Libre Culture

Libre Culture

Meditations on Free Culture

Edited by
David M. Berry and Giles Moss

Contents

For Darrow Schecter.

Foreword

Libre Culture is the essential expression of the free culture/copyleft movement. This anthology, brought together here for the first time, represents the early groundwork of Libre Society thought. Referring to the development of creativity and ideas, capital works to hoard and privatize the knowledge and meaning of what is created. Expression becomes monopolized, secured within an artificial market-scarcity enclave and finally presented as a novelty on the culture industry in order to benefit cloistered profit motives. In the way that physical resources such as forests or public services are free, Libre Culture argues for the freeing up of human ideas and expression from copyright bulwarks in all forms.

Developing chronologically in scope from manifesto to article to essay, this seminal collection of writing cuts directly into the heart of how intellectual property impedes the natural progression of creativity, staggering its distribution and cutting it off from the possibility of reaching a true 'ideas commons.' While Berry and Moss are here primarily using internet movements and art as conceptual-frameworks, the sublimity of their work lies in its ability to penetrate into other spheres of life, to avoid becoming captured by any one ideology, to hold a glance that remains everywhere. Exploring a radical democratic politics of "the commons," the critique abandons the will to glue itself to a specific political identity, resultantly allowing its dialogue to arm itself with its own conditions: the writing attempts to live its own words by allowing itself to be used (and reused) freely by anyone.

Where the neoliberal Creative Commons moves to create a bureaucratic vivisection of culture, cutting it into discrete pieces, each of which have their own distinct license, rights and permissions defined by the copyright holder who 'owns' the work, ensuring that legal licenses and lawyers remain key nodal and obligatory passage points within the Creative Commons network, Libre Culture moves diametrically against such mechanical blockages and colonization maneuvers — against the totality of intellectual property regimes everywhere and their attempts to extend the reach of their own compartmentalization.

Matthew Zacharias
September 2007

Introduction

Welcome to *Libre Culture*. We hope that the texts we have assembled here are as thought provoking and interesting to you as they have been to everyone involved. This book is intended to be a toolbox. Rather than offer explanations, it is intended to give ideas, concepts and information to facilitate the growth of a network of artists, creatives and researchers into open source culture. It is a political intervention; more of a statement of aims than a reference text. It is also a call to arms.

The reader is a strange kind of object in that it too has been written, edited and compiled in a decentralised and networked fashion by a number of different people. And the process has taken place using technology that has allowed the inside and the outside of the network to become fluid and modulating. We believe that this points to possibilities and practices within art and culture that have yet to be fully explored.

Open Source culture represents something very new and very interesting: a politicisation of the question of the commons. What is the commons, and why is it suddenly becoming such an important matter of concern and mobilisation point for so many different people — from techies in software, peasant farmers in India (Neem patent), Brazilian Government's fight over anti-viral HIV patents, Biopiracy and of course artists and creative people wishing to use and reuse culture in their work?

The production and distribution of information is a key source of wealth in the digital age and creates a new set of conflicts over capital and property rights that concern the right to distribute and gain access to information. As many papers discuss through the reader, multinational capital is now seeking to turn what is common increasingly into private property that can be used to extract value and profit. There is an important tension between:

1. Public access to information and knowledge in a public domain.
2. Private ownership of information and knowledge.

No matter how much you try to square these basic liberal principles, they are in direct contradiction to each other. And whilst property was based on physical items at least there could be trade offs that some societies would accept and try to regulate

the effects through the welfare state (e.g. political equality versus economic inequality). However when information and knowledge are privatised, the very preconditions of a critical public required within a democratic society are denied to that public.

This is the tension that is emerging as to the ability to access, use and reuse information and knowledge (whether written, immaterial, music or art). Do we have corporate controlled knowledge and a corresponding weakening of democratic society or democratic control of knowledge and a corresponding weakening of corporate control? Unfortunately, however, it seems that we are not being asked. Instead laws are being put into effect and massive changes taking place justified through the discourses of globalisation and the 'war on terror.'

There is also the question of the multitude and to what extent these increases in communicational and affective production are transforming us into a new subjectivity that can organise against these effects. Do these new networked ways of working and interacting present new ways of 'being-in-the-world' and corresponding new ways of seeing, transforming and creatively interacting with each other? Does this point to a new form of politics? How can we, should we and will we mobilise and use these new skills and forms of knowledge?

These are some of the fundamental questions generated by the so-called knowledge economy, creative economy, and information society. It is not hard to see that the decisions that governments (influenced, of course, by the corporate lobbyists) are taking today in support of the short-term corporate desire for profit pose a considerable threat to the democratic freedom and creative potential of future generations. Art and creativity lie at the nexus of the next phase of capital expansion — namely the privatisation of our very social existence (e.g., think of telephone calls as privatised conversations, SMS as privatised notes and letters). Companies see huge monopoly profits available when everyone has to pay to view, use or read a certain book, photograph or painting.

We hope that this reader will contribute to this debate and also to experiments in new forms of organisation and artistic production, particularly forms that work against the present (i.e. against the privatisation of artistic production). We believe that artists and creative people have important things to say about this new world order, and an amazing palette of creativity with which to say it.

DB and GM

1. The Libre Culture Manifesto

Version 1.62 — David M. Berry and Giles Moss

A constellation of interests is now seeking to increase its ownership and control of creativity. We are told that these interests require new laws and rights that will allow them to control concepts and ideas and protect them from exploitation. They say that this will enrich our lives, create new products and safeguard the possibility of future prosperity. But this is a disaster for creativity, whose health depends on an ongoing, free and open conversation between ideas from the past and the present.

— *In response, we wish to defend the idea of a creative field of concepts and ideas that are free from ownership.*

1. Profit has a new object of affection. Indeed, profiteers now shamelessly proclaim to be the true friend of creativity and the creative. Everywhere, they declare, "`We support and protect concepts and ideas. Creativity is our business and it is safe in our hands. We are the true friends of creativity`!"

2. Not content with declarations of friendship, profiteers are eager to put into practice their fondness for creativity as well. Action speaks louder than words in capitalist culture. To display their affection, profiteers use legal mechanisms, namely intellectual property law, to watch over concepts and ideas and to protect them from those who seek to misuse them. While we are dead to the world at night, they are busily stockpiling intellectual property at an astonishing rate. More and more, the creative sphere is being brought under their exclusive control.

3. The fact that the profiteers are now so protective of creativity, jealously seeking to control concepts and ideas, ought to rouse suspicion. While they may claim to be the true friends of creativity, we know that friendship is not the same as dependency. It is very different to say, "I am your true friend because I need you," than to say, "I need you because I am your

true friend." But how are we to settle this issue? How do we distinguish the true friend from the false? In any relationship between friends we should ask, "Are both partners mutually benefiting?"

4. The profiteers' insatiable thirst for profit clearly benefits from their new friendship with creativity and the creative. Unlike physical objects, concepts and ideas can be shared, copied and reused without diminishment. No matter how many people use and interpret a particular concept, nobody else's use of that concept is surrendered or reduced. But through the use of intellectual property law — in the form of patents, trademarks and particularly copyright — concepts and ideas can be transformed into commodities that are privately regulated and owned. An artificial scarcity of concepts and ideas can then be established. Much money is to be made when creative flows of knowledge and ideas become scarce products or commodities that can be traded in the market place. And, increasingly, intellectual property law is providing profiteers with vast accumulations of wealth.

5. Informational, affective and knowledge-based labour has now become a central driver of profit. Indeed, immaterial labour is increasingly replacing industrial manufacture as the main producer of wealth in the age of technological capitalism. With these developments in the productive processes, a new embodiment of profit emerges. Alongside the landlords that controlled agriculture and the capitalist factory owners that controlled manufacture, vectors — the owners of the distribution, access and exploitation of creative works through valorisation — have emerged. It is these same vectorialists, of course, that are now so vocal in their claim to be the true friends of creativity and the creative.

6. For many of us, the thought of intellectual property law still evokes romantic apparitions of a solitary artist or writer seeking to safeguard her or his creative work. It is therefore unsurprising that we tend to view intellectual property law as something that defends the rights and interests of the creative. Perhaps, in some removed and distant time, there was a modest respect in this notion. But this romantic vision of the creative is certainly ill at ease with the current capitalist reality.

7. The world in which creative people now find themselves is a social factory or a society-factory (Virno and Hardt 1997). The vectors view the whole social world of creativity and creative works as raw material for commodification and profit. Creative people have thus become de facto employees of the vectors, if not their actual ones. Each concept and idea they produce is available to be appropriated and owned by the vectors through the use of intellectual property law. What is more, the vectors continually lobby to extend the control of these laws for greater and greater lengths of time. Because the vectors have now made intellectual property law their own, we can from now, more accurately, term these laws, 'vectoral laws.'

8. The creative multitude is becoming legally excluded from using and reinterpreting the concepts and ideas that they collectively produce. In addition, this legal exclusion is being supported by technological means. Using technology as their delegates, the vectors seek to enforce vectoral law by instantiating their interests within the technical code that configures information, communications, networks and devices. To do so, they are currently developing and configuring ever more closed technologies and disciplinary machines. Digital rights management software, for example, sequesters and locks creative works, preventing their copying, modification and reuse. The vectors can by using these prescriptive technologies deny access to those who cannot pay or to those whose sympathies and support are not assured. They can also exclusively determine how ideas and concepts are to be used in the future. In the current era of technological capitalism, public pathways for the free flow of concepts and ideas and the movement of creativity and the creative are being steadily eroded — the freedom to use and re-interpret creative work is being restricted through legally based but technologically enforced enclosures.

9. This development is an absolute disaster for creativity, whose health depends on a free and ongoing conversation and confrontation between concepts and ideas from the past and present. It is shameful that the creative multitude is being excluded from using the concepts and ideas that they collectively produce. Creativity is never solely the product of a single creator or individuated genius. It always owes debts to the inspiration and previous work of others, whether these are thinkers, artists, scientists, paramours, listeners, machines or

friends. Creativity, as a fusion point of these singularities, cannot subsist in a social nothingness. Concepts and ideas depend upon their social life — *and it could not be otherwise*.

10. An analogy can be drawn with everyday language: that is, the system of signs, symbols, gestures and meanings used in communicative understanding. Spoken language is shared between us. A meaningful utterance is only made possible by drawing on the words that freely circulate within a linguistic community of speakers and listeners. Language, then, is necessarily non-owned and free. But imagine a devastating situation where this was no longer the case. George Orwell's depiction of a 1984 dystopia — and the violence done here to freethinking through newspeak — helps to illustrate this. In a similar way, the control and ownership of concepts and ideas is a grave threat to creative imagination and thought, and so also a danger to what we affectionately call our freedom and self-expression.

11. Until recently, the creative multitude could decide either to conform or rebel. In conforming they became creatively inert, unable to create new synergies and ideas, mere producers and consumers of the standardised commodities that increasingly saturate cultural life. In rebelling, they continued to use concepts and ideas in spite of vectoral law. Labeled "`pirates`," "`property thieves`" and even "`terrorists`," they were then answerable as criminals to the courts of global state power. In other words, a permanent state of exception, a political emergency, was declared, which, together with the disciplinary norms of a propertised control society, was then used to justify and extend the coercive use of state power and repression against an increasingly criminalised culture of creativity. But as we will soon discuss, a growing number of the creative have now moved beyond both conformity and rebellion, through an active resistance to the present and the creation of an alternative creative field for flows of non-owned concepts and ideas.

12. The vectors and their representatives will make immediate objections to all we have said. The profiteers will turn proselytizers and exclaim, "`If there is no private ownership of creativity there will be no incentive to produce`!" The suggestion that the ownership of knowledge and ideas promotes creativity is a shameful one,

however plausible it may seem from the myopic perspective of profit. To say that creativity can thrive while the creative lack the freedom to reuse concepts and ideas is clearly upside-down. After giggling a little at this, we should now turn this thinking the right way up.

13. According to this "`incentive`" claim, there cannot have been any creativity (i.e., art, music, literature, design and technology) before the ownership and control of our concepts and ideas. This seems like fantasy. Historians frequently profess to us that creativity was alive and well in pre-capitalist times, before the advent of intellectual property laws. But even so, we might concede that history is now enough of a fiction to raise some doubt about the form of previous incarnations of creativity and the creative. The incentive claim, however, is even more risible when it implies that there cannot be any creativity currently operating outside of the vectoral property regime. This of course contradicts our current experiences as historical actors and witnesses. We can now be sure of something that we have always already known — creativity is irreducible to the exploitation of intellectual property.

14. A new global movement of networked groups that operate across a variety of creative media (e.g., music, art, design and software) is now emerging. These groups produce a *gathering* (*Versammlung* Heidegger 1993) of concepts, ideas and art that exist outside the current vector property regime. The creative works of the Free/Libre and Open Source communities, for instance, can all be freely examined, challenged and modified. Here, knowledge and ideas are shared, contested and reinterpreted among the creative as a community of friends. The concepts and ideas of these groups, like the symbols and signs of language, are public and non-owned. Against the machinations of profit, these groups are in the process of constituting a real alternative — of constructing a model of creative life that reflects the force and desire of the creative multitude.

15. Through the principles of attribution and share-alike, existing works and ideas are given recognition in these communities. This means that while creative work may always be copied, modified and synthesised into new works, previous creative work is valued and recognised by the community for its contribution to creativity as a whole (and rightly so). Attribution

and share-alike are constitutive principles of the Free/Libre and Open Source movements, and chromosomes of the new mode of creative life that their social practice intimates.

16. These movements adopt an ingenious viral device, implemented through public licences, known as copyleft. This ensures that concepts and ideas are non-owned, while guaranteeing that future synergies based on these concepts and ideas are equally open for others to use. Whereas copyright operates through law to prevent the modification and reuse of concepts and ideas, copyleft ensures that these concepts and ideas remain openly available and not capable of being privatised. In this way, copyright ('all rights reserved') is stood back on its feet by copyleft ('all rights reversed'). It now stands the right way up for creativity and can once again look it in the eyes.

17. More broadly, we can say that non-owned creative works are created by singularities formed into machines of struggle (e.g., GNU, bit-torrent, nettime.org, Autonomedia, SchNEWS, the Zapatistas, Linux, Indymedia). These are horizontal and decentred molecular networks of actors, both human and nonhuman. These can and should be differentiated from the more centralised, disciplinary machines to which the concept network is now so liberally applied (e.g., "network firms," "network states," "network wars"). As such, they should also be distinguished from vectoral machines (e.g., capitalist corporations, WTO, IMF, the World Bank), which are closed, hierarchical, proprietary machines that configure and territorialize networks, concepts and ideas.

18. Machines of struggle are continually being enrolled into new alliances and relations. As the vision and practice of non-owned creativity gathers in strength, these rhizomatic arrangements are both deepening and widening. Just as the violence of the vector's disciplinary regime is seeking to intensify, it is being met with a real counter-power. This countervailing force finds its form and strength, not through any individual nucleus or singularity standing alone, but through broader relations and alliances. More accurately, therefore, we are talking here of circuits of counter-power — *machines of struggle in creative alliances*.

19. These circuits of counter-power bring forth the scope for resistance, the capacity for agency and thus the hope and promise of future worlds. When linked together, machines of struggle are able to confront and challenge the vectoral regime as a real force, collectively armed against the territorializing effects of vectoralist capital. Circuits of counter-power provide the conditions and capacity for transformative constitutive action. Such circuits are but one moment of the potential power of the creative multitude as organised and effective transformative agents.

20. We believe that the creative multitude should form themselves into machines of struggle and establish alliances with broader circuits of counter-power. In so doing, they contribute towards the idea and practice of non-owned creativity and the untimely model of creative life that it intimates. Through collective production and shared creative alliance, they will defend and extend creativity against those who shamelessly remain wedded to the language and practice of private property and profit, and who continually attempt to territorialize and configure for the purposes of control and ownership.

21. Indeed, we — who are already quite a crowd — must defend the idea and practice of non-owned creativity. For it is only the creative multitude, when organised and enrolled into circuits of counter-power, who will determine whether a possible transformation of our times is realised. This is a movement that is acting "counter to our time and, let us hope, for the benefit of a possible time to come" (Nietzsche 1983) — *Creativity is creating resistance to the present*.

Further Reading

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2. Free as in 'Free Speech' or Free as in 'Free Labour'

— David M. Berry

Free software sustains and enables the internet. Across the world, people continue to freely contribute ideas and expertise to an important and growing movement. The internet itself was largely born out of a culture of contributing code and content in an electronic public "space" of global proportions. This has meant that the constellation of software supporting the internet, and the content that sits upon it, is to a large degree, non-market, peer-produced and free (as in "freedom" and as in "beer"). But, why do people code, hack, test, write and create free culture?

Free labour sustains the free software and free culture movements, and yet we're still pretty much in the dark as to why people do it. Indeed, this question continues to puzzle many people who find it difficult to fit into traditional concepts related to production. Theorists and researchers have used a number of approaches: from individualistic or psychologistic theories, which usually end up identifying personal preferences or "motivations"; to concepts of frictionless information or institutional frameworks; essentialist claims about humans; gift economics; free-market economics; bazaars; theories of public-goods; and even the concept of "fun" itself, in an attempt to explain it. But ultimately, the explanatory factors continue to be shrouded in mystery. None of the current theories give a satisfactory answer to the questions raised, namely: why do coders, users and lots of amateur artists contribute to free culture projects?

This article examines free software and free culture, together with the concepts that Hannah Arendt (1998) presents in *The Human Condition*, to outline some of the key aspects of labour within what Yochai Benkler calls "commons-based peer production." It questions whether there is more than just simple motivational factors at work underneath the surface of the so-called "Hacker Ethic." Indeed, making "things" is usually classified outside the realm of the life world, and the question of

free-software problematises some of our common-sense impressions of what work *qua* work actually is.

Free as in "software"

The dynamics of software production are complex, and the resources required to sustain it are expensive, in terms of equipment and basic necessities, but also in terms of the wider economics of the computing industry. Software development is hugely profitable and employs a large number of people involved in labour intensive, complex and demanding work, which is exploited using copyright and patent monopolies. This, in turn, generates large profit margins and, as can be seen from salary levels, rewards many programmers handsomely. However, software programming remains a labouring activity; in other words, the activity undertaken by the programmer is exchanged for their wages. The product of this labour, *code*, is alienated and appropriated by the employing company.

Free software, on the other hand, is produced outside of the office-factory — indeed, it is freely produced and contributed to projects that have many features in common. They are owned, if they can be said to be owned at all, by everyone, and it is freely available to be taken and used — although sometimes restricted by license requirements, such as the GNU General Public License (GPL). This code is produced neither wholly as a job nor as a hobby. But its commons-based approach means that it is never wholly appropriated or alienated from the producer either.

This raises two related issues about contemporary free software development that this article intends to examine: (1) Why free-software is undertaken by programmers; and (2) whether free-software points toward a different relationship with the "work of our hands" and the possibilities for emancipation from necessity.

Hannah Arendt's distinctions between *Labor* and *Work* offers useful concepts that can help in understanding why free software is produced and can contribute to further understanding of the activities associated with it. As Arendt explains in *The Human Condition*, the etymology of the two words, *Labor* and *Work*, casts light on the fact that although today we use them synonymously, this wasn't always so. John Locke, for example, drew a distinction between "working hands" and "laboring bodies" and this has some resemblance to

the ancient Greek distinction between "the craftsman" and the work of "slaves." This bifurcation of the process of production has also been mirrored in the distinction between manual and intellectual labour and the corresponding connotations and values we have associated between them.

