

Biography

Andrea Rossato is assistant professor of Comparative Private Law at the Faculty of Law of the University of Trento. He teaches "Intellectual Property Rights" at the Faculty of Science and "Economic Analysis of Legal Institutions" at the Faculty of Law. He authored a book on the use of architectural elements in shaping human behavior within the digital realm with specific reference to the role played by free software in preserving the basic values of the Western legal tradition in the digital space (*Diritto e architettura nello spazio digitale. Il ruolo del software libero*, Padova, 2006).

Abstract

Although Plant Genetic Resources could be thought as commons -- this idea seems to have had some influence on the International Treaty on Plant Genetic Resources for Food & Agriculture --, Genetic Use Restriction Technologies (GURTs) may jeopardize the very possibility of a commons-like management system due to the use of technological measures which allow the enclosure of the genetic commons regardless the adopted legal regime.

This may represent a problem which strictly resembles the use of Digital Rights Management Systems to enforce a strictly proprietary regime in the field of intellectual creativity.

Two major issues arise from the use of GURTs: on one hand the role of self-help to enforce contractual obligations which have the primary scope to require farmers to waive some of the rights granted by national and international regulations and, on the other hand, the role of the technological power to privately create self-enforcing rules. This phenomenon can be seen as a way of privatizing legal regulations and rules as long as the legal protection of technological measures may be granted regardless the interests those measures are protecting.

Self-help has been a neglected topic within the Western legal culture mostly because it has been historically confined within very strict borders. Still, the digital revolution is leading to a revival of this legal tool, which is seen as a practical way to balance the diminishing capacity of national legal systems to effectively enforce legal rules in the digitalized world and thus providing a way to clearly define property rights to be negotiated in the market. All that seems to occur without a clear assessment of the short and long term consequences of this way to enforce privately enacted entitlements.