social change in our societies — in fact in all societies. In a world of digital networks, the process of interactive creativity is contradicted by the legislation of property rights inherited from the industrial era.<sup>80</sup>

Castells's analysis of innovation is impaired by the fact that he stresses that it is innovation, not innovators (i.e., humans), that are the driving force behind creativity demonstrating an intertextual link to Bell's nominalized portrayal of innovation. While Castells's more recent writings demonstrate an increased awareness of the connection between intellectual property

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75 Castells, *Network Society*, above note 64 at 114 and 120.

76 Castells, *Internet Galaxy*, above note 66 at 100.

77 Castells & Ince, above note 69 at 54.

78 Castells, *Internet Galaxy*, above note 66 at 182.

79 Manuel Castells, "The Cultures of the Internet" (2002) 109:3 *Queen's Quarterly* 333 at 341–42.

80 Manuel Castells, "The Network Society: From Knowledge to Policy" in Manuel Castells & Gustavo Cardoso, eds, *The Network Society: From Knowledge to Policy* (Washington, DC: John Hopkins Center for Transatlantic Relations, 2005) at 19 [emphasis in original].



and innovation, he still presents a nominalized view of innovation and his discourse helps to naturalize the idea of an information age.

Like Bell, Castells's work has been subject to a fair deal of criticism and in many respects lacks substantive differences with that of Bell's analysis.<sup>81</sup> Although he is less prone to overstating the case for an information age than other information society proponents, his work suffers from a degree of technological determinism, though lesser in degree than that of Bell. He claims that information technology largely determines innovative capacity.<sup>82</sup> His simplistic view of innovation is also a weakness. Even Bell is critical of Castells for failing to differentiate between invention, innovation, and the diffusion of innovation.<sup>83</sup> As with Bell, Castells offers a nominalized view of innovation, while his writings help to naturalize the idea of an information society where intellectual property rights and their effects on power and social relations do not play a significant role.

Castells goes further than any other information society theorist in not only analyzing the idea of a network/information society,<sup>84</sup> but also extolling the benefits of innovation. While he addresses the subject of innovation extensively, it is only in his more recent writings that he begins to reflect critically on the role of intellectual property. His failure to engage the topic at greater length, particularly given his relentless focus on innovation and entrepreneurialism, is a major shortcoming. Castells provides some useful insights on the negative trends that have occurred since the 1970s; however, like Bell, his overemphasis on the positive elements of innovation and lack of rigour in accounting for the role of exclusionary intellectual property rights contribute to the naturalization of information society discourse, which has been fruitfully employed by neo-liberal policy-makers to consistently expand and strengthen intellectual property protection.

## **F. DAVID HARVEY AND THE INFORMATION SOCIETY AS AN EXTENSION OF INDUSTRIAL CAPITALISM**

David Harvey's analysis of the changes taking place in society is antithetical to the work of Castells and Bell. Juxtaposing Harvey's work with that of Bell and Castells is illuminating because though he deals with the same sub-

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81 Webster, above note 9 at 121.

82 Castells, *Network Society*, above note 64 at 259.

83 Bell, *Coming of Post-Industrial*, above note 5 at xxiv.

84 Webster, above note 9 at 98 and 265; Hassan, above note 48 at 93.

ject matter as the others, his conclusions are significantly different. Most importantly, an examination of Harvey's writings, which do not display an intertextual link with the works of Bell and Castells, demonstrates the struggle that exists within orders of discourse.

Like Castells and Bell, Harvey acknowledges the crucial role played by innovation; however, drawing on Marx he views innovation as an essential and historical feature of capitalism and not a new phenomenon.<sup>85</sup> He is critical of how social inequality is used to encourage entrepreneurial risk taking.<sup>86</sup> While Harvey acknowledges that innovation has produced new goods and services, he is critical of how it can alter social relations in a destabilizing manner.<sup>87</sup> For capitalists, innovation is a necessary mechanism to ensure profitability and labour surpluses that weaken the position of workers and lower wages.<sup>88</sup> Harvey argues that innovation accounts for the majority of US job losses and twice as many losses as caused by firms relocating production sites to locales outside of the United States.<sup>89</sup> He further argues that such information technology is given a privileged status in neo-liberalism for its ability to facilitate speculative activity.<sup>90</sup> While Harvey provides a pervasive critique of capitalist innovation, his view of capitalism is not entirely negative. He does argue that capitalism on its own cannot be blamed for things like urban sprawl and increased meat consumption that arise from changes in socio-cultural preferences.<sup>91</sup> Furthermore, he also notes that without capitalism there may not have been a way to support the world's expanding population over the past three centuries unless alternative methods of providing goods had been developed.<sup>92</sup> Unlike Bell and Castells who assume the inherent benefit of innovation, Harvey casts a critical eye on the subject, which in turn leads his analysis to identify many of the problematic aspects of intellectual property.

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85 David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Cambridge, MA: Blackwell, 1990) at 111 [Harvey, *Condition of Postmodernity*].