Arendt explains that in classical times, *Labor* was associated with contempt, an activity that left no trace, no monument, no great work worthy of remembrance. Labouring was for those who, like "slaves and tame animals with their bodies, minister to the necessities of life." In order that we could become *political* — i.e. that which distinguished us from animals — we had to escape from necessity. Today, the production of labour is the production of the masses, and Marx notwithstanding, it has historically been feared by the owning or thinking classes — controlled and channelled through overcoding structures that have been able to appropriate their productivity. Think, for example, of the school, the hospital and the assembly lines for the mass produced cars, producing what Foucault termed the *docile bodies* of the workers. These workers performed a fraction of the entire process of production and were thereby alienated from their labour. By being forced to work by necessity (i.e. to enable them to buy food and shelter) meant that they were not able to become fully human; alienated from the products of their own hands, unable to act or think politically and easy to control.

In contrast, Arendt argues that for those who *Work* — who "work upon" rather than "labor and mix with" — there is the possibility for the beginnings of reflexive behaviour (i.e. becoming self-conscious acting beings). *Work* for Arendt, produces durability, the products of work do not disappear but give our common lives stability and solidity — think, for example, of a table passed down generation to generation, contrasted with labouring in a field which would leave no such trace. For Plato, *Poiesis*, as making or fabrication, showed that the craftsman had within his mind an *idea* that could be shaped to a conscious material design: a creative act of production in the physical world. Where *Labor* only produces for the consumption or necessity of the labourer, *Work* creates something durable that will last (for now leaving aside the problematic ontological question of the status of source-code's obduracy). This is important because it is only by escaping necessity (i.e. the constant requirement to produce things we need) that we can begin to communicate and become human as political animals. For Arendt, *Work* is a prerequisite for the

14

possibility of *Action* — the realm of great deeds and great words. As memorably related by Homer, Achilles was remembered for his *Action* — not for his need to satisfy his hunger and clothe his body.

To work for necessity, as many of us do in contemporary consumer society, would be classified by Arendt as *labor*. In fact, Arendt argues that we have become a *laboring society*; in other words, we have succeeded in levelling all human activities to the common denominator of securing the necessities of life and providing for their abundance. Therefore, whatever we do, we do for the sake of "making a living." Anything that cannot be classified as part of making a living becomes a "hobby," subsumed under playfulness or non-serious activities. Our society is now shaped by the importance of producing objects for consumption, and the drive for profitability encourages the production of objects that simply wear out as quickly as possible. Living for necessity was the life of animals — the Greeks even derive their word for torture (*anagkai*) from *necessity* (the realm of labour) and not from *violence* (*bia,* the realm of war) and in ancient societies torture could not be applied to *free men*, it could only be applied to labouring men or slaves who were subject to necessity anyway (see Arendt 1989: 129).

Because life depends upon it, necessity is an extremely powerful drive. By directing our labour towards necessity, capitalism is able to reproduce itself as a social system. But free software seems more akin to the realm of *Work* than the realm of *Labor*, it lies to a certain extent outside of the market. Its commons-based production and the action of its producers seem to be less concerned with necessity than building durable, lasting things (the code). The care that goes into much free software production contributes to its craftsmanship — the production of code is in many ways "public," and the source code can be read and admired by others, in this respect it seems to be similar to a great speech or a work of art.

Free as in "freedom"

The second question this article asks is whether free software points toward a different relationship with the work of our hands and the possibilities for emancipation from necessity. Indeed, free software is not directly linked to necessity, and is in many ways similar to the creation of an artist — who Arendt

identified as the only real "worker" left in society. She argued that we will not be free until we realise that we are subject to necessity and liberate ourselves from it. Whilst we are forced to "make a living" we will always be caught in a never-ending spiral of *laboring* and consuming. As technology creates more "spare time" the resulting shaping of our desires by the advertising industry makes us greedier and more craving of our appetites — met only by consumption of the consumer goods before us. Free software is created here, strangely enough in the space of consumption. However, it differs, as it is productive and creative. To create free culture is to contribute toward culture rather than consume (i.e. destroy it).

The possibilities offered by free culture are not (yet) completely linked or mediated through the operation of corporations and necessity. People can still write code, blog and share their thoughts on the web, and this act of sharing is also one of communication. However, it is a fragile space that seems similar to the temporary autonomous zones (TAZ) popularised by Hakim Bey (1991). Will the creators of free culture and free software allow it to be overcoded, controlled and channelled towards consumption? Clearly, the vast resources that corporations bring to bear on projects often crush resistance to a bureaucratic mentality. Inevitably, the creators often have different sentiments to those who seek to make money, and eventually they come into conflict with the instrumental rationality of corporations (who aim for profit maximising). Some worrying examples include: the continuing commercialisation of the inter-net; IBM's forays into the Linux kernel; and even the colonisation of blogging and photosharing.

If we begin to view free software and open source no longer purely for necessity or instrumentally (i.e. as not just a technical activity) we can reposition it within the realm of human creativity. If free software lies outside the sphere of *labor*, following Arendt, then perhaps, we can begin to understand it as a possible prerequisite for the beginning of political activity. Free software is interesting in that it seems to contribute towards the conditions of possibility for *Work* and *Action* — for humans to perform great deeds, and through the code to speak and create a trace or memory. For instance, Mathew Fuller's (2004) concept of *Critical Software* aims to act politically, to subvert existing codes and to give agency and freedom to the usually passive user. Similarly, free software, by giving away the source-code, simultaneously gives agency to the producer and the user opening the possibilities for *Action*

rather than directing and controlling the user — e.g. think of the way a word processor can control the user by "suggesting" spellings and grammar.

The realm of economics and markets is the sphere of necessity — you do not have the freedom to act, creatively or politically as an agent. Conversely, free software and free culture seem to be constituted communicatively (i.e. as a conversation between volunteers), and could, therefore, open the possibility for decentralised, non-market commons-based production, within which may lie the seeds of a new politics — the politics of the commons.

3. Art, Creativity, Intellectual Property and The Commons

— David M. Berry and Giles Moss

Let us begin with a story about art. In this story, art produces aesthetic works of durability and stability — things that "stand up on their own." The act of artistic production doesn't come from nowhere; neither is it born in the heads of private individuals. It doesn't dwell in a social nothingness. Nor does it start with a blank canvas. Any moment of production involves the reassembling and rearranging of the diverse materials, practices and influences that came before it and which surround it. Out of this common pool, art creates aesthetic works with emergent properties of their own. From the social world in which it lives, art creates *affect* and *precept*. It forms new ways of feeling, seeing and perceiving the world. It gives back to us the same object in different ways. In so doing, art invents new possibilities and makes available new forms of subjectivity and life. Art is creative and productive.

Art as property?

This is a plausible story about the "truth" of art. But it's not the story we are commonly told. Normally, art and creativity are associated in people's mind with a more heroic tale. Here, the moment of production is reduced to the actions of an individual creator. Creativity is considered to be a moment of individual genius, born out of a social vacuum, solely from the minds of private individuals *ex nihilo*. In this view, art is an autonomous sphere, existing independently from and impervious to other aspects of the social world (e.g., technology, economics, politics). It is this enduring discourse of artistic creativity that sociologists and philosophers have had so much fun demystifying and debunking in the past. Time and again they've highlighted the absurdity of romanticism and subjectivism. They remind us that there is no such thing as a private language of creativity. Artistic creativity is a social practice. It cannot

help both influencing and being influenced by other aspects of social life. As if anyone ever really doubted these things in the first place.

Critiques of romanticism and subjectivism have been restated so many times that they may sound tired and repetitive to some. It might appear trite and even boring to keep remaking this case. But even so, discourses of subjectivism and romanticism *continue* to permeate interpretations of creativity. Nowhere is this clearer than in legal and economic definitions. In intellectual property law, for instance, we find that discourses of the author, romanticism, subjectivism, originality and genius are still rife. Given this, it is no surprise that sociologists will keep reminding us, pointing to the sociological "facts" of art and creativity.

Political economists take a different approach. They ask why these specious discourses of romanticism and subjectivism remain pervasive. And they argue that the reasons are clear-cut. Look no further than the commodification and privatisation of artistic creativity. The story goes like this: in order to generate profit from art, creative products must be transformed into property that may be owned and exchanged by private profiteers. "Intellectual property rights," enforced by the state, are the mechanism for achieving this. Intellectual property requires a legal persona who "owns" the creative product in order to function: the "author." This legal fiction is the sovereign "individual," endowed with the power of creation, someone who "justifiably" has ownership rights over their creative goods and "deserves" to be handsomely rewarded. These creative goods, even though they were created in and out of the public, may then be owned by private entities (and not necessarily the "original creators") and removed from what we share in common. Then, as property, these creative products can be exchanged among private hands, and traded and consumed in the market place.

Creators may be understandably flattered by their association with the mythical identity of the creative genius. They can easily forget how they were inspired and influenced by others (friends, lovers, teachers, enemies...) and of the legitimacy of any previous "sources." They might yet start believing that they are above and beyond this world: the true romantic genius. But they will soon be brought back down to earth in one respect. For they will also have to be their own mini legal-experts. They must manage and defend the alleged misuse, unauthorized reproduction, or plagiarism of "their" works by

others. It is no wonder that new digital technologies — media for sharing and reproducing immaterial goods like never before — are so dangerous and alarming. Fortunately for them, this situation will not be so for long. Many of these creative and freeing technologies are currently being brutally reconfigured to prevent the reuse of immaterial goods, such as sampling CDs, recording and reusing television or invoking montages of images on a computer screen. Our artistic geniuses (and their corporate friends) may sleep soundly in bed again.

The alternative vision

It is too easy for the creative to overlook how the myth of the romantic creator allows creativity to be linked into the system of profit — that it is most often employed to justify the ownership and exploitation of creative works by private corporations. This tendency is further supported by the claim that art is somehow autonomous from society. In truth, like many of us, artists are of two minds where money is concerned. Sometimes they are critical. But mostly they collaborate. The art market sustains the livelihood of many independent artists who are understandably wary to bite the hand that feeds them. Nonetheless, the art market also has pernicious effects. Capital has always shaped and controlled bourgeois art, whether through speculators and investors, corporate art portfolios, or indirectly through government pressure to create artists who are vocationally trained, ready for the advertising agencies and marketing departments. But there is now a new intensity to capital, a new plane of organisation that segments and over codes the practices and subjectivity of the creative. Private corporations (creating what Walter Benjamin (1935) called the mythology of *newness*) harvest the work of artists so that new commodities can promise beautification and aesthetic "novelty." Numerous artists are co-opted into the ranks of bureaucrats and managers, finding themselves no longer creating art, but marketing and selling commodities. Art has obsolescence built in, oriented towards fashion and the valorisation of the putatively "new." Arts and Humanities departments in universities make room for "Marketing" and "Creative Industries" departments, where the value of creativity is reduced to its profitability.

This list of corruptions is not exhaustive. We could go on and on citing other examples. But our point is simple. All these developments fit neatly with the transient, throwaway

culture of postmodern consumerism, but less so with a view of art as autonomous from society and immune to social interests. Instead of concerning ourselves with the question of art's so-called autonomy, we should be confronting more pressing questions. For example, what vision of creativity and of themselves do the creative hold? As we have described, the prevailing system of intellectual property law, and the discourses of romanticism and subjectivism that sustain it, create a particular set of interests for artists. This is the possessive individual, the creative genius. Here, the creative become divided from one another. They are not encouraged to share thoughts, concepts and work. They are not encouraged to contribute to the common. Instead, they jealously protect "their property" from others who are understood as competitors. This vision of creative production is easily linked to the capitalist system of property, market exchange and exploitation. Most importantly, it allows corporations as private entities to own and profit from creative works. Indeed, overall, this is a vision of the art world created in capitalism's own image.

This is the dominant discourse and practice of creativity today. But — *and a big "but"* — it is not the only vision of creativity available to us. There are alternatives. If we look hard enough we find networks of individuals and groups who understand creativity in terms quite different from the present intellectual property system. We find a vision of creative production more like the story which opened this article. Notable examples of such networks go under the names of the "creative commons," "copyleft," "free/libre" and "open source" production. These networks produce creative works (concepts, ideas and art) that exist outside the current property regime. They therefore seek to turn the intellectual property regime and its vision of creativity and the interests of the creative on its head.

Rather than privatising their creative works, these networks share them and hold them in common. To do so, they adopt an ingenious "viral" device, implemented through public licences, known as *copyleft*. This ensures that their creative works can all be shared, contested and reinterpreted among the creative as a community of friends. It also guarantees that future synergies based on these concepts and ideas are equally open to others. Whereas copyright operates through law to prevent the modification and reuse of concepts and ideas, copyleft ensures that these concepts and ideas remain openly available and resistant to being privatised. So the concepts and ideas of these

networks, like the symbols and signs of language, remain public and non-owned. For these groups consider it shameful that private entities are allowed to "own" creative works and prevent others from using and reinterpreting them. For them, creativity and the creative depend upon what is common. They depend upon their social life.

Conclusions

In our view, the attempts of these networks to reinstate a "commons" in a world of capitalist privatisation is a significant contemporary development. If nothing else, these networks create a vantage point from which we can view the profound increase in the commodification and privatisation of our common creative life — where shared concepts and ideas are privatised and expropriated from the common by profit-makers. Thanks to them we are less likely to allow the marketing and PR of the creative industries fool us into thinking they are the true friends of creativity. Or convince us that sharing our creative work with one another is criminal. If anything, property is the corruption and the crime, an act of theft from the common substrate of creativity. Copyleft groups have created critique and resistance to the intellectual property regime. More positively, these networks have given us new possibilities. They are not only reactive, but productive: they make available new forms of subjectivity and life; they remind us that we only ever attain the possible by time and again reaching for the impossible; they are social laboratories. Let us hope, for a possible future of creativity to come.

4. The Commons

— David M. Berry

> He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. (Thomas Jefferson, 1999: 580)

The commons, or *res communes*, has had an important social function in our society, it provides a shared space, a resource that is shared within a community, a network of ideas and concepts that are non-owned. The concept of the commons has had a long heritage. For example, the Romans distinguished between different categories of property, these were: (i) *res privatae*, which consisted of things capable of being possessed by an individual or family; (ii) *res publicæ*, which consisted of things built and set aside for public use by the state, such as public buildings and roads; and (iii) *res communes*, which consisted of natural things used by all, such as the air, water and wild animals.

The Information Society

When individuals contribute to a shared project that creates new ideas or even provides an important social function it becomes increasingly valuable. It is no surprise that the temptation to appropriate and resell the products of the commons can be overwhelming. The current neo-liberal trend toward the

privatisation of energy and communication services is another example of public goods being enclosed and transformed into private property. Market regimes and neo-liberalism survive off these privatisations; of physical goods, such as the transistor; of distribution networks, such as energy or water; or of services, such as the National Health Service.

The commons, which once were considered the basis of the concept of the public, are privatised, and the values of common ownership and the public good are destroyed in exchange for market exchange and consumer choice. The relation between the public and the common is replaced by the power of private property and the market.

Digital Revolution

The digital revolution has facilitated widespread cultural participation and interaction that previously was not possible. At the same time, it has allowed the creation of new technologies, potentially limiting and controlling these forms of cultural participation and interaction. The "expression" of ideas and concepts, such as books and music, can be encoded into digital information so that it can be transferred through communications, databases and web pages. The production and distribution of this information is a key source of wealth in the digital age and creates a new set of conflicts over capital and property rights that concern the right to distribute and gain access to information. With these restrictions on the access and use of information there is a corresponding restriction on the use of ideas and concepts.

What is distinctive about ideas? Unlike physical objects, concepts and ideas can be shared, copied and reused without diminishment. No matter how many people use and interpret a particular concept, nobody else's use of that concept is surrendered or reduced. But through the use of intellectual property law — in the form of patents, trademarks and particularly copyright — concepts and ideas can be transformed into commodities that are privately regulated and owned. An artificial scarcity of concepts and ideas can then be established. Much money is to be made when creative flows of knowledge and ideas become scarce products or commodities that can be traded in the market place. And, increasingly, intellectual property law is providing corporations with vast accumulations of wealth.

This legal exclusion is being supported by technological means. To do so, corporations and governments are currently developing and configuring ever more closed disciplinary technologies. These technical devices act as electronic fences, regulating access to those that have paid, those that are approved of and those that consume. Digital rights management software, for example, sequesters and locks creative works, preventing their copying, modification and reuse. Adobe e-Books, for example, can restrict to a fine level of granularity how you can use the text, the publisher can even mandate how many times you can print pages from the book, whether you can copy it, or if you can copy and paste sections into other texts. They can also set an expiry date for the book, so after a certain date the book will self-destruct and delete itself from the system.

Thus, public pathways for the free flow of concepts and ideas and the movement of creativity and the creative are being steadily eroded — the freedom to use and re-interpret creative work is being restricted through legally based but technologically enforced enclosures. Against this trend, a new global movement of networked groups that operate across a variety of creative media (e.g., music, art, design and software) is now emerging. These groups produce a gathering of concepts, ideas and art that exist outside the current property regime. The creative works of the Free/Libre and Open Source communities, for instance, can all be freely examined, challenged and modified. Here, knowledge and ideas are shared, contested and reinterpreted among the creative as a community of friends. The concepts and ideas of these groups, like the symbols and signs of language, are public and non-owned. Against the machinations of profit, these groups are in the process of constituting a real alternative.

Locking down Culture

Meanwhile, corporations are constructing the means to control ideas and concepts at a level of pay-per-view, whether watching, reading or listening. We all use and reuse ideas and concepts that are shared and non-owned without realising it. Changes are taking place due to the lobbying of the multinational media corporations and governments, particularly through the American use of TRIPs (Trade Related Intellectual Property agreements) and other international bodies such as the

World Trade Organisation (WTO) — changes which are sadly lacking in democratic debate and deliberation. These moves threaten our ability to speak, write and even think differently (for if we can never read, see or hear concepts and ideas we can never use them).

An example of this new trend is given when Fox News Corporation trademarked the phrase "Fair and Balanced." In August 2003, Fox sued the humorist Al Frankin and his publisher E. P Dutton/Penguin for alleging infringement on Fox's three-word trademark "Fair and Balanced." Frankin's book *Lies and the Lying Liars who Tell Them* was subtitled "A Fair and Balanced Look at the Right." In the US, a district judge refused to accede to Fox's claim and Fox dropped the lawsuit but has retained the trademark. Next time they may be more successful as they and other multinational corporations lobby to strengthen the intellectual property laws when they are unsuccessful in court — for example, the Digital Millennium Copyright Act (DMCA) and the currently debated Induce Act.

The creation of new knowledge requires that ideas and concepts may be freely exchanged. If ideas and concepts can be digitally locked and controlled, it will have a devastating effect on our ability to draw on ideas from the past. A non-owned public domain, or commons, of freely shared concepts and ideas, where each may draw, without diminishing the availability of ideas and concepts for others is crucial. But whereas the enclosure of land contributed to the rise of capitalism and the power of the bourgeoisie to challenge the feudal order, this chapter argues that the informational enclosure will conversely lead to a new feudal order. By drawing profit from the ownership of information the corporations will in effect be living from rents, a new rentier system based on the ownership of ideas.

This information-based system will allow the corporations — and they are predominantly corporations — who own the books and the newspapers, the music, the films, the patents and inventions to live off a monopoly rent from the rest of society. Taxing all members of society, maximising their profit and their income without any concomitant requirement to contribute creatively towards society. This movement threatens our ability as a society to reuse existing concepts and ideas and hence threatens social and cultural stagnation by closing our ability to be creative.

