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PERSPECTIVE ON GOVERNMENT-FUNDED INNOVATIONS

"Because half-a-dozen grasshoppers under a fern make the field ring with their importunate chink, whilst thousands of great cattle repose beneath the shadow of the British Oak, chew the cud and are silent, pray do not imagine that those who make the noise are the only inhabitants in the field." Edmund Burke

Imagine the following comment evoked by an historical event: Samuel B. Morse had just demonstrated his new discovery, the telegraph. Among the enthusiastic observers is an executive from the Government agency that partially supported the experiment with $30,000. "Mr. Morse, thank you for showing us the utility of your marvelous invention! Uh - if you wish, we'll be glad to grant you a non-exclusive license to use your discovery."

Were Mr. Morse a contemporary inventor, the comment would not be improbable. There are some two dozen policies in force regulating the rights to inventions developed with even partial federal funding, as in the Morse case.

Congressman Ray Thornton has introduced legislation that would establish a uniform federal patent policy leaving rights with the inventor, contrary to the intent of most of the current policies.

Another person with a firm opinion about who should own federally-funded inventions is Senator Gaylord Nelson, chairman of the Small Business Subcommittee and champion of antitrust legislation. With a keen eye for the opportunities which reduced competition can bring, the Senator made a classic bid for media coverage by convening his committee during the recent Christmas recess to "resolve" this issue. The topic of conversation--announced with colorful headline-hunting references to Santa Claus and the Tooth Fairy--was whether it is better to allow avaricious inventors to retain any rights in their government-funded discoveries or, by damning the rascals, to polish one's public image as a trust-busting defender of the abused consumer. As befits such an orchestrated event, the witness list was tightly controlled. The National Small Business Association, and the universities, and the research community can all be heard later. What we need now is impact! Who's going to produce media coverage to our liking if one of those X!%*$ universities is in here saying the government ought to be giving away invention rights!

Could this be a case when the grasshoppers have had their say, and we would do well to remember that they are not the only occupants of the field?

Inventions which can and should be used, but are not used, are worse than useless; the costs associated with their discovery are wasted assets, and the consequences of their non-use are wasted opportunities. There are several reasons for non-use. One is that businessmen are reluctant to invest risk capital in the commercial development of unproven technologies unless, having won their gamble, they are assured of a reasonable measure of exclusivity in the marketplace. To take an analogy from the trademark field, who would spend millions of dollars promoting the mark "Coca-Cola" if anyone could market a soft drink under that name?

Universities are not unlike the U.S. Government in the sense that they have no control over manufacturing facilities. Like the Government, they must transfer their inventions to the commercial sector if the inventions are to be used. Here the similarity ends, for universities are 600 percent more efficient than the Government in commercializing their inventions, principally because of their ability to grant exclusive licenses.

No one is suggesting that taxpayers do not have a right to own inventions produced at their expense. What is being suggested is that informed taxpayers would gladly exchange those stagnant assets for the new products, new jobs and increased tax revenues which private patent-based enterprises have traditionally lavished on our economy.

To give the gentleman his due, Senator Nelson is probably no less interested in new jobs, new products and new tax revenues than you or I. Unfortunately, he is mesmerized by the notion that patents as monopolies lead to that greatest of evils: industrial concentraion (much worse, mind you, than tens of thousands of unused inventions).

Okay, we agree that concentration can be a problem, but we should be able to meet it, not even by relying on the anti-trust laws alone, but by tying a string onto every right which the inventing institution is allowed to retain. One false move and zap! The string has many strands, each one of which is known as a "march-in right." This idea is not new; the government has had this option for years on a limited scale. Senator Nelson claims, however, that these strings have rarely been pulled, and he's probably right. The question remains, can the Senator, or anyone, point out cases where the strings should have been pulled and weren't?

Next we suggest that he explain his philosophy more clearly. Recently he voted to permit the Government to acquire ownership of inventions made by private companies, whether large or small, during the course of a government-guaranteed <u>loan</u>, even if the loan is fully repaid to the lending bank, on time and with interest.

If Senator Nelson's sense of equity dictates that the Government should own what the Government has paid for, however counterproductive to public interest, surely private industry should own what private industry has paid for, and invented besides.

This bill was passed before the conclusion of Senator Nelson's hearings, and before either hearings on Congressman Thornton's bill or the appearance of a long-awaited policy statement by the Administration on this very issue. It would be in the best interests of the country if no more precipitous action were taken until all the "inhabitants of the field" have been heard.

{all interested parties}

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