86 David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005) at 156 [Harvey, *Brief History*].

87 Harvey, *Condition of Postmodernity*, above note 85 at 27 and 106.

88 *Ibid* at 105; David Harvey, *Limits to Capital*, 2d ed (London: Verso, 2000) at xxiv; David Harvey, *The Enigma of Capital: and the Crises of Capitalism* (Oxford: Oxford University Press, 2010) at 14 and 59–60 [Harvey, *Enigma of Capital*].

89 *Ibid* at 93.

90 Harvey, *Brief History*, above note 86 at 157 and 159.

91 Harvey, *Enigma of Capital*, above note 88 at 73–74.

92 *Ibid* at 144.

Harvey is also much more attuned to the role of intellectual property than most information society advocates. Rather than viewing patents as a stimulant for innovation, he argues that monopoly rights help to limit the pace of innovation and lessen the ability of innovation to destabilize capitalism<sup>93</sup> — a similar view to that of Schumpeter who saw patents as a mechanism for stabilizing the economy in light of creative destruction. Intellectual property rights and the undermining of common property rights are seen as one mechanism through which neo-liberal governments have facilitated a transfer of wealth to elites.<sup>94</sup> He argues the commodification of information is not a generative wealth creating process, but instead a redistribution from the dispossessed (ranging from the holders of traditional knowledge to artistic labourers) to powerful rights holders.<sup>95</sup> He is critical of how commodification takes properties of things such as originality, uniqueness, and creativity and transforms them into commodities.<sup>96</sup> Harvey warns that increasing intellectual property rights may lead to the eventual patenting of human life.<sup>97</sup> Intellectual property is part of a broader pattern of commodification that has occurred under neo-liberalism where a range of common property rights have been converted into private property against the broad will of the general public.<sup>98</sup> Although he is highly critical of intellectual property and capitalist innovation, Harvey is not opposed to innovation *per se*; rather, he advocates for technological innovations that support the common good and not private gain.<sup>99</sup>

Harvey serves as a useful counter example to the positions of Bell and Castells. Harvey's writings are discursively disjunct — innovation is not nominalized and the ideological assumptions that underpin information society discourse are explicated — reflecting Fairclough's argument that discourse is a site of struggle.

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93 *Ibid* at 91.

94 David Harvey, *Spaces of Global Capitalism: Towards a Theory of Uneven Geographical Development* (London: Verso, 2006) at 43 [Harvey, *Spaces*]; Harvey, *Brief History*, above note 86 at 159–60.

95 Harvey, *Spaces*, above note 94 at 44–45.

96 Harvey, *Brief History*, above note 86 at 166.

97 Harvey, *Enigma of Capital*, above note 88 at 221.

98 Harvey, *Brief History*, above note 86 at 159 and 161.

99 Harvey, *Enigma of Capital*, above note 88 at 230–31.

## G. INFORMATION SOCIETY DISCOURSE, INTELLECTUAL PROPERTY, AND NEO-LIBERALISM

Information society discourse and neo-liberalism are intimately linked. Information society discourse with its embedded assumptions that underestimate the importance and prominence of intellectual property and celebratory yet nominalized rhetoric on innovation has provided an invaluable discursive mechanism for the neo-liberal policy agenda to be advanced. At first glance the neo-liberal approach which favours deregulation and celebrates the virtues of competition unfettered by government interference would be at odds with monopoly intellectual property rights;<sup>100</sup> however, the fundamental principle behind neo-liberalism is not the complete diminution of the state but the use of state power to maximize the business climate for capital accumulation.<sup>101</sup> Both are premised on liberalism and the respect for property rights, and emphasize the “‘free market’ as the ideal allocative mechanism.”<sup>102</sup> Although information society theorists often downplay the central role of intellectual property rights, information age discourse and neo-liberal economic logic combine and mutually reinforce the notion that intellectual property is necessary to advance innovation.<sup>103</sup> Bell’s work had a direct influence on the Reagan administration<sup>104</sup> and also provided a conceptual underpinning to information society policies in Europe and the Clinton administration.<sup>105</sup> Bell’s optimistic vision of a post-industrial future has not only influenced policy-makers at the highest level; it has also provided conceptual and rhetorical mechanisms that have been used to deploy neo-liberal policies. Bell’s discourse has influenced both academics and governments not only in the past but currently as well. The recent strengthening of Canadian copyright provides a case study that demonstrates how Bell’s writings have had an interdiscursive effect on policy-making literature in Canada, and how the nominalized conception

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100 May, above note 9 at 166.

101 Harvey, *Spaces*, above note 94 at 25.

102 Trosow, above note 6 at 418; May, above note 9 at 164; James Boyle, “Fencing Off Ideas: Enclosure and Disappearance of the Public Domain” (2002) 131:2 *Daedalus* 13 at 24.