The corporations profit hugely from their libraries of art, films, music and writings, indeed, they need not worry

26

about future creativity, as they increasingly own vast quantities of the creativity of the past. They can then package and resell this creativity in endlessly reissued compilations, director's cuts and special editions. As it is consumed it provides an endless stream of profit to the owners — for if you like it you'll gladly pay again and again for the privilege of viewing. And should the founding ideals of intellectual property threaten profits — that copyright and patents should provide a limited monopoly on ownership — the corporations lobby to extend the length of copyright terms. Indeed, corporations argue for unlimited ownership and control of creative works and new crimes to protect from the new "dangers" of informational theft, of so-called "piracy" and of "hacking."

The Control Society?

Our ability to use concepts and ideas is being restricted and controlled by an all encompassing and enveloping digital field that increasingly surrounds us. Gilles Deleuze identified a control society, which moves beyond the disciplinary society that Michel Foucault observed. Rather than institutionally bound, such as in the school, the hospital or the prison, the control society monitors our every action. This form of digital surveillance is extremely well suited to observing and controlling our use of concepts and ideas, and will allow payment and punishment to be extracted in the use of any creative work. This new rentier world is being silently built around us, partly using existing legislation, such as copyrights and patents, but increasingly by the active construction of technologies of surveillance and control, digital rights management technologies (DRM), authentication and identity recognition systems.

To combat this threat, it is argued that a new concept of the "commons" will have to emerge and that new *technologies of the commons* will need to be developed. For this we will need new stories and narratives and new metaphors and common-meanings and this is therefore foremost a new political project for the 21st Century. It was 'Rousseau [who] said that the first person who wanted a piece of nature as his or her own exclusive possession and transformed it into private property was the person who invented evil. What is common, however, is good' (Hardt and Negri 2000).

5. On the "Creative Commons": a critique of the commons without commonalty

— David M. Berry and Giles Moss

On the face of it, the Creative Commons project appears to be a success. It has generated interest in the issue of intellectual property and the erosion of the "public domain", and it has contributed to re-thinking the role of the "commons" in the "information age". It has provided institutional, practical and legal support for individuals and groups wishing to experiment and communicate with culture more freely. A growing number of intellectual and artistic workers are now enrolling in the Creative Commons network and exercising the agency and freedom it has made available. Yet despite these efforts, questions remain about the Creative Commons project's aims and intentions and the vision of free culture that it offers. These questions become all the more significant as the Creative Commons develops into a more influential and voluble "representative" and public face for libre culture.

We recognise the constructive nature of the work done by the Creative Commons and, in particular, its chief protagonist, Lawrence Lessig. Together they have generated interest in important issues that we hold dear. But here we wish to stand back for a while and subject some of the ideas of the Creative Commons project to interrogation and critique. We don't do this because we think that we have a better understanding of the actions of and motivations of individuals and groups involved in libre culture. In fact, without a great deal of symbolic violence, we think it would be impossible to faithfully represent libre culture in all of its diversity. So rather than attempting to represent what libre culture is, an ill-fated and thankless task, we work on the basis of what it could become. This isn't a question of mimesis, of Archimedean points, of hermeneutics. It's a question of thinking about libre culture in a more experimental and political way.

We argue that the Creative Commons project on the whole fails to confront and look beyond the logic and power asymmetries of the present. It tends to conflate how the world is with what it could be, with what we might want it to be. It's too of this time—it is too timely. We find an organisation with an ideology and worldview that agrees too readily with that of the global "creative" and media industries. We find an organisation quick to accept the specious claims of neo-classical economics, with its myopic "incentive" models of creativity and an instrumental view of culture as a resource. Lawrence Lessig is always very keen to disassociate himself and the Creative Commons from the (diabolical) insinuation that he is (God forbid!) anti-market, anti-capitalist, or communist. Where we might benefit from critique and distance, the Creative Commons is too wary to advocate anything that might be negatively construed by the "creative" industry. Where we would benefit from making space available for the political, the Creative Common's ideological stance has the effect of narrowing and obscuring political contestation, imagination and possibility.

A commons without commonalty

Like others before him, Lawrence Lessig (2004) bemoans the loss of a realm of freely shared culture. He writes about the colonisation of the public domain brought about by extensions in intellectual property law and the closing down of the technical architecture of the internet. He rightly identifies the way in which global media corporations have lobbied to extend the terms of copyright law so that they can continue to profit from their ownership of creative works. He also identifies the way in which private interests are simultaneously encoding and enrolling digital technologies in order to support their control of artistic and intellectual creativity. Whereas others who problematise these trends turn to the political, the legal professor's penchant is to turn to the field of law and lawyers. What follows is a technical attempt to (re-)introduce a commons by instituting a farrago of new legal licences in the existing system of exploitative copyright restrictions. This is the constructive moment of the so-called "Creative" Commons.

We'll return to this shortly. But first, before getting ahead of ourselves, we should recognise that the action that the Creative Commons project takes is already anticipated in how they represent social reality and define the "problem" in hand.

The way in which we construct a problem is also to always render certain beliefs and actions (and not others) obligatory and justified. And so, if anywhere, this is where we must look first.

For us, Lessig's particular understanding of the world, and his desire to strike a balanced bargain between the public and private that follows from this, appear naïve and outmoded in the age of late capitalism. Listen to the political economists. Capital is continually rendering culture and communication private, subject to property rights and the horror of commercial exploitation and beautification. When immaterial labour is hegemonic, the relationship codified in intellectual property between the "public" and "private", between labour and capital, becomes a crucial locus of power and profit. And it is quite natural that private interests would want to protect and extend this profit base at all costs. Their existence depends on it. If libre culture or the Creative Commons threatens this profit base in any way, wars of manoeuvre and position will ensue, where corporations and the state will set out either to crush or co-opt.

The paramount claim of Lessig's prognosis about the fate of culture is that we will be unable to create new culture when the resources of that culture are owned and controlled by a limited number of private corporations and individuals. As far as it goes, this argument has appeal. But it also comes packaged with a miserable, cramped view of culture. Culture is here viewed as a resource or, in Martin Heidegger's terms, " standing reserve ". Culture is valued only in terms of its worth for building something new. The significance, enchantment and meaning provided by context are all irrelevant to a productivist ontology that sees old culture merely as a resource for the "original" and the "new". Lessig's recent move to the catchphrase "Remix Culture" seems to confirm this outlook. Where culture is thought of as merely standing reserve it can be owned and controlled, diminishing the opportunity for ethical questioning or resistance. The view of culture presented here is entirely consistent with the creative industry's continual transformation of the flow of culture and meaning into decontextualised information and property.

This understanding of culture frames the Creative Common's overall approach to introducing a commons in the information age. As a result, the Creative Commons network provides only a simulacrum of a commons. It is a commons without commonalty. Under the name of the commons, we actually have a privatised, individuated and dispersed collection of objects and resources that subsist in a technical-legal space of

confusing and differential legal restrictions, ownership rights and permissions. The Creative Commons network might enable sharing of culture goods and resources amongst possessive individuals and groups. But these goods are neither really shared in common, nor owned in common, nor accountable to the common itself. It is left to the whims of private individuals and groups to permit reuse. They pick and choose to draw on the commons and the freedoms and agency it confers when and where they like.

We might say, following Deleuze and Guattari (2004), that the Creative Commons licensing model acts as a " plan(e) of organisation ". It places a grid over culture, communication and creativity, dividing it and cutting it into discrete pieces, each of which have their own distinct licence, rights and permissions defined by the copyright holder who "owns' the work. Lessig's attempt to make it easier to understand which creative works can, or cannot, be used for modification (due to copyright) has spawned a monster with a thousand heads. The complexity of licences and combinations of licences in works has expanded exponentially.

This plane of organisation ensures that legal licences and lawyers remain key nodal and obligatory passage points within the Creative Commons network, and thereby constitute blockages in the flow of creativity. But what is happening is that the ethical practice of sharing communication and culture is being conflated with a legal regime that seeks bureaucratically to enforce the same result through comprehensively drafted and dense legalese. At least Richard Stallman and his ingenious GNU General Public License (GPL) is honest in claiming to be an ethical rather than purely legal force. The GNU GPL has tenacity not due to its legal form alone. The GPL is based on a network of ethical practices that continually (re-)produce its meaning and form. The commons is always more than a formal legal construct. The commons is based on commonalty.

Very simply put, the commons has historically been understood as something shared in common. In pre-capitalist times the commons were referred to as " *res communes* ". This included natural things that were used by all, such as air and water. This ancient concept of the commons can be traced through Roman law into the various European legal systems. Through migration and colonisation, it can also be found in the United States and other countries around the world. In the UK, there's still the concept of common lands, albeit a pale shadow of what went before. In the United States, the concept of public

trust doctrine is an application of the ancient idea of the commons. To a certain extent the commons, as *res communes*, lies outside the property system. It is separate from both private (*res privatae*) and state (*res publicae*) ownership. Through copyright the Creative Commons attempts to construct a commons within the realm of private ownership (*res privatae*). The result is not, dare we say it, a commons at all. The commons are formed through commonalty and common rights, resistant to any mechanisms of privatisation, whether those of the Creative Commons or not. Without commonalty, without the common substrate through which singularities act, live and relate, there could be no commons at all.

A commons with commonalty

The marketing and PR of the creative industries, their lobbying attempts and their lawyers, have not managed to persuade us that they are true friends of creativity. They don't convince us of their specious incentive claims nor of the idea that sharing knowledge, concepts and ideas is criminal. If anything, property is the corruption and the crime: an act of theft from the common substrate of creativity. But still global media corporations continue to work to transform the system — legally, technologically and culturally — to facilitate their ownership and control of creativity. This is a social-factory of immaterial labour where all of life — loving, thinking, feeling and sharing — is subject to the corruption of privatisation and property.

As we've already suggested, the commons is an ethical and not just a legal matter. We underscore the point. The commons rests on commonalty, on ethical practices that emerge rhizomatically through the actions, experiences and relations of decentralised individuals and groups, such as the free/libre and open-source movement. For this reason, libre culture is far more than just a protest movement. It is not only reactive; it is productive. It creates new forms of life through its practices. It creates new possibilities. Yet, in our view, there has to be a political dimension to libre culture as well. This expresses itself through political imagining, action and a broader struggle for true democracy. And, as such, it is important to recognise the damage that could be done to libre culture by those spokespeople who seek to depoliticise it. In the world in which we find ourselves, political awareness, resistance and struggle are essential in order to defend the idea and practice of a

creative field of concepts and ideas that are free from ownership — to stand up, that is, for the commons and commonalty. It is to the political struggle of libre culture and the commons that we finally turn.

Where is the politics of libre culture to be found? The answer: at numerous levels. Political struggle will no doubt be orientated towards the nation state (as Maureen O'Sullivan argued in " A law for free software" in issue 2 of *Free Software Magazine*). For the time being at least, nation states are obligatory passage points that retain a privileged position in upholding and enforcing law. But it cannot remain there alone. The commonalty of creativity shows little regard for national boundaries and, of course, neither does the global reach of the profiteers from the creativity and media industry. Creativity is at once too small and too large. Political action and the struggle for true democracy will have to also be aimed simultaneously at local and global levels. For the latter, we might envisage a treaty obligation through measures such as preventing the commodification of human DNA and life itself or a UN protectorate to defend the sanctity of ideas and concepts. We might picture something akin to Bruno Latour's " Parliament of Things ", a space where not just the human is represented, but all of life has a defender, all of life has a voice.

Law is a juridico-legal grid placed on social life. This grid is upheld and enforced by a network of states and other forces of governance and governmentality. Reliance on law and the state makes the legal licences of the Creative Commons (or other legal versions of the commons for that matter) vulnerable and precarious. We cannot be sure, as yet, how Creative Commons licences will stand up in legal practice. For they have not been properly tested. But there is one thing of which we can be relatively sure. In principle, we might all be equal in the eyes of law. In principle, the ladder of the law might not have a top or a bottom. But, in practice, economic power matters. We know that law and the state are not immune to economic persuasion, to lobbying, to favours and so forth. And, because of this, the commons remains subject to the threat and corruption of privatisation and commodification.

We do not want to suggest by this that all legal and public rights, including the protection of the commons by the state or global institutions such as the UN, are worthless. This would be a perversion of our position. What we would stress is that such rights originate with the people through political struggle, not with legislators or legal professors setting them

down on pieces of paper. And if these rights are to be maintained, if a commons is to be instantiated and protected, there is a need for political awareness, for political action, for democracy. Which is to say, any attempt to impair commonalty and common rights for concepts and ideas must meet resistance. We need political awareness and struggle, not lawyers exercising their legal vernacular and skills on complicated licences, court cases and precedents. We're sorry to say, however, that this does not appear to be a political imaginary (and political struggle) that the Creative Commons project shares or supports.

6. The Will to Code: Nietzsche and the Democratic Impulse

— David M. Berry and Lee Evans

> To refrain from injury, from violence, from exploitation, and put one's will on a par with that of others: this may result in a certain rough sense in good conduct among individuals when the necessary conditions are given (namely, the actual similarity of the individuals in amount of force and degree of worth, and their co-relation within one organisation). As soon, however, as one wished to take this principle more generally, and if possible even as the fundamental principle of society, it would immediately disclose what it really is – namely, a Will to the denial of life, a principle of dissolution and decay (Nietzsche 1998: §259).

Introduction: The Moral Claims of Free Software

Free Software has been described by theorists such as Benkler (2007) as 'commons-based peer-production'. It is hailed for the revolutionary potentials inherent in its oft-described decentred, non-hierarchical and egalitarian (dis) organisation (e.g. Moglen 1999; Hardt and Negri 2004). However in this chapter we intend to see whether reading Nietzsche offers an alternative insight into the workings of free software projects. Particularly one that starts from a different point to that of an egalitarian theory and points rather to explanation that may cohere around a coding aristocracy. Does an analysis that focuses on the will to power (or perhaps more accurately the will to code) provide any explanatory value in understanding the extremely complex interactions and processes involved in software development in copyleft groups? How might reading Nietszche help us to question the morality instantiated in such software and associated cultural projects? This short article is a preliminary sketch of how we feel a reading of the practices of the free

software movements could be usefully understood through Nietszche.

In *Beyond Good and Evil*, *On the Genealogy of Morals* and elsewhere, Nietzsche examines the origins of 'conventional' morality, claiming that prevailing ascriptions of the labels 'good' and 'evil' are the secularized legacy of Judeo-Christian 'resentiment'. Ideals of compassion and neighbourliness, originating in the 'slave' mentality of the oppressed and marginalised Jewry of antiquity have, through the rise of Christianity, come to exert a pernicious sway over European morality and politics. Reflecting upon the 19th century European milieu, he argued that the democratic-egalitarian impulse is not intrinsically 'good' at all, but rather the product of an extended historical process of contest between aristocracy and slaves, rulers and ruled.

But this genealogical analysis was not the endpoint of Nietzsche's investigation. His work can be understood as an extended commentary upon and dialogue with this democratic impulse in which its core premise - that of the possibility and desirability of the drawing of moral and political equivalences between human beings - is subjected to normative (r)evaluation. Possibility, because in the concept of 'will to power' he claimed that humans were fundamentally competitive rather than compassionate; desirable, because he forcefully claimed the implications for the health of the community of a moral complex which elevates facility to its central ethical core, was fundamentally deleterious.

The claim that the democratic egalitarian impulse is immoral makes for difficult reading, particularly in an age notable for its proselytizing of choice, freedom and liberty. But in the spirit of 'untimely meditation' - to think outside or against the times - it raises some pertinent questions about the form and consequences of morality instantiated in contemporary contestations over intellectual property regimes. The aristocratic moment in Nietzsche's philosophy, where the majority exist to facilitate the pursuit of Beauty, Truth and Legacy by a select group of ubermensch, is redolent of a hierarchical social form to which few would today subscribe. And yet, insofar as he sought to rethink the legitimating narratives of his day in such a way that the contestation of authority became problematic for the 'health' of the community, rather than its salvation, we argue that it provides an important corrective to uncritical, unreflexive assumptions that the morality inscribed in the free software moment is 'good'. Indeed, reading Nietzsche calls on us to

(re)consider how to understand and evaluate the moral claims of the free software movement and its contributors in toto. So, for example, insofar as this movement accentuates the democratic-egalitarian impulse, do its members not inadvertently contribute to the ongoing enervation of the res publica in which they are located? Or, conversely, might they be understood as a code aristocracy which, in undertaking a 'copyfight', instantiate a process of self-overcoming though which the *res publica* is revitalised? And what moral judgement might we ourselves pass on them as a result?

The Morality of Free Software - A Code Aristocracy?

Before passing moral judgement, then, a moral assessment of the free software projects and contributions to them is required. This assessment has two dimensions: first, does the Free Software/open-source movement's elite group of individuals, such as Richard Stallman, Eric Raymond, Linus Torvalds, Alan Cox, Bruce Perens, Tim O'Reilly, Brian Behlendorf, Eben Moglen et al, amount to a Nietzschean coding aristocracy; and second, does the will to power represented by Stallman et al signify the refraction of a novel moral complex through the social whole in which they are embedded, or are they merely (re)articulating more widely held and understood concepts of what counts as good and evil? What then is the morality instantiated in the free software movement by its contributors - the desire to 'level' or the desire to lead?

In the first case it is clear that there is indeed a case to be made for the existence of an upper tier of programmers, self-selected and their authority legitimated by the claims to 'hacker' status. These hackers are often extremely productive and active in their coding activities, sometimes even having the title 'benevolent dictator' bestowed upon them (Linus Torvalds being a notable example). They also feel free to proclaim the morals and ethics of the communities they nominally claim to represent and sometimes take extremely controversial positions and actions (e.g. the Torvalds bitkeeper debacle). Much research is underway in a number of disciplines to understand the free software and open-source movements but the empirical studies undertaken so far seem to point towards a large number of developers in these projects but with a much smaller core cadre of programmers who undertake the majority of the work. When it comes to discussing difficult issues, decisions and future

directions, those that have a 'reputational' weight can carry a particular position or decision (of course, notwithstanding the dangers of 'forking' and the need therefore to keep some semblance of consensus - or perhaps more pessimistically, hegemony). In the first case then, it is clear that there is indeed an argument to be made for the existence of an upper tier of programmers, self-selected and their authority legitimated by the claims to "hacker" status.

Additionally, nobody can ignore the proclamations of individuals like Richard Stallman and Eric Raymond (whose controversial and widely differing views on the ethics of these software communities we cannot go into here, see for example Berry 2004). But suffice to say that the two movements (i.e free software and open-source) are important 'nodal points' around which discussions are often polarised. Here we concentrate particularly on the arguments made by those who support the position of the Free Software movement, as we believe that they can and should be separated from the more individualistic and rational choice theory presented by the open-source community. Additionally, their explicitly moral and ethical claims allow us to examine their arguments within the framework we have discussed. We intend to return to the question of the open-source counter-claims in a later article.

Secondly, although a Kantian notion of a categorical imperative seems to underlie the philosophical foundations of the position advocated by Richard Stallman (i.e. what is ethical for the individual must be generalisable to the community of coders), the nature of the language which is utilised by the Free Software Foundation (FSF), and Stallman in particular, draws on the benefits and importance to society as an original reading of the republican values of the US constitution. Separating a 'free as in free speech' (i.e. libre) from a 'free as in free beer' (i.e. gratis) he argues forcefully against the dangers threatened through the ownership and control of knowledge. He advocates a voluntaristic project that can counter the damaging constriction of human knowledge through corporate or governmental control (i.e. the right to access code, tinker, use and reuse ideas and concepts). He is also remarkably active internationally, giving Zarathrusta-like warnings of the dangers from the coming intellectual dark ages in presentations to governments, corporations and 'civil society' organisations.

A lone voice in the wilderness for many years, Stallman has had the last laugh, as all warnings regarding the enclosure and restrictions placed on knowledge through intellectual

property law (e.g. patents and copyright) have come to pass. Yet, during this time, although to a large degree distanced from the wider community, he continued to (almost single-handedly) develop the most important tools necessary to build a philosophy and an operating system that remained outside of the private ownership of individuals (e.g. GNU). Indeed, it could be argued that the Free Software Foundation, which controls the development, is more akin to *res universitatis* than *res privatae* (i.e. it remains outside of private property as normally understood due to both its non-profit status and the ingenious General Public License). However, in a cruel twist of fate it was left to a young Finnish student, Linus Torvalds, to write the essential core kernel, to name it 'Linux', and thus complete the system. Perhaps more surprisingly, Torvalds also demonstrated a political naivety and lack of appreciation of the underlying ethical and political project that made his work possible in the first place. It could even be argued that Torvalds apolitical technocratic mentality has aided Stallman's critics and the open-source movement's project of de-politicisation of Free Software rather than confirming Stallman's prescient forecasts. Nonetheless, Stallman's project of the GNU/Linux system has paid off in a global debate which has truly unforeseen consequences (witness for example the spectacle of a music industry finding itself for the first time on the wrong side of the argument against 'the system', appearing less a radical/progressive force in tune with youth culture and more as corporate suits allied with the conservative hierarchy fighting file-sharing and peer2peer networks). The consequences of this project gradually revealing themselves: from technical questions over software to the (always implicit but now increasingly evident) concerns with morality...sharing or profit; our 'right' to information against the private ownership of knowledge.

Without Regard For Persons? Or, The res publica vs human beings

In turning to Nietzsche we tread a familiar path in contemporary political thought. Such is the scope of his works that his texts have provided a rich seam for thinkers during the past four decades or so. In fact, there has been no time since his death when he has not been a feature of the political terrain. And yet for all this attention to Nietzsche, the normative core of his political diagnoses is all too often elided, particularly where he

has been mobilised to refine various schema - democracy, feminism and socialism - to which he was implacably opposed. To acknowledge the legitimacy of the method is one thing - his work is a resource to be played with. But we argue that to invoke Nietzsche it is necessary to recognise and engage with his emphatically anti-democratic injunctions. We are not advocating Nietzsche's binary social distinction: our intention is not to recalibrate the aristocratic moment. But we are intrigued by the possibility of invoking his untimely challenge to the conviction that human beings can be the subject of moral evaluation *qua* human beings. That we might, in Nietzsche words, be able to undertake some form of 'revaluation of values'.

In this vein we suggest that it is not origins on which moral evaluation should be based, but on consequences. In a era in which social democracy's pact with the market demands that citizen's rights be balanced by 'responsibilities', and political philosophy continues its Sisyphian struggle to resolve the unresolvable - to proclaim the ethos of community while retaining that lonely figure of the modern sovereign individual as its real ethical core - we wonder whether this revaluation might include re-consideration of the yardstick by which we judge moral agents. And to extend this line of thought, it might be possible to envisage a moral schema in which evaluation of a citizen be accomplished in terms of the service they perform to the community. In other words, that people be ajudged in terms of actions, and that actions be judged in terms not of their service to human beings qua human beings but to the social whole.

In the Free Software world that hackers inhabit, participants believe themselves to live in a meritocracy, where only the best programmers rise through the ranks to decide the rules of the game for others. But even here there are stark differences in how the contributions hackers make to a community might be judged: witness for example the different ethical standpoints of the free software versus the open-source movement (e.g. community based ethics against a form of selfish utility maximisation). It is also instructive to see how technological tools are developed by the hackers to discuss technical issues but also inevitably politics, economics and social issues (see for example slashdot.com for a good example). Yet key to a Nietzschean assessment of the morality of the Free Software movement is the establishment of a meta-morality that enables us to view its claims not oppositionally but

40

historically: to provide a basis for moving beyond evaluation of which is the 'most good' to think anew about what is 'good' in the first place.

If the defeat of old values creates nihilism, the task confronting us is precisely not to place faith in our agency, to think that we can 'build' our way out of the moral impasse (as might be implied by the moral topology of contemporary resistance/struggle). The subversion of the old values by their own call to truth does not mean that we now exist in a moral vacuum into which we can add our own progressive morality (borne of countering authority, in this case in the form of IPRs). No, reading Nietzsche compels us to pause and consider anew the moral topography in which we are located and to which we all contribute. The task is not to innovate values through our agency, but to think how we may contribute to a revaluation of values through that agency - how we may help recalibrate the hierarchy of values. Not to make new morality but to refashion the existing one. Within Free Software and Free Culture there is an assumption of a certain group of norms and values, a commitment to an uncontested but implicit set of rights and obligations. Here and elsewhere, Nietzsche, then, calls upon us to question whether, in this age of utterly unreflective indulgence of the democratic impulse, we might not serve ourselves, and our community better by pausing to think what we are doing.

7. The Parliament Of Things

— David M. Berry

With apologies to Bertolt Brecht

Prologue

A hi-tech eco-friendly office on common land in the east of Europe. The office community is drawn together to discuss the recent problems and issues besetting the community. They have all worked during the day and the weather is cool and bright as it is nearing the end of the year. They sit around waiting for the start of the meeting.

A Knowledge Worker: Must we discuss these issues all the time. Can we not just vote for someone to represent us and stay at home?

A Girl on a Laptop: Do you not remember what it was like in the times of Kings and Parliaments? When we had no voice and were directed and controlled like animals in a social-factory? They took from us, spoke for us, but never deemed to speak to us.

An Old Man: I remember when we used to have all that we produced with our hands and minds taken from us. We must not let that happen again. Now we can hunt in the morning, code in the afternoon and criticise after dinner!

Community Chairman: Come now. We must discuss the common things and ensure that each is fairly treated and we keep our society free.

A Knowledge Worker: I do not care for talk. I only care for bread and beer. *[Laughing]*

An Old Man: I am old, and do not care for anything except warm nights, good stories and no exploitation. *[Cheers from the others]*

A Girl on a Laptop: Do you not remember the story of the Parliament of Things? You should ask Bruno the actor, network expert and theorist to tell us again before he leaves.

[Bruno is seen walking towards the group].

 Community Chairman: Bruno, would you tell us all again the story of the Parliament of Things?

Bruno: I am so sorry I have not the time; I have to leave for Paris tonight on the express, I have an urgent meeting with my darling, Aramis.

An Old Woman: Oh please. We would be so grateful.

A Knowledge Worker: Yes I would like to hear this story too. I have heard of, but never heard it told, and you are renowned as one of the greatest orators. *[Aside: Unlike our Chairman!]*

A Woman: *[Walking from the Station]* The trains are cancelled tonight as there has been large snowfalls across the land and the connectors are complaining that nobody loves them enough. Maybe that means that Stallman Claus is coming this year. *[with a wink]*

A Girl on a Laptop: You see! It is a sign that gifts should be exchanged – you should tell us the story and we will give you a fine meal in return!

Bruno: Smiling Ok. Ok. If your Chairman agrees to give me bedding tonight and a hearty breakfast tomorrow. *[Chairman nods smiling]*. And if you will all be silent I will begin, the great story of the Parliament of Things...

Chorus: *This is a tale from Long ago.*
When all were slaves and life was slow.
Whenever should a thought be told,
The King would add it to his gold.

Narrator: The King after many wars, now weary and despondent, is bankrupt of ideas and concepts. He is forced to call together a body, the Estates Generalé, that has not been called for nigh three hundred years. The first and second estate are hierarchical and managerial in thought, and only able to appropriate the ideas and concepts of others. The third estate, the commons, rich in creativity and life, is also summoned to the capital at his Majesty's pleasure to talk and fill the coffers of the king, to create through lively debate and respectfully to handover their concepts and ideas. The messengers are sent throughout the land to proclaim the royal command and on the day the 1st May they meet in historic walls, a Parliament of Things.

Chorus: *The Commons called upon to give,*
The King his sovereign due,
Must debate and talk and respect the call
Create fresh concepts and ideas anew.

Narrator: Within the walls of the building there are assembled from across the country a great mass of actors, from Men and Women to Code and Computers, Mice, Keyboards, Operating Systems, Applications, Editors, Compilers, Languages, Debuggers, Crackers and Hackers. They are all talking, noisily debating amongst themselves, without any voice being particularly distinct. The Speakers Chair, loudly and clearly calls for order, and the din dies down.

The Speakers Chair: Order! Order! Before you all, in debate and talk can even start this session, you must from among your members select a Speaker to this chair. The Speaker must uphold the chair in respect for all that wish to speak, and seek balance in each debate.

The Mice: *[together]* We vote that Donald Knuth is made the Speaker. His many programs, algorithms and procedures he has given to us all in the Art of Programming that we may share and learn from each other. He is neutral! He is fair!

Emacs: I wish to second that call.

The Speakers Chair: We must vote now on the Speaker-elect all the Ayes?

Everyone: Aye!

The Speakers Chair: All the Noes?

Bill Gates: Noe!

Windows XP: Noe!

The Speakers Chair: The Ayes have it. I therefore resign as we now have a Speaker.

Knuth makes his way somberly to the front of the Commons and takes his place on the Speakers Chair.

The Speaker: *[commandingly]* I wish that all can speak and I will do my best to keep any interjections simple, firm and fair, and objective. Let's try and keep the politics, values and the like out of this. Stick to technical reason. For amongst us all we are called here to create a wise solution and give to the King the ideas and concepts that he desires so desperately in order that his rule can continue. Let us begin.

Chorus: *And so the technical remains aloof,*
                    Somehow distant from the truth,
                    Yet others seek through difficulties to call
                    It's only the political that can change it all.

Act II

Eric Raymond: I wish that we should pass a law that all should own firearms to protect themselves from the King. The right to bear arms should be our main concern today!

Everyone: But concepts and ideas will not be protected by guns!

A Gun: Violence against violence will solve nothing. It will bring more tears and bloodshed, surely we wish for an enlightened age and not the barbarity of 'might is right'?

Everyone: Hear! Hear!

Lessig: We should be civilized and use law to protect concepts and ideas

Everyone: *[laughing]* But, of course, the state makes and upholds the law

Hardt and Negri: We need political action….

Slashdot: *[interrupting]* The solutions are technical not political…

The Speaker: Order! Order!

Silence holds for a little while as people gather their thoughts

RIAA: *[speaking like a mantra]* We have the solution: ©, ©, ©. Everything should be ©. And to prison for all thieves who steal this property.

Everyone: All thieves?

RIAA: Who cares if a girl is 12 years old. All should be equal in the eyes of the law. Law should be fair and discriminatory and protect those with property. Those without property should be kept away from us that own, and monitored to stop their thieving ways.

Linus Torvalds: Really, I do not think it matters what is owned or what is not owned. We all write programs because it is fun, and that's all. Tell them Linux, I did it just for fun, didn't I?.

The Linux Kernel: I wish to say that no matter what dear Linus tells us, I would not be if not for the GPL and the sharing of ideas. To that we should all attend. The King should not be the only one who controls and owns ideas! To say that fun alone is a protection for the realm of concepts and ideas is clearly false!

Hackers: Yes! We do like fun, but there more to life than that, for coding is art, puzzle, enigma and more. We write for many reasons true, but some seek to appropriate and profit for the few. We could name some *[quietly]* Gates, for it is clear that when it suits him he shares but when it profits things he hoards. *[louder]* We must therefore defend our life and ideas from those that wish to own.

IBM: Well, we have always believed in sharing concepts and ideas. We are the true friends of Free Software and Open Source (except for the hippy elements, of course) *[Laughing in a PR way]. [Aside to suit:]* But quick make haste get in our patent applications before too late we must own it all before we debate!)

Steve Jobs: *[Resplendent in a black turtle neck]*. Of course I invented Open Source. I invented Free Software. *[Turning on the reality distortion field]*. I should be King!

The mice: *[Momentarily]* Of course… *[Shaking heads to clear the fog]*.. Someone gag him quick before our mission clear is undermined. You make nice things tis true, but your idea of open source is something to borrow when it suits you, but file patents as much as the other selfish multinationals do.

Everyone: The voices of Multinationals is booming and loud, this is surely dangerous for fair debate, be clear you all who profit from all, that the public sphere should be free from your siren call. For freedom and democracy will be our call!

Ted Nelson: Who wants freedom? Follow me to the land of Xanadu *[exit setting off on his own]*.

Gates: I declare that hobbyists are the worst! Their little sharing worlds bring no profit, nor power, nor empires that we capitalists build. For freedom and democracy and capitalism go hand in hand surely!

John Locke: All that is the result of your own labour should be your property, *[Aside to Gates]* Is this true of Windows, Mr Gates?

[Gates looks sheepish]

A mouse: *[to Gates]* You think that equality and inequality need each other? You are talking as one with power, with honeyed words; you buy the critics and silence the others. Your game is not for us, for we seek a fairer world, where all can share and use and build without the need of pain and necessity to make a minority rich.

Lessig: Careful! For the economy to grow and capitalists to gain, I call that we should share our ideas so that we do not drift into a communist society.

Bill Gates: But you are a communist!

The Speaker: Order! Order! The member shall withdraw that blasphemous and diabolical comment or he shall be ejected from the Parliament.

Gates: I am sorry; I meant to say that you are a Commonist. As you yourself have exclaimed! *[Aside:]* Not that they are different Ha!

Lessig: I believe in the Free Market! Viva the Capitalists! The Market Economy forever!

Creative Commons Licences: Hear! Hear!

The GPL: The Market is not everything. It can only lead to rich and poor, to unhappiness for the many and riches for the few. Read the philosophers! Heed their words!

Locke: Enough always must be left over for the Common.

Marx: To each according to his need, to each according to his ability.

Deleuze: Avoid State Science and Royal Philosophy, join the Nomads, and be free of the bureaucrats and the state!

Jesus: Love your neighbour!

Chorus:
The Law will keep us safe,
And Guns can make us great,
The Rich are here to stay
No thoughts for the poor, dispossessed or those
who stray.

Act III

.Net: Listen, all must come through me, who want to reach those concepts and ideas that you see.

TCP/IP: That's shameful, for all can; and always have talked through us before you began. We are freely shared and open, do not lose us, cause a fuss! You will need to fight and struggle for your rights, as the common standards are attacked, on your guard against those whom you are stacked!

The Sockets: And us too! We only live to connect and pass data through and through. But hear our call, hear our call, some people here would steal it all!

The Speaker: I call the computer languages to speak, as they need the common from which to draw, and software patents threatens it all.

```
C ++: {for {I: 0: 10}  {can(); speak(); for
{all:0: 10}  {the_languages(as, we, are,
all, object-oriented, now)}};
```

Bjarne Stroustrup: I speak as Dr Frankenstein for my creation although a monster; large but noble, unwieldy and strong and difficult to understand. But still I love it. As should you, for he speaks for all languages, none other have his strength, power

and resolve! One language to rule them all, one language to find them, one language to bring them all, and in the darkness bind them!

Html: <p>But I have a voice too! <b>And I wish to say <i>Freedom for the rest</i> and a multiplicity of tongues is good to stop a monopoly best</p>

Java: (speaking very slowly from a sand box) {main(And, me!, I, Agree, Sharing, Is, The, Key, Although (shame), Sun, Owns, Me)};

Lisp: [I, Agree, Although, I, Confess, That, RMS, has, dedicated, his, love, to, me, although, he, seems, to, spend, too, much, time, with, that, bloody, GCC]

Basic: REM It IsNot true that ownership of concepts and ideas is good for us, the languages!

Visual Basic: *[speaking over Basic]* ' May I interject, my friend, to point out that we own 'IsNot'. And you will be billed for the use of our patent.

Gates and Microsoft: Well said, my friend! Respect our rights to own and use, or we will turn on all and sue!

XML: <Statement>I have to say, that with dismay, I watch the slow advance, of those who seek to own and charge, leaving others with no chance! <Louder>I know of this, from my own case, of so-called interoperability, being slowly embraced and extended into a proprietary standard readily. </Louder><Main argument>So I say that we should not give up, our common to them now, communication, language, thoughts and talk should be for the good of all.</Main Argument>

[Pascal, Forth, and the other languages concur that without sharing and non-owned concepts there can be no programming at all].

A Woman: Why is it when we speak of common, that our voice is lost and silent. Why do you all in technical talk think this only concerns the technical? A warning from those who once were, thought as property of the husband, we fought and fought to gain some freedom don't let your own be lost!

A Mouse: We are all equal here, to talk and share and so it should be in society. That all men and women and things (and mice) for each according to ability and each according to his need.

Stallman: *[Raising himself up from his seat]* It is time we realize that it is not just about profit, not just about the technical. We have to start to recognise the political is just as important. For surely now we see that when the owners want to have a certain law passed, procedure democracy or fine words are put aside - we only have to look at the EU and the shocking way the software patent directive was passed!

Microsoft: You're a Communist!

Stallman: You are correct, to flatter me so, if by that you mean I fight for the rights of all, and unlike you who seeks for himself the wealth of all the commonwealth, I wish for all to share. We've seen your tricks, in courts and so, extend and embrace, smile with a knife behind your back, insult, sue and silence critics, patent, copyright and monopoly through and through. I might remind you that your boss, Bill Gates, once agreed too but then he was not so rich, and strange how peoples views change depending on how much money they have.

Windows XP: But we must own certain things. If I am not owned who will work on me, love me and cherish me?

Lessig: You do not need to be owned, we could draw up a contract to license 'love' to you! Constitutions, tort and law, Lessig's your man to sort it all! Leave it to me, and you'll see, that legal questions are easy as one-two-three.

[Exit Lessig goes off to look for old legal precedents on various doomed constitutional remedies...]

A Mouse: He is nothing if not optimistic! But does he not see even now that law will not solve it all!

Speaker: Order! And now we have a special speech left, by one who knows slavery the best.

[A doorman brings out an golden cage within which sits a small ill mouse...]

OncoMouse: I cannot speak as I am owned, but within this hallowed Parliament it gives me rare right to say and so I will tell of my way! A life forever enslaved to profit. Pity me. And yourselves through, because if you're not quick your genes will be owned too.

Gates: But surely you must reward innovation and invention! I am sure you're owner treats you well, looks after you, acts like a friend!

A Patent Lawyer: Nods approvingly. There is no better friend than a lawyer, *[raising voice]* and we will fight to your very last penny to defend your right! For with patent lawyers fees you can have monopoly protection till hell doth freeze!

[A black cloud of smoke momentarily appears and a red horned creature emerges...]

The Devil: Even I am embarrassed in here today, I cannot agree with anything you say! And as you do my image so much pain, I'm taking you back from whence you came! *[Aside to the lawyer:]* and if you say another word about 'strong IP protection' it'll be red hot pokers for you tonight!

[Exit the devil vanishes taking the patent lawyer with him...]

OncoMouse: My owner, a company, breeds me to die, as it has changed my patented genes, XY. A human cancer in me will kill, whilst it grows rich and fatter still. Like cancer this company drains its host, and human society in the end a ghost? *[deadpan]* Is that the kind of friendship you mean Mr Gates?

Windows 3.1: *[Clears throat, coughs roughly]* I am dying and frail, with my colleagues Windows NT and Windows 95 and we have also been bred for obsolescence. *[Coughing]* No friends have we, though once we were loved too. Beware Windows XP

and Longhorn - for the scythe the Mr Gates carries also awaits you two!

Everyone: *[Sharp intake of breath in amazement and shock]*

Kant: But to own life itself? Surely this cannot be ethical or morally correct? Where would this end, life itself must be beyond the tawdry world of huckstering and profit.

Linux: Ownership is not friendship, and love is not dependent on property rights. I am loved by many, cherished by many and have friends all over the world. But none owns me, none can control me and all have freedom.

Gates: *[Quietly to Microsoft and the other Multinationals]* Come quick! This is a den of anarchists and thieves, we must warn the King before it is too late, he must arrest and throw them into the tower.