103 May, above note 9 at 165.

104 Harris, Hannah, & Harris, above note 62 at 58.

105 William H Dutton, “Introduction” in William H Dutton, ed, *Information and Communications Technologies: Visions and Realities* (Oxford: Oxford University Press, 1996) at 15; William H Dutton, Jay G Blumler, Nicholas Garnham, Robin Mansell, James Cornford, & Malcolm Peltu, “The Politics of Information and Communication Policy: The Information Superhighway” in William H Dutton, *ibid* at 387–405.

of innovation and naturalized assumptions of the information society provide a discursive means for ratcheting up intellectual property protection.

In the lead up to the passing of Bill C-11,<sup>106</sup> the Canadian government released several significant policy documents that discussed the importance of strengthening copyright. These documents have a clear inter-discursive link with the writings of Bell and Castells. Most importantly, they import the nominalized view of innovation and rely on the naturalized, or common sense idea of the information society as a means of arguing for stronger copyright protection. In 2007, the Government of Canada released *Mobilizing Science and Technology to Canada's Advantage*, which explicitly stressed the need to increase copyright protection.<sup>107</sup> Although the government does not use the specific term “information society,” the document repeatedly refers to the “knowledge economy,”<sup>108</sup> “knowledge-based economy,”<sup>109</sup> and “new economy.”<sup>110</sup> The nominalized concept of innovation is present. For example, in the introductory message from the Minister of Finance, Jim Flaherty notes, “[t]he Government of Canada will do its part by creating a new climate of innovation and discovery in our nation.”<sup>111</sup> The document also notes, “[i]mprovements in our quality of life and standard of living will depend on our increasing success in bringing scientific and technological innovations to life.”<sup>112</sup> A similar sentiment is repeated when the government declares, “[s]cientific and technological innovations enable modern economies to improve their competitiveness and productivity, giving us the means to achieve an even higher standard of living and better quality of life.”<sup>113</sup> In these passages the agents of innovation are obscured, while the benefits of innovation are extolled. More importantly, the government links its celebratory rhetoric on innovation to the need for copyright reform.<sup>114</sup> Because the concept of an information age (or knowledge economy as the government refers to it) has been naturalized through discourse, the government is more easily able to argue the need for greater copyright protection to facilitate higher levels of innovation.

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106 *Copyright Modernization Act*, RSC 2012, c 20.

107 Industry Canada, *Mobilizing Science*, above note 4 at 52.

108 *Ibid* at 23.

109 *Ibid* at 25, 65, and 80.

110 *Ibid* at 53.

111 *Ibid* at 5.

112 *Ibid* at 22.

113 *Ibid* at 23.

114 *Ibid* at 52.

The use of a nominalized portrayal of innovation and the naturalized concept of the information society is also present in the more recent digital economy consultation paper.<sup>115</sup> While the government has shifted from calling the use of “knowledge economy” to “digital economy,” the document has a clear intertextual link to *Mobilizing Science and Technology to Canada’s Advantage*. The nominalized view of innovation is evident in quotes such as, “the critical role that technology and innovation will play in our future prosperity and quality of life . . . .”<sup>116</sup> It should be noted that while the process of innovation is presented in a nominalized fashion, the government is clear that innovation will be undertaken by the private sector.<sup>117</sup> Again, the strengthening of copyright is highlighted as a means for ensuring innovation with the government stating, “[a]n updated copyright framework . . . will help maximize creativity, innovation and economic growth.”<sup>118</sup> The government also suggests, “[i]nnovation and creativity will grow where investments of time, energy and money are secure and fairly rewarded.”<sup>119</sup> This passage explicitly links a nominalized view of innovation with the idea of stronger (more secure) copyright. These passages are couched within a document rich in information society discourse. The government states, “we all have a vested interest in a dynamic and flourishing digital economy.”<sup>120</sup> The document goes on to argue, “[a] strong digital economy will be the backbone of Canada’s future prosperity and success.”<sup>121</sup> Similar to the 2007 science and technology strategy paper, the Canadian government has employed seemingly neutral information society discourse as a means of advancing a neo-liberal political agenda aimed at increasing the protection for copyright holders. While the government did have two failed copyright bills, information society discourse has been an important mechanism through which the government achieved its goal of copyright reform.

## H. CONCLUSION

Starting with Bell’s work in the early 1970s and continuing with texts such as Castells, information society discourse has paved the way for policies

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115 Canada, *Digital Advantage*, above note 4.

116 *Ibid* at 9.

117 *Ibid* at 11, 15, 17, 22, and 25.

118 *Ibid* at 14.

119 *Ibid* at 28.

120 *Ibid* at 8.

121 *Ibid*.

that have ratcheted up intellectual property policies. By extolling innovation, such discourse has naturalized the idea that in an information age it is necessary to have strong intellectual property protection to facilitate economic growth, while obscuring the ideological fact that such policies disproportionately benefit rights holders by limiting access to information. The recent policy documents by the Canadian government demonstrate how naturalized information society discourse has been used discursively to frame changes to Canadian copyright. Discursive analyses of information society rhetoric provide a useful mechanism for intellectual property scholars to examine how intellectual property policies are ideologically naturalized through discourse. More study is needed to further examine the relationship between theories of the information society, intellectual property, and policy-making.