[They leave quietly out of the back door but are spotted by a Mouse who warns the Speaker.]

The Speaker: Order! Order! I have been warned that there are some amongst us, who traitors to the common, seek to join the King in disgraceful dictatorship and autocracy. Quick lock the doors, here lies sovereignty in the common will of all.

Everyone: Hear! Hear!

[The doors are locked.]

Linux: We should see now, that no matter how much work, or technical we think the world is, we cannot ever escape the call to the political, regardless of the words of the powerful.

Slashdot: Technical-Social-Political! Political-Technical-Social! Yes, yes! We see, that both are three, that each is needed, one two three. Before we rested on our laurels, and left to others to defend the morals. But now we heard, the call to fight and in the public we believe right is might!

A Mouse: And now, we should recognise that we must fight, the King and aristocracies to guard our freedom and light. Let us form a commonwealth, a commonality of all things, equality,

fraternity and liberty! Where nobody but all in common can own the things.

Everyone: Hear! Hear!

The GPL: And so I call that we should write a Declaration of the Rights of All. That ideas and concepts shall never be owned and free from control and free for all.

The Speaker: Throw open the Oncomouse's cage, as she is released and freedom given so are we!

[A doorman throws open the Oncomouse cage, to the cheers of the Parliament. The Oncomouse looks around in amazement.]

Everyone: Hear! Hear!

[Suddenly there was a great knocking at the Door]

The Speaker: Order! Order! Who disturbs this great Parliament? By what right do you dare challenge its rights to debate!

Guards: *[From outside door]* We come from the King! The Sovereignty lies with him, and he dissolves your tatty Parliament! Tell us who is in there!

The Speaker: Order! Order! I have neither eyes to see nor mouth to speak, except as Parliament's will decides. And it has spoken that you have no rights here. Be gone and tell your so-called King, that he will answer to Parliament's pleasure!

Guards: *[A bit unsure of themselves]* We have come to take the traitors all, to the prison where you'll lie, at the Kings pleasure for eternity, and then when he decides you'll fry!

The Speaker: Then take the King, as you'll soon see his sovereignty lies with We. And now our task is clear to call, this Parliament declares itself for the good of all.

Everyone: To arms! To arms! You'll never take us all, through lines-of-flight and common cause you'll never win by force!

Chorus: *So all have made the change,*

They see the unfairness that remains,
Through talk and politics we live
Till the end of Sovereigns and all they bring...

Narrator: The Parliament was resolved and it went into recess. To the King was sent the message that there would be no control of concepts and ideas and that they would not meet the Kings request. To which apoplectic he sent the Army to kill and capture the Parliament of Things, but the people rose up to defend the Parliament and the King was dragged from his palace and sentenced to death (off with his head) and they all lived happily ever after.

The End

8. What is code? A conversation with Deleuze, Guattari and code

— David M. Berry and Jo Pawlik

The two of us wrote this article together. Since each of us was several, there was already quite a crowd. We have made use of everything that came within range, what was closest as well as farthest away. We have been aided, inspired multiplied.[1]

JP: Code is described as many things: it is a cultural logic, a machinic operation or a process that is unfolding. It is becoming today's hegemonic metaphor; inspiring quasi-semiotic investigations within cultural and artistic practice (e.g. *The Matrix*). No-one leaves before it has set its mark on them...

DB: Yes, it has become a narrative, a genre, a structural feature of contemporary society, an architecture for our technologically controlled societies (e.g. Lessig) and a tool of technocracy and of capitalism and law (Ellul/Winner/Feenberg). It is both metaphor and reality, it serves as a translation between different discourses and spheres, DNA code, computer code, code as law, cultural code, aristocratic code, encrypted code (Latour).

JP: Like the code to nourish you? Have to feed it something too.

DB: Perhaps. I agree that code appears to be a defining discourse of our postmodernity. It offers both explanation and saviour, for example, the state as machine, that runs a faulty form of code that can be rewritten and re-executed. The constitution as a microcode, law as code. Humanity as objects at the mercy of an inhuman code.

JP: True and it gathers together a disturbing discourse of the elect. Code as intellectual heights, an aristocratic elect who can free information and have a wisdom to transform society without the politics, without nations and without politicians. Code becomes the lived and the desired. Both a black box and a glass box. Hard and unyielding and simultaneously soft and malleable.

DB: Code seems to follow information into a displaced subjectivity, perhaps a new and startling subject of history that is merely a reflection of the biases, norms and values of the coding elite. More concerning, perhaps, code as walls and doors of the prisons and workhouses of the 21st Century. Condemned to make the *amende honorable* before the church of capital.

JP: So, we ask what is code? Not expecting to find answers, but rather to raise questions. To survey and map realms that are yet to come (AO:5). The key for us lies in code's connectivity, it is a semiotic-chain, rhizomatic (rather like a non-hierarchical network of nodes) and hence our map must allow for it to be interconnected from anything to anything. In this investigation, which we know might sometimes be hard to follow, our method imitates that outlined by Deleuze and Guattari in *Anti-Oedipus* (2004). It will analyse by decentering it onto other dimensions, and other registers (AO:8). We hope that you will view this article as a 'little machine' (AO: 4), itself something to be read slowly, or fast, so that you can take from it whatever comes your way. It does not ask the question of where code stops and the society starts, rather it forms a tracing of the code-society or the society-code.

DB: Dystopian and utopian, both can cling like Pincher Martin to code. Code has its own apocalyptic fictions; crashes and bugs, Y2K and corruption. It is a fiction that is becoming a literary fiction (Kermode). We wish to stop it becoming a myth, by questioning code and asking it uncomfortable questions. But by our questioning we do not wish to be considered experts or legislators, rather we want to ask again who are the 'Gods' of the information age (Heidegger). By drawing code out and stretching it out, we hope to make code less mysterious, less an 'unconcealment that is concealed' (Heidegger).

JP: Perhaps to ask code and coders to think again about the way in which they see the world, to move from objects to things, and

practice code as poetry (*poeisis*). Rather than code as ordering the world, fixing and overcoding. Code as a craft, 'bringing-forth' through a showing or revealing that is not about turning the world into resources to be assembled, and reassembled forever.

DB: And let us not forget the debt that code owes to war and government. It has a bloody history, formed from the special projects of the cold war, a technological race, that got mixed up with the counter-culture but still fights battles on our behalf. He laid aside his sabre. And with a smile he took my hand.

Code as concept

DB: A stab in the dark. To start neither at the beginning or the end, but in the middle: code is pure concept instantiated into the languages of machines. Coding is the art of forming, inventing and fabricating structures based on these languages. Structures that constrain use as well as free. The coder is the friend of the code, the potentiality of the code, not merely forming, inventing and fabricating code but also desiring. The electric hymn book that Happolati invented. With electric letters that shine in the dark?

JP: And what of those non-coders who use code, or rather are used by code instead of forming it? Code can enable but it can also repress. Deleuze believes that we live in a society of control and that code is part 'of the numerical language of control' requiring of us passwords, user names, and the completion of form fields to either grant or deny access to information, goods and services (1990).

DB: Yes, code becomes the unavoidable boundary around which no detour exists in order to participate fully in modern life. It is ubiquitous. Formatted by code, harmonised with the language of machines, our life history, tastes, preferences and personal details become profiles, mailing lists, data and ultimately markets. Societies of control regulate their population by ensuring their knowing and unknowing participation in the marketplace through enforced compatibility with code. Watch over this code! Let me see some code!

JP: But there is no simple code. Code is production and as such is a machine. Every piece of code has components and is defined by them. It is a multiplicity although not every multiplicity is code. No code is a single component because even the first piece of code draws on others. Neither is there code possessing all components as this would be chaos. Every piece of code has a regular contour defined by the sum of its components. The code is whole because it totalises the components, but it remains a fragmentary whole.

DB: Code aborescent. Plato's building agile, object-oriented and postmodern codes under the spreading chestnut tree.

JP: But computers are not the only machines that use code. Deleuze believes that everything is a machine, or to be more precise every machine is a machine of a machine. By this he means that every machine is connected to another by a flow, whether this flow is air, information, water, desire etc. which it interrupts, uses, converts and then connects with another machine.

DB: I agree that human beings are nothing more than an assemblage of several machines linked to other machines, though century's worth of history have us duped into thinking otherwise.

JP: But, does every machine have a code built into it which determines the nature of its relations with other machines and their outputs? How else would we know whether to swallow air, suffocate on food or drink sound waves? There is even a social machine, whose task it is to code the flows that circulate within it. To apportion wealth, to organise production and to record the particular constellation of linked up flows that define its mode of being.

DB: Up to this point, code is verging towards the deterministic or the programmatic, dependent upon some form of *Ur-coder* who might be synonymous with God, with the Despot, with Nature, depending on to whom you attribute the first and last words.

JP: But Deleuze delimits a way of scrambling the codes, of flouting the key, which enables a different kind of de/en-coding to take place and frees us from a pre-determined input-output,

a=b matrix. Enter Desire. Enter Creativity. Enter the Schizo. Enter capitalism? You show them you have something that is really profitable, and then there will be no limits to the recognition of your ability.

Code as Schizo

DB: Deleuze and Guattari warned us that the Schizo ethic was not a revolutionary one, but a way of surviving under capitalism by producing fresh desires within the structural limits of capitalism. Where will the revolution come from?

JP: It will be a decoded flow, a 'deterritorialised flow that runs too far and cuts too sharply'. D and G hold that art and science have a revolutionary potential. Code, like art and science, causes increasingly decoded and deterritorialised flows to circulate in the socius. To become more complicated, more saturated. A few steps away a policeman is observing me; he stands in the middle of the street and doesn't pay attention to anything else.

DB: But, code is bifurcated between a conceptual and a functional schema, an 'all encompassing wisdom [=code]'. Concepts and functions appear as two types of multiplicities or varieties whose natures are different. Using the Deluezean concept of Demon which indicates, in philosophy as well as science, not something that exceeds our possibilities but a common kind of these necessary intercessors as respective 'subjects' of enunciation: the philosophical friend, the rival, the idiot, the overman are no less demons that Maxwell's demon or than Einstein's or Heisenberg's observers. (WIP: 129). Our eyes meet as I lift my head; maybe he had been standing there for quite a while just watching me.

JP: Do you know what time it is?

HE: Time? Simple Time?... Great time, mad time, quite bedeviled time, in which the fun waxes fast and furious, with heaven-high leaping and springing and again, of course, a bit miserable, very miserable indeed, I not only admit that, I even emphasise it, with pride, for it is sitting and fit, such is artist-way and artist-nature.

Code and sense perception

DB: In code the role of the partial coder is to perceive and to experience, although these perceptions and affections might not be those of the coder, in the currently accepted sense, but belong to the code. Does code interpolate the coder, or only the user? Ideal partial observers are the perceptions or sensory affections of code itself manifested in functions and 'functives', the code crystallised affect.

JP: Maybe the function in code determines a state of affairs, thing or body that actualises the virtual on a plane of reference and in a system of co-ordinates, a dimensional classification; the concept in code expresses an event that gives consistency to the virtual on a plane of immanence and in an ordered form.

DB: Well, in each case the respective fields of coding find themselves marked out by very different entities but that nonetheless exhibit a certain analogy in their task: a problem. Is this a world-directed perspective'code as an action facing the world?

JP: Does that not consisting in failing to answer a question? In adapting, in co-adapting, with a higher taste as problematic faculty, are corresponding elements in the process being determined? Do we not replicate the chains of equivalence, allowing the code, to code, so to speak, how we might understand it?

DB: Coders are writers, and every writer is a sellout. But an honest joy/Does itself destroy/For a harlot coy.

JP: We might ask ourselves the following question: is the software coder a scientist? A philosopher? Or an artist? Or a schizophrenic?

AL: For me the only code is that which places an explosive device in its package, fabricating a counterfeit currency. Which in part the knowing children sang to me.

Dr. K: This man is mad. There has been for a long time no doubt of it, and it is most regrettable that in our circle the profession of alienist is not represented. I, as a numismatist, feel myself entirely incompetent in this situation.

DB: For Deleuze, the ascription of these titles exceeds determining whether the tools of the trade in question are microscopes and test- tubes, cafes and cigarettes, or easels and oil-paints. Rather they identify the kind of thinking that each group practices. Latour claimed that if you gave him a laboratory he could move the world. Maybe prosopopoeia is part of the answer, he should ask code what it thinks.

JP: But not just the kind of thinking, but the kind of problems which this thought presupposes, and the nature of the solutions that it can provide. To ask under which category the coder clicks her mouse is to question whether she is creating concepts as opposed to dealing in functives like a scientist, or generating percepts and affects like an artist.

DB: If you're actually going to love technology, you have to give up sentimental slop, novels sprinkled with rose water. All these stories of efficient, profitable, optimal, functional technologies.

JP: Who said I wanted to love technology?

DB: The philosopher loves the concept. The artist, the affect. Do the coders love the code?

JP: If we say that code is a concept, summoning into being or releasing free software as an event, the coder is cast first and foremost as a philosopher. The coder, as philosopher, could neither love nor covet her code prior to its arrival. It must take her by surprise. For the philosopher, or more specifically the conceptual personae through whom concepts come to pass and are given voice, (Deleuze does not strictly believe in the creativity of an individual ego), Deleuze reserves a privileged role in the modern world which is so woefully lacking in creation and in resistance to the present. He writes: 'The creation of concepts in itself calls for a future form, for a new earth and people that do not yet exist' (1994, 108). Deleuze would hope this future form would be recognizable by virtue of its dislocation from the present.

DB: If the software coder really is a philosopher, what kind of a future is free software summoning and who are the new people who might later exist?

JP: Thanks to computers, we now know that there are only differences of degree between matter and texts. In fact, ever since a literary happy few started talking about 'textual machines' in connection with novels, it has been perfectly natural for machines to become texts written by novelists who are as brilliant as they are anonymous (Latour). But then is there no longer any difference between humans and nonhumans.

DB: No, but there is no difference between the spirit of machines and their matter, either; they are souls through and through (Latour).

JP: But don't the stories tell us that machines are purported to be pure, separated from the messy world of the real? Their internal world floating in a platonic sphere, eternal and perfect. Is the basis of their functioning deep within the casing numbers ticking over numbers, overflowing logic registers and memory addresses?

DB: I agree. Logic is often considered the base of code. Logic is reductionist not accidentally but essentially and necessarily; it wants to turn concepts into functions. In becoming propositional, the conceptual idea of code loses all the characteristics it possessed as a concept: its endoconsistency and its exoconsistency. This is because of a regime of independence that has replaced that of inseparability, the code has enframed the concept.

Code as science

DB: Do you think a real hatred inspires logic's rivalry with, or its will to supplant, the concept? Deleuze thought 'it kills the concept twice over'.

JP: The concept is reborn not because it is a scientific function and not because it is a logical proposition: it does not belong to a discursive system and it does not have a reference. The concept shows itself and does nothing but show itself. Concepts are really monsters that are reborn from their fragments.

DB: But how does this relate to the code, and more specifically to free software and free culture? Can we say that this is that summoning? Can the code save us?

JP: Free software knows only relations of movement and rest, of speed and slowness, between unformed, or relatively unformed, elements, molecules or particles borne away by fluxes. It knows nothing of subjects but rather singularities called events or haecceities. Free software is a machine but a machine that has no beginning and no end. It is always in the middle, between things. Free software is where things pick up speed, a transversal movement, that undermines its banks and accelerates in the middle. But that is not to say that capital does not attempt to recode it, reterritorialising its flows within the circuits of capital.

DB: A project or a person is here only definable by movements and rests, speeds and slowness (longitude) and by affects, intensities (latitude). There are no more forms, but cinematic relations between unformed elements; there are no more subjects but dynamic individuations without subjects, which constitute collective assemblages. Nothing develops, but things arrive late or in advance, and enter into some assemblage according to their compositions of speed. Nothing becomes subjective but haecceities take shape according to the compositions of non-subjective powers and effects. Maps of speeds and intensities (e.g. Sourceforge).

JP: We have all already encountered this business of speeds and slowness: their common quality is to grow from the middle, to be always in-between; they have a common imperceptible, like the vast slowness of massive Japanese wrestlers, and all of a sudden, a decisive gesture so swift that we didn't see it.

DB: Good code, Bad code. Deleuze asks: 'For what do private property, wealth, commodities, and classes signify'? and answers: 'The breakdown of codes' (AO, 218). Capitalism is a generalized decoding of flows. It has decoded the worker in favour of abstract labour, it has decoded the family, as a means of consumption, in favour of interchangeable, faceless consumers and has decoded wealth in favour of abstract, speculative, merchant capital. In the face of this, it is difficult to know if we have too much code or too little and what the criteria might be by which we could make qualitative

distinctions between one type of code and another, such as code as concept and code as commodity.

JP: We could suggest that the schizophrenic code (i.e. the schizophrenic coding as a radical politics of desire) could seek to de-normalise and de-individualise through a multiplicity of new, radical collective arrangements against power. Perhaps a radical hermeneutics of code, code as locality and place, a dwelling.

DB: Not all code is a dwelling. Bank systems, facial recognition packages, military defense equipment and governmental monitoring software is code but not a dwelling. Even so, this code is in the domain of dwelling. That domain extends over this code and yet is not limited to the dwelling place. The bank clerk is at home on the bank network but does not have shelter there; the working woman is at home on the code but does not have a dwelling place there; the chief engineer is at home in the programming environment but does not dwell there. This code enframes her. She inhabits them and yet does not dwell in them.

Code as art

JP: You are right to distinguish between code as 'challenging-forth' (Heidegger) and code that is a 'bringing-forth'. The code that is reterritorialised is code that is proprietary and instrumental, has itself become a form of 'standing-reserve'.

DB: So how are we to know when code is a 'bringing-forth'? How will we know if it is a tool for conviviality. How will we distinguish between the paranoiac and the schizophrenic?

JP: We know, that the friend or lover of code, as claimant does not lack rivals. If each citizen lays claim to something then we need to judge the validity of claims. The coder lays claim to the code, and the corporation, and the lawyer, who all say, 'I am the friend of code'. First it was the computer scientists who exclaimed 'This is our concern, we are the scientists!'. Then it was the turn of the lawyers, the journalists and the state chanting 'Code must be domesticated and nationalised!' Finally the most shameful moment came when companies seized control of the code themselves 'We are the friends of code, we put it in our computers, and we sell it to anyone'. The only code

is functional and the only concepts are products to be sold. But even now we see the lawyers agreeing with the corporations, we must control the code, we must regulate the code, the code must be paranoiac.

DB: This is perhaps the vision offered by William Gibson's *Neuromancer*, a dystopian realization of the unchecked power of multinational corporations which, despite the efforts of outlaw subcultures, monopolize code. Through their creation of AI entities code becomes autonomous, it exceeds human control. If indeed it makes sense to retain the term human, which Gibson pejoratively substitutes with 'meat'. The new human-machinic interfaces engendered by software and technological development demand the jettisoning of received categories of existence as they invent uncanny new ones.

JP: This is the possibility of code. The code as a war machine. Nomadic thought. The code as outsider art, the gay science, code as desiring-production, making connections, to ever new connections.

DB: Code can be formed into networks of singularities into machines of struggle. As Capital de-territorializes code there is the potential through machines to re-territorialize. Through transformative constitutive action and network sociality in other words the multitude-code can be deterritorializing, it is multiplicity and becoming, it is an event. Code is becoming nomadic.

JP: This nomadic code upsets and exceeds the criteria of representational transparency. According to Jean Baudrillard, the omnipresence of code in the West—DNA, binary, digital—enables the production of copies for which there are no originals. Unsecured and cut adrift from the 'reality' which representation has for centuries prided itself on mirroring, we are now in the age of simulation. The depiction of code presents several difficulties for writers, who, in seeking to negotiate the new technological landscape, must somehow bend the representational medium of language and the linear process of reading to accommodate the proliferating ontological and spatio-temporal relations that code affords.

DB: This tension is as palpable in Gibson's efforts to render cyberspace in prose (he first coined the term in Neuromancer)

as it is on the book cover, where the flat 2D picture struggles to convey the multi-dimensional possibilities of the matrix. The aesthetics of simulation, the poetics of cyberspace and of hyperreality are, we might say, still under construction.

JP: Perhaps code precludes artistic production as we know it. Until the artist creates code and dispenses with representational media altogether, is it possible that her work will contribute only impoverished, obsolete versions of the age of simulation?

DB: Artists have responded to 'code' as both form and content. As form, we might also think of code as 'genre', the parodying of which has become a staple in the postmodern canon. Films such as 'The Scream' series, 'The Simpsons', or 'Austin Powers'; flaunt and then subvert the generic codes upon which the production and interpretation of meaning depends. More drastically, Paul Auster sets his 'New York Trilogy' in an epistemological dystopia in which the world does not yield to rational comprehension, as the genre of detective fiction traditionally demands. If clues are totally indistinguishable from (co)incidental detail, how can the detective guarantee a resolution, how can order be restored? As Auster emphasizes, generic codes and aesthetic form underwrite ideological assumptions and can be described as the products of specific social relations.

JP: And what of code as content? Like the 'Matrix'. Here is a film which has latched onto the concept of code and also its discussion in contemporary philosophy, almost smugly displaying its dexterity in handling both.

DB: Or 'I ♥ Huckabees' with its unfolding of a kind of existential code that underlies human reality. Are our interpretations shifting to an almost instrumental understanding of code as a form of weak structuralism? Philosophy as mere code, to be written, edited and improved, turned into myth so that our societies can run smoothly.

JP: The hacker stands starkly here. If code can be hacked, then perhaps we should drop a monkey-wrench in the machine, or sugar in the petrol tank of code? Can the philosopher be a model for the hacker or the hacker for the philosopher? Or perhaps the hacker, with the concentrations on the smooth, efficient hacks, might not be the best model. Perhaps the cracker is a better

model for the philosophy of the future. Submerged, unpredictable and radically decentred. Outlaw and outlawed.

DB: Perhaps. But then perhaps we must also be careful of the fictions that we both read and write. And keep the radical potentialities of code and philosophy free.

Wet with fever and fatigue we can now look toward the shore and say goodbye to where the windows shone so brightly.

Notes

[1] We were, in fact, at least four, and we think you can guess who the others were.

9. The Politics of the Libre Commons

— David M. Berry and Giles Moss

Forward

Interest and support for all things 'libre,' 'free,' 'remixed' or 'open-source' continues to grow and deepen. Contestation over the direction and goals of libre culture has followed in the wake. Some people may not welcome this development, believing that things are best off left as they are. They fear that internal critique and contestation is a perilous force that might just fragment libre culture into so many lonely (if not war-like) factions. Be this as it may, we argue that contestation and the politicisation of libre culture is a positive development, a healthy by-product of a growing and maturing movement. Along with risks, we suggest, come possibilities.

We will propose here a way to consolidate the power and realise the promise of libre culture through the creation of a radical democratic project (Laclau and Mouffe, 2001). Such a project is premised on the *political* as much as anything else, where the political is understood in its specificity, as a field of agonistic contestation and circuitous re-articulation. Radical democracy offers a positive vision for libre culture, and a constructive response to the question of how libre culture can deepen and extend itself. It is about a multiplicity of singular networks of struggle operating on the terrain of civil society who may seek strategic alliances and articulate as an active political subject under a 'common' radical democratic (counter-hegemonic) project. This stretches libre culture out in myriad directions, to form multiple points of passage with other singularities that are now struggling against various power asymmetries and injustices.

In this chapter, then, we want to introduce libre culture to radical democracy[1]. We hope that a meeting between the two will lead to a mutually beneficial engagement. This hope and vision goes under the name of the *libre commons* to differentiate it from other groups and proposals (e.g. Creative

Commons, Free Culture). Libre culture is presently being reduced to economic, moral, technological or legal logics, all of which (albeit in different ways) claim to circumvent the political and move us along effortlessly in straight, non-political lines (Berry, 2004). In contrast, *libre commons* makes room for plurality, dissensus and curvature — the very basis of the political.

In our view, thinking about libre culture with radical democracy is long overdue. True, Micheal Hardt and Antonio Negri have recently penned: 'Our approach to understanding the democracy of the multitude . . . is an open-source society, that is, a society whose source code is revealed so that we can all work collaboratively to solve its bugs and create new, better social programmes' (Hardt and Negri, 2004). We concur, needless to say, with the sentiment. Libre culture's democratic effects could be far-reaching. But we question the now prevalent idea that democracy is an essential part of libre culture and something that will automatically flow from it. Libre culture can be understood in myriad ways and move in various directions. Not all of these directions are particularly democratic. Insofar as libre culture eschews the political, we argue, it is not likely to be very democratic in its effects at all. In the light of this, it is unclear to us what Hardt and Negri actually mean when they invoke the term "open-source." For one thing, their delphic usage ignores a number of significant internal differences in libre culture between, say, Free Software, Open Source and the Creative Commons. And it is for this reason that we here wish to defend an alternative radical democratic position. This, in short, is the idea of the libre commons.

We will differentiate between different parts of libre culture, beginning by discussing some pre-dominant discourses that now shape the movement: Creative Commons/Open-source movement (Section One) Free Software movement (and by proxy the Free Culture groups) (Section Two). We will then advocate our own position (Section Three), and outline what we call the 'the libre commons license' (Section Four).

Section One: The Creative Commons

By all accounts, the Creative Commons project has been a great success. It has generated interest in the issue of intellectual property and the erosion of the 'public domain,' and it has

contributed to re-thinking the role of the 'commons' in the 'information age' (Lessig, 2005). It has provided institutional, practical and legal support for individuals and groups wishing to experiment and communicate with culture more freely, and a growing number of intellectual and artistic workers are now enrolling in the Creative Commons network and exercising the agency and freedom it has made available.

Like others before him, Lawrence Lessig bemoans the loss of a realm of freely shared culture. He writes about the colonisation of the public domain brought about by extensions in intellectual property law and the closing down of the technical architecture of the Internet. He rightly identifies the way in which global media corporations have lobbied to extend the terms of copyright law so that they can continue to profit from their ownership of creative works. He also identifies the way in which private interests are simultaneously encoding and enrolling digital technologies in order to support their control of artistic and intellectual creativity. But whereas others who problematise these trends turn to the political, the legal professor's penchant is to turn to the field of law and lawyers. In the creation of the Creative Commons there is a technical attempt to (re-)introduce a commons by instituting a farrago of new legal licences in the existing system of exploitative copyright restrictions. This is the constructive moment of the so-called 'Creative' Commons.

For us, Lessig's particular understanding of the world, and his desire to strike a balanced bargain between the public and private that follows from this, appear naïve and outmoded in the age of late capitalism. We follow the political economists instead, and trace the associations they draw. Capital is continually rendering culture and communication private, subject to property rights and the horror of commercial exploitation and beautification. When immaterial labour is hegemonic, the relationship codified in intellectual property between the 'public' and 'private,' between labour and capital, becomes a crucial locus of power and profit. And it is quite natural that private interests would want to protect and extend this profit base at all costs. Their existence depends on it. If libre culture or the Creative Commons threatens this profit base in any way, wars of manoeuvre and position will ensue, where corporations and the state will set out either to crush or co-opt.

It has been argued that having no constitution-based limit, or clear set of values to guide the organisation, Creative Commons is able to expand and extend the definition of 'free

culture' beyond any reasonable criteria. This leads to an unchecked bureaucratic rationality that seeks to maximise its licensing schemes to all parts of creative endeavour, form partnerships with corporations without regard to their stance (e.g., Microsoft's recent US $25,000 donation to CC) and to happily manufacture new licences that increasingly look anachronistic to the free culture project (e.g. non-commercial clauses, sampling licenses and the balkanisation of the tricontinental countries in a 'developing nation' license).

The paramount claim of Lessig's prognosis about the fate of culture is that we will be unable to create new culture when the resources of that culture are owned and controlled by a limited number of private corporations and individuals. As far as it goes, this argument has appeal. But it also comes packaged with a miserable, cramped view of culture. Culture is here viewed as a resource or, in Heidegger's terms, 'standing reserve.' Culture is valued only in terms of its worth for building something new. Lessig's recent move to the catchphrase 'Remix Culture' seems to confirm this outlook. Where culture is only standing reserve it can be owned and controlled and ethical questions over ownership can be sidelined by claims to leaving things to the 'invisible hand of the market.' The view of culture presented here is entirely consistent with the creative industry's continual transformation of the flow of culture, communication and meaning into decontextualised information and property.

As a result, the Creative Commons network provides only a simulacrum of a commons. It is a *commons without commonalty*. Under the name of the commons, we actually have a privatised, individuated and dispersed collection of objects and resources that subsist in a technical-legal space of confusing and differential legal restrictions, ownership rights and permissions. The Creative Commons network might enable sharing of culture goods and resources amongst possessive individuals and groups. But these goods are neither really shared in common, nor owned in common, nor accountable to the common itself. It is left to the whims of private individuals and groups to permit reuse. They pick and choose to draw on the commons and the freedoms and agency it confers when and where they like.

We might say, following Gilles Deleuze, that the Creative Commons licensing model acts as a 'plan(e) of organization.' It places a grid over culture, communication and creativity, cutting it into discrete pieces, each of which have

their own distinct licence, rights and permissions defined by the copyright holder who 'owns' the work. The complexity of licences and combinations of licences in works has therefore expanded exponentially. This plane of organisation ensure that legal licences and lawyers remain key nodal and obligatory passage points within the Creative Commons network, and thereby constitute blockages in the flow of creativity. But what is happening is that the ethical practice of sharing communication and culture is now being conflated with a legal regime that seeks bureaucratically to enforce the same result through comprehensively drafted and dense legalese.

Through copyright the Creative Commons attempts to construct a commons within the realm of private ownership. The result is not, dare we say it, a commons at all. The commons are formed through commonalty and common rights, resistant to any mechanisms of privatisation, whether those of the Creative Commons or not. Without commonalty, without the common substrate through which singularities act, live and relate, there could be no commons at all.

Section Two: The Free Commons

At least Richard Stallman and his ingenious GNU General Public License (GPL) is honest in claiming to be an ethical rather than purely legal force. The GNU GPL has tenacity not due to its legal form alone. The GPL is based on a network of ethical practices that continually (re-)produce its meaning and form. The commons is always more than a formal legal construct; the commons is based on commonalty.

Most of us share, despite our other differences, a hope that the project of libre culture will deepen and extend. But the salient question is how, by which machinery, and in which direction. In our view, the creative commons has widened itself out in such a way that it now bears little resemblance to the underlying arguments that should be made for libre culture. By opening itself up to a broad membership, especially by courting private industry and property, it is following an economic market logic that compromises libre culture and encourages multinational corporations to take centre stage. It has taken the same path as 'open-source.' (Eric Raymond, of course, distinguished the term 'open source' from that of 'free software' because the latter term was unappealing to private industry.)

This results in inevitable dilemmas for libre culture in terms of co-option and compromise.

By what other means can libre culture deepen and extend itself? Well, we were interested to read the intervention by Hill (2005). Thankfully, this chapter moved away from the narrow economic logic of the creative commons and open source. Hill has another agenda, but one that is no less familiar to those versed in debates over libre culture. For him, the creative commons had lost touch with a moral set of principles that allowed us to distinguish between (what he termed) 'right' and 'wrong.' Some of Hill's criticisms of the Creative Commons tally with our previous remarks. But we are nonetheless skeptical of his proposed alternative. What he does, in effect, is displace the problem with the creative commons to a different level. Rather than turn to law or economics, he turns to the order of morality. By an over-hasty fetishisation of technology, and the naïve acceptance of human rights in a metaphysical sense, there is a lack of grounding in real concrete political action. His arguments are again anti-political. They attempt to close down the space for contestation, too, but this time in the name of an ultimate and invariable 'good' or 'right.'

This indicates a more general problem with many of the arguments of the Free Software Movement: they are overwhelmingly made within a *moral* register. Claims to authority are made by reference to a priori human rights divorced from the political realm. Decisions are made between "right" and "wrong" (note the quite deliberate *scare* quotes) on the basis of a supposedly shared morality. There is then no ground for further discussion, as the terms of the decision have already been set *a priori*. This has dangerous consequences. It closes down possibilities; it prevents alternative articulations. They are all variously labeled dangerous, evil or wrong. Counter-arguments can be neatly ignored and an ostensible moral consensus within the free culture 'community' maintained. We have assertions made to a 'right to...,' not political claims to struggle to bring into effect these rights and liberties. The discourse of rights, used in such a way, does not encourage political thinking. Instead, it tends to close down debate to a simplistic friend/enemy binary.

Section Three: The Libre Commons

The alternative we want to suggest to broadening and extending libre culture is the radical democratic project of the libre commons. We believe that a political approach should be sought that channels dissent within the movement of libre culture towards a vibrant political space of agonistic debate, rather than an antagonistic friend/enemy relation. Our position is that no movement can remain legitimate without a political component; that is, without realising the importance of the struggle of groups asserting and contesting their agonistic positions through a political process to reach a decision. This is not a decision to be taken by consensus. Moral consensus merely invalidates the political as it does not allow for opinions to fall outside of its boundaries (Mouffe, 2005). When they do, and they will do, they are illegitimate or ignored as 'foe.' We argue that the very rights that libre culture movements are calling for should be substantiated through political democratic means and agonistic debate.

This offers a different way for libre culture to broaden itself out and deepen. But this approach is no less productive and constructive than any other. Indeed, we believe it to be more so. It is about a multiplicity of singular networks of struggle operating on the terrain of civil society. These networks can seek alliance and articulate as an active political subject under a 'common' and counter-hegemonic radical democratic project. The common that they articulate under is an 'empty place of power' and is therefore truly democratic. It is something to be articulated and re-articulated, made and re-made, by political means. It is not reduced to (possessive individualist) economic or (consensus-based) moral assumptions. It is vision where libre culture connects and finds points of passage with other singularities (machines of struggle) who are coming up against various other power asymmetries.

Strategic alliances can here be drawn through political means against the unremitting exploitation of the 'common' pool of immaterial labour. Which is to say, it is about time that libre culture meaningfully engaged with various other struggles against the commodification of knowledge, as they are expressed, for example, in terms of the pirating of native knowledge, environmentalism, GM foods, welfare rights, drug patenting, and worker's rights and struggle more generally. This will require an articulation of the dangers and threats from commodification from knowledge expressed in terms that can

be valued and understood by a broader constituency. As libre culture becomes more inclusive, acquiring new members, allies and connections, it grows more political. It clarifies, with ever-greater sophistication, the various causes of the complaint, and what is needed to remedy it. It is no longer good enough to limit the demands to a technical concern for computer programming or the freedom to make music. Rather, these issues flow out across a number of different planes. There is a need to build alliances across these different struggles. This may well involve the uncomfortable truth that a cozy moral consensus is not reached. But political alliances can be drawn and partial closures fixed under the common, as a counter-hegemonic project (Laclau and Mouffe, 2001).

Fragmentation and contestation, rather than being seen as a weakness, is a positive political moment. Through agonistic debate there is the possibility for the development of a multi-perspectival approach to instantiating a new form of commons for the twenty-first century. Debate is never closed absolutely, for there is never a full reconciliation. There is only a temporary hegemonic closure which can continue to be countered or rearticulated. One condition of this is through the development of 'the common' as the empty signifier and place of power around which numerous diverse groups can democratically mobilise. The common is to be articulated through the creation of alliances between individuals and groups (i.e., singular machines of struggle) formed through political dialogue and action.

Libre Commons 'Licences'

Up to this point we have been oddly silent on law. Somehow or other we have got a fair way through a chapter on libre culture without really mentioning law directly. Throughout this chapter, we have argued along with radical democracy for a turn away from the anti-political language of economics, technology and morality. This means that legal rights understood as *a priori* human rights would fall foul, too, since they presuppose the (all too Western and imperialistic) idea of a universal moral consensus. We reject the ideas of a universal human nature, of a universal canon of rationality, as well as possibilities of a universal condition of truth. But rejecting the notion of human rights as given or universal does not mean that do not value

rights *per se*. Quite the contrary. They can be extremely useful strategic devices in the political field.

We would also support other measures that pertain to legal rights. "Why not have a new legislative agenda for a 'global commons'/Let's also prevent the world-wide drift to unitary (i.e., U.S.) intellectual property rights." Like you, we want all this and more from the law. But even so, we do not forget that it is only through political struggle that rights are constructed, invested with meaning and given any force. Yes, being political can be arduous and frustrating; politics often moves circuitously, rather than in a straight line. Be this as it may, rights are constructed not given, they are the result of political struggle, not assertions of moral orders. There is no way to bypass politics. There is no such thing as a priori human rights, just legal promises that we must continually ensure our fulfilled for ourselves and for our friends also. We need, in sum, to always re-articulate rights as democratic and political rights, rather than viewing them as given, universal or reducing them to an individualist framework.

These are the grounds on which we have introduced the Libre Commons licences into the ether, including the *res communes* and the *res divini juris* licences. Let's be clear: these "licences" are politic-democratic devices. We do not claim that they have legal authority. Indeed, our non-legal usage of the term licence has upset some lawyers and the like. They have lectured to us that our use of the term "licence" is 'wrong,' 'incorrect' and 'contradictory.' It is not surprising that those, who retain power and status by claiming to speak 'correctly' and with 'rectitude' on other's behalf, would fear polysemy and flat-out deny our capacity to think or speak otherwise. It is not surprising that those who move in anti-political worlds of straight lines would want to deny our political capacity to contest and multiply meanings.

We want, in contrast, to here be a little more *licentious* with the word licence than the lawyers allow. For those wonks and purists of etymology, with an *Oxford English Dictionary* at the ready, let us say that for the purposes of the libre commons we are drawing on other connotations of the term. We don't take licence to mean legal permission. Closer to our meaning of 'licence' would be 'to license' as in 'poetic license,' as in a poetics of knowledge and politics. The meanings proliferate further: 'liberty of action,' 'abuse of freedom,' 'licentiousness,' 'disregard of proprietary,' 'irregularity,' 'deviation from the

norm' and so on. In any case, let us turn to consider the *poetic license* of the libre commons more directly.

Libre Commons Res Communes Licence

The commons is that which is shared in common with others and the *Libre Commons Res Communes Licence* seeks to underline that definition. A commons can be a resource, such as land or water, that members of a "community" own and share. The commons has traditionally been limited to a local community right and to a physical resource such as a forest. But it has also been used to refer to the space of intellectual thought -an 'ideas commons,' an 'innovation commons,' an 'intellectual commons,' a 'digital commons,' 'immaterial commons' and inevitably an 'e-commons,' 'the public domain' or 'Intellectual Space.' The *Libre Commons Res Communes Licence* commits work that is inscribed with it to a shared common that all can draw from and reuse.

We are, to be clear, using the concept of the commons in an inclusive and positive sense. The commons is shared in common between us (i.e., positive in being 'owned' by us all) and inclusive in that we are all included in being able to use the commons (i.e., inclusive in as much as it includes the human race as a whole). This differs from negative conceptions of 'community' relating to the commons, where the commons is an unowned space, ripe for appropriation and privatisation by anyone (i.e., the justification used by corporations for the appropriation of common land).

Libre Commons Res Divini Juris Licence

In this case, the *Res Divini Juris* commons is one that lies beyond a notion of human 'ownership.' Instead, due to its sacredness, there should be no attempt to commodify or privatise. We can think here of the sanctity of human life, the human genome or the great knowledge and literature passed onto us from previous thinkers. Of course, we are aware that *Res Divini Juris* might insinuate a theological justification for this position, however although inspired from Roman Law definitions of theological artifacts, we would like to link the concept to a radical democratic definition of positive community rights. That is, that at root is a humanist notion of a

shared human capacity for love, such that although we might exploit what we own, we will defend what we love. Through a constant politicisation, we would hope that this 'licence' would never become 'fixed,' instead it is always open to political contestation and debate. Indeed that is the very terms of its definition and through constitutive action it remains a strictly political space.

Res Communes Licence

The *Res Communes* license is designed to reject a state–centred legal construct of a commons (or commons without commonalty) in order to concentrate on creating a common which is shared between us in collective practices (a commons with commonalty). The 'Commune' or the 'Commonalty' originally meant 'the people of the whole realm' or 'all the King's subjects' as opposed to the King, the Nobles or the 'Commons' in Parliament. We here refer to the commonalty to refer to the global multitude, the people of the whole world.

1. This work is outside of all legal jurisdictions and takes its force and action from the constituent radical democratic practices of the global multitude against the logic of capital.

2. All work that is so inscribed should bear the text '(L) <year> Libre Commons Res Communes License.'

3. As a user of this license the work is available to be shared and used as part of a common creative substrate that is shared between us.

Res Divini Juris Licence

The *Res Divini Juris* license is intended to raise awareness of the condition of possibility for sacred spaces, and equally highlights the importance of contestation and debate where matters of public importance (i.e. the common things) are discussed as a political project. What is endangered under advanced capitalism is a source of resistance. Treating everything as resources makes possible endless disaggregation, redistribution, and re–aggregation for its own sake. This can be seen as a period of de–industrialisation and growth in the communicational and semiotic as generators of surplus value.

1.   By using this license you are agreeing to allow your work to be shared as a step on the path of revealing. Within the realm of the gods, the work will contribute to a shared new world of collective practices and networks of singularities operating within a non–instrumental and communal life.
2.   All work that is so inscribed should bear the text '(L) <year> Libre Commons Res Divini Juris License.'
3.   This license operates under a permanent state of exception. It is a result of radical democratic practices beyond the state. Users of the license are committed to political action and social struggle.

Section Four: Coda

As we've already suggested, the commons is an ethical and not just a legal matter. We underscore the point. The commons rests on commonalty, on ethical practices that emerge rhizomatically through the actions, experiences and relations of decentralised individuals and groups, such as the free/libre and open-source movement. For this reason, libre culture is far more than just a protest movement. It is not only reactive; it is productive. It creates new forms of life through its practices. It creates new possibilities. Yet, in our view, there has to be a political dimension to libre culture as well. This expresses itself through political imagining, action and a broader struggle for true democracy. And, as such, it is important to recognise the damage that could be done to libre culture by those spokespeople who seek to depoliticise it. In the world in which we find ourselves, political awareness, resistance and struggle

are essential in order to defend the idea and practice of a creative field of concepts and ideas that are free from ownership — to stand up, that is, for the commons and commonalty. It is to the political struggle of libre culture and the commons that we finally turn.

We began by saying that we hoped a meeting between libre culture and radical democracy would lead to a mutually beneficial engagement. The struggle for the libre commons can, as we have argued throughout, form the basis for a 'common' radical democratic project. But to achieve this, radical democracy needs to engage with libre culture as much as the other way around. So what does thinking about radical democracy along with libre culture mean? Well, this is another topic, another intervention, for another time. A lot could be said, and needs to be said, but let us conclude with one thing that libre culture might say to radical democracy.

As we have argued above, radical democracy underlines the centrality and specificity of the political: that is, agonistic debate and contestation. Relentlessly, radical democracy keeps saying to libre culture: "Don't forget the political by reducing everything to straight lines/the only way to protect our rights and liberties is by acting politically." But then libre culture might say, "Fair enough, I accept that I have to act politically and that democratic rights are important/But where does all this political contestation that you talk of take place?/Many of the old 'public places' have been privatised, have fallen into disrepair or were just plain miserable/You're just not being practical!/How are we to construct public-political spaces adequate to our time, or much better, how are we to construct untimely spaces, adequate for a possible time to come?"

With radical democracy, we stress the need for plural passage points, for multiplying the forms and modes of democratic agency and subjectivity available in the present. We favor heterogeneity — multiple assemblages of humans and non-humans. We question, to be sure, the liberal idea of a single, homogenous public. This is for the same reason that we have questioned an overly singular and concrete sense of libre culture, and the idea that it can move in straight lines. Meanwhile, however, thinking about radical democracy along with libre culture, gives us reason to look at this through a different optic. This is an optic whose focus has been sharpened through the struggle against the intellectual property regime. Postmodern capitalism, whose chief expressions are the market and the commodification of immaterial labour through

intellectual property, brings an endless spinning off and proliferation of the seductively 'new' or 'novel' (Lazzarato, 1996). On the surface there seems to be the continuous reproduction and valorisation of multiple passage points and sites of power. But then as soon as they are produced these passage points are devalued with the next upgrade, the next conceit, the next chance for profit, by in-built obsolescence and patents that are in the danger running out.

Hannah Arendt, in *The Human Condition*, was clear on the importance of the objectivity or thing-character of the world and particularly public space. Along with Arendt, we might say not only does libre culture provide the possibility for widespread experimentation with public socio-technical space, it also ensures that public spaces can (if we want them to) have a relative durability and stability. Common ownership is the basis from which socio-technical space can be protected, and the stability and durability necessary to democratic engagement and agency be ensured (Arendt, 1998). Libre culture, to put it bluntly, puts these decisions in public and democratic hands.

Libre Commons licences carry the hope that they can be both a way of rethinking the commons, beyond narrow conceptions of public and private ownership, and also contribute to a stability of creativity, a place where things may be placed outside of the 'system of needs,' with its rampant exploitation and reduction of all to profit. That this space can become re-thought as a space of the 'common-wealth,' that is, that all may have access to use the 'common things' and productively contribute to the common good. This, of course, is but one more expression of libre culture's long overdue political calling.

Where is the politics of libre culture to be found? The answer: at numerous levels. Political struggle will no doubt be orientated towards the nation state (for example, as O'Sullivan [2005] argues). For the time being at least, nation states are obligatory passage points that retain a privileged position in upholding and enforcing law. But it cannot remain there alone. The commonalty of creativity shows little regard for national boundaries and, of course, neither does the global reach of the profiteers from the creativity and media industry. Creativity is at once too small and too large. Political action and the struggle for true democracy will have to also be aimed simultaneously at local and global levels. For the latter, we might envisage a treaty obligation through measures such as preventing the commodification of human DNA and life itself. Or a UN protectorate to defend the sanctity of ideas and concepts. We

might picture something akin to Bruno Latour's 'Parliament of Things,' a space where not just the human is represented, but all of life has a defender, all of life has a voice (Latour, 1993).

Law is a juridico-legal grid placed on social life. This grid is upheld and enforced by a network of states and other forces of governance and governmentality. Reliance on law and the state makes the legal licences of the Creative Commons (or other legal versions of the commons for that matter) vulnerable and precarious. We cannot be sure, as yet, how Creative Commons licences will stand up in legal practice for they have not been properly tested. But there is one thing of which we can be relatively sure. In principle, we might all be equal in the eyes of law. In principle, the ladder of the law might not have a top or a bottom. But, in practice, economic power matters. We know that law and the state are not immune to economic persuasion, to lobbying, to favours and so forth. And, because of this, the commons remains subject to the threat and corruption of privatisation and commodification.

We do not want to suggest by this that all legal and public rights, including the protection of the commons by the state or global institutions such as the UN, are worthless. This would be a perversion of our position. What we would stress is that such rights originate with the people through political struggle, not with legislators or legal professors setting them down on pieces of paper. And if these rights are to be maintained, if a commons is to be instantiated and protected, there is a need for political awareness, for political action, for democracy. Which is to say, any attempt to impair commonalty and common rights for concepts and ideas must meet resistance. We need political awareness and struggle, not lawyers exercising their legal vernacular and skills on complicated licences, court cases and precedents. We hope therefore, that our intervention will open up the question of licences and the commons for greater debate and contestation, and encourage more critical reflection on the numerous licensing schemes that have emerged recently.

Notes

[1] Our understanding of radical democracy follows more-or-less the various writings of Earnesto Laclau and Chantel Mouffe: it is relational rather than essentialist, stresses the agonistic nature of the political and is radical as in far-reaching.

10. Free and Open-Source Software: Opening and Democratising e-Government's Black Box

— David M. Berry and Giles Moss

Introduction

E-government is at an embryonic stage of development where significant decisions over the application of technology in government are being considered.[1] One choice facing governments is whether they choose to adopt proprietary or non-proprietary software. The 'standard' approach to software development is 'proprietary' (or 'closed'),[2] where intellectual property is enclosed and protected within well-defined organisational boundaries. But an open, 'non-proprietary' approach to software development has recently received public attention and a greater share of the software market, mainly due to the Free Software and Open Source movements. The increased availability of non-proprietary software has provided

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[1] In this chapter, 'e-government' refers to the use of ICT to support government processes, which is something conventionally justified in relation to increased access and/or efficiency. 'e-Democracy' (i.e., online voting, consultation, and participation) brings an additional requirement to deepen and/or widen political participation. The thesis we introduce about the democratisation of e-government processes extends beyond the technical requirements of democratic processes into all aspects of government technology usage, from the use of transparent democratic processes to check tax assessments to auditing the code managing voting systems.

[2] We use the term 'proprietary' analytically in this chapter. We include both (1) computer software produced by private actors (e.g. individuals or corporations); and (2) code produced within public institutions (e.g., government departments). This is because in neither case is the source code released to the public or supported by open development processes. The term proprietary is used by the Free Software Foundation to describe software that is not 'free' software (i.e., *libre*). They use the term to refer to all software not in the public domain.

a viable alternative for a number of organisations. This includes governments, who are now assessing the pros and cons of non-proprietary software and are considering policies to encourage or even mandate its use.

Recent commentators, meanwhile, have suggested that the open and collaborative processes characteristic of free and open-source software development could contribute to democratising technology in public organisations[3] (Chadwick 2004; Scacchi 2002). Alongside methods of socio-technical and participatory design, non-proprietary software development may offer a way to increase public participation in technical design and contribute to the project of democratising technology (Feenberg 2002). In this chapter we assess this idea from a constructionist standpoint, informed by a social construction of technology perspective and discourse theory in political analysis (Hoff, 2000; Laclau and Mouffe, 2001). Through this optic, the democratic 'effects' of adopting non-proprietary software are not inherent to the software itself. They are contingent on how non-proprietary software development is discursively represented and constituted as it is 'translated'[4] into e-government systems.

This chapter first examines the discourses surrounding the production of computer code in the Free Software and Open Source movements. Section one locates a key discursive struggle over non-proprietary software production between discourses of ethics and freedom, on the one hand, and discourses of neo-liberalism and technical efficiency, on the other. Whereas the latter position depoliticises the production of code, the former holds the potential to open technical practice to public evaluation and participation. However, as we argue in section two, official government discourse over the merits of non-proprietary software has been pre-occupied with cost-effectiveness, technical efficiency and security. While

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[3] Most of the software that does important things in government, such as computing taxes or working out child benefits, is owned and controlled by a public institution that would not generally publish the source code. There have, however, been recent moves to outsource the processing of data via commercial proprietary corporations such as EDS. Either way, we will argue that a democratisation via non-proprietary software might encourage greater accountability, with public institutions knowing that they might be subject to external review and challenge.

[4] In contrast to conventional conceptions of knowledge transfer as a unidirectional process of 'diffusion', the concept of 'translation' depicts the introduction of a new object as an active and reciprocal process where both the new and the existing mutually constitute one another.

discourses of neo-liberalism and technical efficiency have been employed, discourses of ethics and freedom have not. The result is that the democratic ramifications that non-proprietary software production might be represented as having are downplayed and obscured. We conclude that the translation of non-proprietary software into government is unlikely to affect existing power relations and asymmetries significantly; in all possibility it will bring more 'politics as usual' rather than democratisation.

None the less, we maintain that making available new forms of democratic subject position in the technologies and practices of e-government is a core objective for theorists and practitioners of democracy (Mouffe, 2001). We agree, moreover, with Andrew Chadwick's (2004) provisional claim that free and open source software might offer one path by which e-democracy can be brought back in to the e-government agenda. From the perspective of radical democracy, the final section of this chapter will flesh out an alternative, value-based discourse surrounding non-proprietary software, and envisage circumstances in which non-proprietary software might contribute to opening up and democratising the e-government black box. In this alternative scenario non-proprietary software development plays a part in ensuring that transparency and accountability are maintained in emerging e-government systems and offers scope for public participation in technical development. Whereas e-government systems are in danger of interpolating a passive user, based on a standardised model of the consumer-producer, non-proprietary software development could contribute to the maintenance and development of democratic 'citizen-user' subject positions.[5]

1. Discourses of Non-Proprietary Software:[6] Free/Libre and Open Source

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[5] Open source approaches are not intended just as a form of public consultation on technology decisions. They also open the code up to inspection. Whilst we support democratisation via consultative exercises, we are also concerned with the opening up of governmental processes using open-source as a paradigm for externalising the internal processing systems.

[6] Here, we concentrate on non-proprietary 'free software' and 'open source'. For a detailed overview of the varieties of non-proprietary software see Straskontoret (2003: 9-18).

The Free Software Foundation (FSF) and Open Source Movement (OSM) are two Internet-based groups committed to the creation of computer software products that are open and freely shared. This means that after a piece of software is designed and written, its 'source code'[7], the only form readily readable by humans, is distributed with the released software, known as the 'binaries'. With the source code remaining in either the public domain or a commons, the programming public at large (not just the original developers) can subsequently read, share, and modify the software. To facilitate this, free and open source software is generally released using either an open-source license or the General Public License (GPL), both of which allow for authorised changes and uses. The GPL gives additional requirements that prevent a piece of software being converted into proprietary software, a process termed 'copyleft'[8] (Stallman 2003).

The 'non-proprietary' approach differs from how most commercial software companies develop and release software. 'Proprietary' software vendors only license the use of 'binaries'. They enforce contractual commitments not to disclose source code so as to prevent the use of the intellectual property that they identify as being located therein. The executable binary is then sold as a licensed software product to users who pay both to use and upgrade it. Whilst it is possible to reverse-engineer object code back to source code, it is a demanding, time-consuming, and (commonly) illegal exercise. In effect, proprietary software owners deliver a 'black-box' whose contents cannot be understood by the user and which only the owners can read and adapt. Against a collegiate academic tradition of sharing software in computer science, proprietary software vendors vehemently defend their right to protect their intellectual property (Microsoft 2004).

Non-proprietary software licenses allow a broad exchange of knowledge amongst the programming community, both through the sharing of source code and through the textual

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[7] Programs are written in text documents, which contain the logic of program operation and are known as 'source-code'. This includes the controlling algorithm, data structures and version history. For source code to be usable, it must be compiled into the machine-readable code that can be read and executed by the computer, known as the 'binary'. This process removes the need for the original source code files to use the program. A computer application when compiled into a binary may be sold without the underlying source-code but may not be modified.

[8] The provisions of copyleft are enforced by copyright law

artefacts that support it (e.g., programming commentaries, documentation, hypertext Web pages, and discussion forums). This makes an 'open' and collaborative process of software development possible, in which loose groupings of programmers (typically coordinated and communicating via the Internet) identify and fix errors in software, and submit thoughts and modifications to the overall development of a project. This peer-produced, commons-based model of software development is an increasingly prominent (some say, 'revolutionising') part of software development today (Moody 2002). The operating system GNU/Linux has attracted most public attention, and is steadily gaining users at the expense of proprietary products, like Microsoft's Windows.[9]

There have been recent attempts to theorise this "open-source revolution" and to explain the motivation of the volunteer 'hackers' who contribute to non-proprietary projects (Berry 2004; Berry and Moss 2005; Bezroukov 2003; DiBona, Ockman, and Stone 1999; Raymond 2001a; Weber 2004). What is clear from this is that, whilst members of both the FSF and OSM defend source code that is publicly accessible, the meaning attached to the practice differs. Indeed, interpretations of non-proprietary software development are hotly contested at the level of discourse (Berry 2004). Of most significance is a controversy between (1) a value-based discourse of 'ethics' and 'individual freedom' and (2) an apolitical discourse of 'technical efficiency' and 'neo-liberalism'. These two positions play themselves out in the essays and interviews of two key 'founding fathers' within the Free Software and Open Source communities: Richard Stallman, of the Free Software Foundation (FSF), and Eric Raymond, of the Open-Source Initiative (OSI). We summarise their positions below, but we would direct the reader elsewhere for a fuller account (Berry 2004).

For Stallman (1992; 1993; 2002), access to source code is viewed as a basic human right and moral norm. Free software is integral not only to intellectual progress, by providing a legal framework for exchanging knowledge freely, but also to the freedom of the individual (viz., free assembly, speech and thought) (Pigdog 2004: 2). Software should be 'free as in

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[9] GNU/Linux combined the labour of the programmers Richard Stallman and Linus Torvalds, and was released with its source code made available. GNU/Linux was (and is) incrementally developed by the input of programmers worldwide.

freedom, not free as in free beer'[10] (Stallman 2002). The transparency and malleability of free software gives all users, not just initial developers, the freedom to shape and modify software. This freedom is important for Stallman, whose conception of 'freedom' points to dangers to free expression if ideas have restrictions on usage. Non-proprietary software development has an ethical value, as much as a scientific and intellectual application. While Stallman recognises that non-proprietary development might have certain advantages in engineering terms, this is less significant than the ethical and political case (Stallman, 2003c).

For Raymond (2001a; 2001b; 2003) of the OSM, access to source code is defended in terms of its practical benefits for effective and 'efficient' software development: 'Open source is not particularly a moral or legal issue. It's an engineering issue. I advocate Open Source, because very pragmatically, I think it lead to better engineering results and better economic results' (Raymond 2003a). For Raymond, when large numbers of hackers work simultaneously on a project, better technical solutions emerge than would in a bureaucratic control system. Access to source code is here a 'means to the end' of superior and secure software, rather than an end in itself. Whereas Stallman views non-proprietary software development in ethical terms, Raymond views it as an optimal software development methodology.

For Stallman and the FSF, code, and the freedom to, read, modify and copy that code, is constructed as a public good as well as an individual one. This is reflected in the copyleft principle enshrined in the requirements of the GPL (Stallman 2003). For Raymond, code is constructed as property owned by an individual programmer who has the right to control and develop it. Coding is based on the needs of a private individual (Raymond, 2001a). Raymond is most concerned with the freedom of the individual to work on a project that is of particular selfish interest. If this is useful to others, then it is the invisible hand of the free-market meeting needs (Raymond, 1999a, 2001a, 2003a).

This adumbrated contrast between two discourses of non-proprietary software can be mapped onto broader debates in the theory of technology. The discourse of Raymond and others of the OSM depoliticises technical development, balkanising the

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[10] The distinction is between free as *libre*, or freedom to use, as opposed to free as *gratis*, or free of charge.

technical sphere from public debate. The value-based discourse of Stallman (2003d) recognises the connection between politics and technology. For Raymond, technologists' best practice is ethically neutral, apolitical and driven by egoism. As Raymond represents them, both technology and the 'free-market' (or 'bazaar') are quasi-natural phenomena, developing outside, and in a way that is ultimately impervious to, the 'social' world of politics and values.

It is probable that many engineers, typically trained in positivist, means-end rational approaches to solving problems, treat politics or values in the technical sphere with suspicion (Scoville 1999). Debates on prevalent discussion websites such as Slashdot[11] suggest as much. Discourses of technical efficiency and neo-liberal economics may provide a 'commonsense' and more convincing 'order of discourse' (Foucault 1989).[12] In addition, this discourse appears to be the chief stimulus for government concern with non-proprietary software (see below). There is a danger, therefore, that such a representation of non-proprietary software production will supplant other interpretations, achieving 'closure' or 'hegemony by fixing the elements within the discourses surrounding the production of code' (Berry 2004:82).

2. Non-Proprietary Software in Government

The increased availability of non-proprietary software has provided users with a viable alternative to proprietary software. This includes governments, who are currently initiating e-government and e-democracy programmes. Many governments, meanwhile, have been considering the merits of non-proprietary software and have been considering policies that encourage or mandate its use (CSIS 2004; Hahn 2002: 5-7; Scacchi 2002; Weber 2003). To avoid the dominance of US companies, countries like China, India, Mexico, Brazil and France support

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[11] http://www.Slashdot.org.
[12] Open-source can be interpreted as a rational response by economic interests to monopolistic tendencies in the software market. New or marginalised software companies can overcome barriers of entry into a saturated software market by becoming open source. They can change their profit-making strategy from the sale of licensed software to other aspects of their business, such as charging users for technical services and customisation. This argument is sometimes favoured in the open-source community.

the use of non-proprietary software[13] (Kesan and Shah 2002: 167; Moody 2002: 317-318). However, more broadly, the implementation of open, non-proprietary systems in government is negligible compared to the use of proprietary 'solutions'.

In line with other research (CSIS 2004; Kesan and Shah 2002: 62-65, 84), an analysis of official government discourse suggests that discussion about the pros and cons of using non-proprietary software has so far been dominated by a concern with cost-effectiveness, technical superiority and security (e-Government_Unit 2004; Leigh 2003: Q1-Q22). Governments do on occasion mention the socio-political factors involved in implementing technology. But they remarks are generally negligible, parenthetical and delphic (CommitteeForTheFuture 2004). Norway's government is not unique in aiming, '…to attain such vaguely defined goals as a higher quality of life, increased user participation' and to avoid '… the new technology being used in ways that reinforce, or even increase, social inequality' (Brosveet and Sørensen 2000: 271). But these concerns are outweighed by questions of cost-effectiveness, technical efficiency and security. Government attitudes to non-proprietary software show parallels with the discourses of technical efficiency and neo-liberal economics surrounding non-proprietary software, while the value-based discourse of non-proprietary software production is ignored (Section 1) (CSIS 2004).

Countless government technology projects have been plagued by costly implementation problems.[14] It is not surprising, therefore, that governments would carefully consider the case that non-proprietary software reduces the cost of obtaining and maintaining software (Fitzgerald and Kenny 2003; Lerner and Tirole 2002). One methodology for comparing costs of technology maintenance (the 'total cost of ownership' or TCO) suggests that open source software is on the whole cheaper than proprietary software (Wheeler 2003). Yet the

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[13] Realpolitik in international relations may come into play in government decisions to opt for non-proprietary software. For example, in China, Brazil, India and elsewhere, there is the view that being dependent on America for such an important resource as software would be against the national interest (see CSIS 2004).

[14] In the UK, where government departments have over 100 ICT projects in progress with a total value of £10 billion, a number of projects have been classed as 'unsuccessful'. A survey in 2003 showed that only 13% of software projects were 'successful'; viz., on time, to specification and to cost (POST 2003: 1).

'economic facts' of software are often malleable enough to suit the case in hand. There are conflicting reports, and dispute on the issue continues unabated (Giera 2004; Schmidt and Schnitzer 2002: 26). All that is clear is that proprietary companies charge a license fee for obtaining software, whereas free software and open-source groups provide the software for free, but will then usually charge for services.

Governments also recognise that when the source code is freely available they are unlikely to be tied to any single vendor (Raymond 2001a: 152).[15] In choosing non-proprietary software, government may be opting for a low market-share product. This is a potentially very serious drawback in a software market that has notoriously tended towards monopoly and path-dependence (Arthur 1994). But governments can avoid the fate of 'lock-in', where it becomes difficult to move to another software package or vendor, due to costs incurred, incompatibility of software and hardware and the lack of suitable providers (Schmidt and Schnitzer 2002: 19-21; Statskontoret 2003: 63-68). Dependence on a single vendor may be costly when organisations are licensing the software directly from the providers and paying for software upgrades (Statskontoret 2003: 78). It is also possible to hire external support in the commercial market if the source code is available, thereby keeping prices competitive. For government departments struggling with over-running costs, this economic rationale of supporting non-proprietary software has had appeal.[16]

Data security is also a foremost government concern, particularly because of bugs, computer viruses and fears of technologically enabled terrorism and crime (Wiener 1993: 156-159. It has also, therefore, been central to government thinking about non-proprietary software (Leigh 2003: Q22). Many supporters of non-proprietary software argue that it is more secure than proprietary software (Statskontoret 2003: 57). When the source-code is available, the security of the software can be checked widely by a large number of programmers or 'eye-

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[15] A localized version of Microsoft windows was not available in Ethiopia whereas computer users have been able to create their own version of GNU/Linux (Moody 2002: 317). Similarly, a Welsh version of GNU/Linux was instrumental in forcing Microsoft to produce a Welsh language version of the Windows operating system (icWales 2004).

[16] The UK government, for instance, hopes to save £100 million by re-negotiating software licenses and examining open-source software (Leigh 2003: Q1).

balls' in Raymond's terms (Raymond 2001a: 33). But, once again, there is disagreement on the subject. Ken Thompson (1984) has outlined the worrying possibility of embedding a "back-door" into a non-proprietary compiler that would be undetectable and reproducible. In addition, even though the End User License Agreement (EULA) of proprietary software licenses usually excludes liability (Statskontoret 2003: 57-58), governments may feel more confident when they have a specific entity with responsibility for software security. (This is part of the reason why companies such as IBM and Red Hat have moved to supplying 'packaged' open-source solutions.)

Our analysis of government technology policy suggests that economic and technical efficiency concerns dominate government thinking about the qualities of non-proprietary vis-à-vis proprietary software (CSIS 2004; Lerner and Tirole 2002; Mockus, Fielding, and Herbsleb 2002; OGC 2004). Given the controversy over these issues, it remains a moot question as to whether governments will implement non-proprietary on these grounds. 'Neutral' government procurement policies on the licensing model of software leave either option open (e-Government_Unit 2004). Whatever the 'rights' and 'wrongs' of the technical and economic efficiency of non-proprietary software (we have been deliberately unforthcoming and agnostic about these 'technical' questions), what has been generally ignored are other benefits that the non-proprietary software production and distribution processes have been interpreted as having (Chadwick 2004; Scacchi 2002). Whereas discourses of neo-liberalism and technical efficiency surrounding free and open source software have been drawn upon, discourses of ethics and freedom have not. This means that any democratic ramifications that non-proprietary software might have are overlooked. It also means, we can conclude, that the translation of non-proprietary software into government is unlikely to affect existing power relations significantly. It is likely to bring more 'politics as usual' rather than democratisation.

None the less, the next and final section builds on the value-based discourse of non-proprietary software in order to consider a scenario in which non-proprietary software development contributes to certain key democratic values (viz., transparency, accountability and participation). We argue that non-proprietary software development, when represented as a collective, value-based practice, might contribute to opening and democratising newly emerging e-government systems. This

is the lineaments of a new radical and associational democratic project for an age of digitally mediated government and democracy.

3. Opening and Democratising E-Government

Transparency in government has long been viewed as a key democratic value. It contributes to the accountability of political decisions, as well as to public trust and the legitimacy of political systems. To the greatest extent possible, government procedures in a democracy should be open, so that governments (or those bodies given the responsibility to work on their behalf) and governmental processes can be publicly knowable, contested, or defended.

From a democratic perspective, the openness of non-proprietary software development can contribute to ensuring that a level of openness in emergent e-government systems is maintained and extended. Lawrence Lessig's (1999) analogy between software code and legal code demonstrates the point. Briefly stated, Lessig argues that computer code constrains human action and shapes human agency, in a similar fashion to law. Like law, code can prescribe certain values back onto individual users, shaping, for instance, their level of freedom or privacy. Lessig further argues that this constraining power of code in the digital age should be subject to the same values of openness and transparency that serve in the production of law (Lessig 1999). For our purposes, the argument that computer code imposes some level of control on people as law does, and should therefore be similarly open and transparent, is a useful starting point. For a system of e-government where software code and its development is hidden from public view has parallels with an offline government in which laws and legal decisions affecting governmental processes are publicly unknowable. Neither system could be called democratic, at least, as we generally now understand that term.

The need for software code transparency in e-government systems can be appreciated when we consider the computation of votes in public elections. The UK government, amongst others, has considered e-voting as part of its agenda to modernise its electoral system. Targeting this potential market, a number of private sector vendors now specialise in the development of proprietary e-voting systems, some of which are being implemented or considered by governments. In defending

94

a proprietary model of software development, these companies argue that secrecy of source code is a necessary requirement for keeping their e-voting systems secure.

Not long ago source code that tallied very closely with a proprietary voting system developed by Diebold, which had earlier been employed in United States municipality elections, appeared on the Internet. This allowed Kohno, Stubblefield, Rubin and Wallach (2003) to conduct a third-party analysis of the voting system. They found that the voting system was below minimally acceptable standards applicable in other contexts. They saw a risk of individuals having multiple votes, an inadequate use of cryptography, and high vulnerability to network threats (Kohno et al., 2003). The system fell short, in their view, of displaying the 'robustness' and 'security' required for a system usable in democratic public elections.

Kohno et al. (2003) argue that the problems they located with the software resulted from the use of a closed, proprietary model of software development. They advocate the use of an open, non-proprietary model for the development of election technologies, instead:

> An open process would result in more careful development… [Those] who value their democracy would be paying attention to the quality of the software that was used in their elections (Kohno et al, 2003:22).

Whether or not non-proprietary software development is technically 'superior' or 'more secure' as Kohno et al. (2001) suggest (once again, we remain agnostic), their study illustrates the socio-political significance of source code transparency. Non-proprietary software development allows a number of individuals and groups to evaluate software development and to contest it. Whilst the source code became available in this instance, proprietary software vendors are quite capable of defending their intellectual property and keeping source code private.[17] Accordingly, the software used for an e-voting, or other e-democracy or e-government systems, is fenced off from public visibility and thereby from public contestation, too.

Kohno et al's (2003) case of the e-voting system is one example of why it might be necessary to ensure transparency in the code that structures relationships between governors and governed, representatives and represented. There are many

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[17] Besides, it does not seem at all feasible to rely on acts of intellectual property 'theft' to ensure transparency and openness.

conceivable examples, including those with a bearing on other core public concerns. The electronic calculation and collection of taxes is arguably a case where trust can be built into the system when the software code that runs these systems can be publicly viewed. Moreover, any e-government system that involves data storage and sharing raises concerns for individual privacy, which would better understood if their design was open.

It should be recognised, of course, that a degree of technical competence is required to know what a particular piece of software code refers to, let alone appreciate the role it plays in a program. Unlike Kohno et al, few people currently have the technical competence to read and comprehend source code. The great majority of us are positioned in a relationship of passivity vis-à-vis technological development. But if most 'ordinary' citizens lack the capacity to decode code, does this not eradicate the democratic need to ensure that the software code in e-government systems is transparent? To a certain degree this objection to source code transparency also applies to the formalisation and transparency of law (Lessig, 1999). Beyond a general awareness, the legal system remains a bewildering and mysterious entity in the eyes of many. The public has to typically rely on representatives and legal experts to interpret the law and its consequences.

Still, in the right democratic circumstances, the transparency of law and legal decisions can have some of the traits of Jeremy Bentham's 'panoptic tower'. Whilst law-makers do not know whether their conduct is being watched at any one moment, transparency of law also ensures that they can never be sure that they are not (Foucault 1977). Just the thought that they _might_ be being watched, without necessarily the reality that they _are_, can mean that a subject-position is formed in which representatives and lawmakers in liberal political systems self-regulate their conduct. There is good reason to defend the transparency of software code as well as law on these grounds. Using proprietary code, a development group given the task of working on key aspects of e-government or e-democracy systems (i.e. a government department or those working on its behalf) are fenced off from public gaze or 'supervision' in Jürgen Habermas's (1974, p54) sense. They can be relatively sure that they are not being watched. With non-proprietary software development the contents of the black box (i.e., knowledge, values, and the source code that instantiates these expressions) are open to public visibility. Although the group

would not know it was being watched, it can also never be sure that it was not. Technical activity is therefore placed in a subject-position and relationship vis-à-vis citizens that engenders a certain policing of conduct.

Notwithstanding these panoptic effects, we appreciate that it is only through increased public awareness and citizen activity that the transparency of code would lead to appropriate accountability in the actions of technical designers and developers. But again, the same holds for law. Legal rights, whether referring to the transparency of legal or software code, might be necessary for an effective and functioning democracy. But they are not sufficient. Democracy requires not only formal legal rights, but also a political culture of public initiative and participation that brings these rights into play. So when it comes to the transparency of software code, there is need for an engaged public that questions technical design and development and brings it to account.

Any such development depends, in no small part, on how the functioning of the technical sphere is discursively represented and constituted. Here, we restate the significance of the controversy over interpretations of the production of code in the free and open-source movements (section 1), and government interpretations of non-proprietary software (section 2). If the technical sphere and the production of code are understood solely in terms of technical and economic efficiency, there is little space for public involvement. This discourse reinforces the barriers around the technical sphere, preventing participation by interlopers (the 'non-technical' public) who encumber the real business of 'running code'.

But when the technical sphere and the production of code is politicised, a space is made for public participation (Feenberg 2002; Lessig 1999; Sclove 1995). Understood as a value-based, politically significant and collective activity, the production of code encourages and facilitates a broader exchange of knowledge and values, not just in terms of source code, but also through supporting textual artefacts. There is some potential here in the alternative value-based discourse of some free and open source groups, not only of the Free Software Foundation itself, but also other software groups like the Appropriate Software Foundation. Moreover, with the increasing recognition of the digital mediation of our human conduct, it is possible that the politicisation of software code will develop correspondingly. Democratic movements of various stripes have worked in the past by rendering previously private and non-political things

(e.g., economy, gender, race, sexuality) public and political (Benhabib 1996). There is also possibility that the political implications of software development will extend beyond existing technology groups to be acknowledged and debated by the political-public at large.

There are various ways to flesh this suggestion out. Methods already exist for increasing public participation in technical design, including consensus conferences and scenario workshops. The literature in socio-technical and participatory design considers these issues in depth (Kesan and Shah 2002; Scacchi 2004; Sclove 1995). Parallel debates in participatory democratic theory are valuable, even if this literature might err on occasion by excluding the technical from democratic concern. We do not deal with all these considerations here. But we suggest that one possible route to inject public participation into non-proprietary software development is to be found in some form of associational democracy (Cohen and Arato 1992; Hirst 1994).

A commitment to associational democracy in this context would first of all mean fostering and encouraging socio-technical associations in civil society. These democratically organised associations would evaluate and politicise emerging e-government systems and provide a mode of connection between citizens and the body legally responsible for developing these systems. These associations could place advocates of certain core public concerns into forums of technical and government decision-making. They could, furthermore, serve an educative function in bringing wider public understanding of the varying political implications of software code, and of the government processes involved in particular e-government systems. When injected into the technical design and development process, associations could contribute towards increasing public awareness and engagement.

This is a wider possibility envisioned in Walt Scacchi's (2002: 3) imaginary of an 'open government':

> Open government seeks to open for public sharing, discussion, review, ongoing development and refinement, and unrestricted reproduction (replication and redistribution) the "source code" of the products and processes of the business of government. Open government represents a concept that seeks more than just the adoption and use of open source software systems by

government agencies. This concept seeks to explore the potential and opportunities that can emerge when one views the purpose of digital government as also including how to empower and engage an interested public… (Scacchi 2002: 4)

Public engagement with e-government processes, as Scacchi implies, need not be restricted to monitoring technical design and development. There is also the more radical opportunity for public involvement in the 'ongoing development and refinement' and 'reproduction' of the 'source code' of an e-government project. When source code is made available, and is surrounded by open processes of communication, it can be more easily modified to support different public concerns. Socio-technical associations of civil society are thus not only able to contribute to public debate about technology, but can develop modified versions of the technology that contribute to the overall development of a system. This associational democratic vision is far removed from the present: it is radical and far-reaching. But we can still outline some cases in which this associational socio-technical vision might be fostered and encouraged.

(1): Movements in value-sensitive design have recognised the potential for modifying technology that open, non-proprietary software development offers. Their work begins by evaluating particular software implementations in terms of how they support core values like anonymity, privacy, autonomy, communicative and group rights. They then seek to rectify any deficiencies that the software might have. One example of value sensitive design is the re-designing of the cookie management system on the Mozilla Web browser. After an evaluation of existing cookie management systems, Nissenbaum and Howe (2003) located a urgent need to respect user's 'privacy' and right to give 'informed consent'. Making use of the availability of the source code for the non-proprietary Mozilla browser, they designed an implementation that supported these values. They thereby offered an alternative to available proprietary products that had used cookies to store user information covertly (this data has then be made available for commercial uses such as advertising and marketing). Furthermore, Nissenbaum and Howe also issued a detailed (socio-technical) rationale for their design choices, so contributing to public awareness and debate over software development.

(2): Software is being used to critically open up technology and expose its underlying structures (Fuller 2003). Sometimes referred to as 'critical software', this allows competing democratic values to be supported. One example is 'I/O/D 4: The Web Stalker'. This is a project to produce software that rejects the standard 'browsing' models for using the Internet, understood as passive and consumerist, and develop a more active 'citizen-user' repertoire. Rather than present the user with a preformatted webpage, it offers the possibility to reconstruct and hack the underlying structures of web pages in real-time (Fuller 2003: 51-67). The recent launch of 'Flock',[18] a web-browser that allows the dialogical use of web pages through built in blog, 'flickr' and 'del.ici.ous' functionality, is another example. Critical software could have applications in e-government systems, restructuring government web pages presented as 'finished' or 'rendered'. Specific examples include 'theyworkforyou.com'. This 'scrapes' UK Parliamentary websites and represents Hansard debates, Written Answers and Select Committee reports in a form that can be shaped and easily searched. The website 'thepublicwhip.com' performs a similar scraping method to locate the details of MP's voting records, their attendance in debates and so on, giving the user the opportunity to scrutinise or supervise their representative[19]. Should government websites rely on proprietary or closed technologies, such as Flash, critical software would not be able to function. Democratic support of open and non-proprietary software development is also important in this context since it provides the basis for critical software skills to develop.

(3): Hacklabs are socio-technical spaces that allow connections to be forged between hackers and other civil society groups. Hacklabs provide an alternative socio-political perspective on technology that challenges standard proprietary software products and aims to shape and subvert existing codes (Blicero 2002; Hacklab 2004). These groups are keen to reach out to those without technical 'skills' and are also active in reconstructing software tools to support political projects. Crucially it is non-proprietary software that allows these tools to be actively reconstructed. Hacklabs contribute to a commons of free and open-source code that provides a growing collection of applications that the citizen-user, non-governmental

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[18] http://www.flock.com
[19] http://www.theyworkforyou.com and http://www.publicwhip.org.uk

organisations and others may use and re-use freely (Blicero 2002). It is not impossible to imagine that if governments were to actively use non-proprietary software then similar projects could form that encourages a citizen-user that is not merely consuming government information but participating more actively.

There is some potential in these traces of socio-technical associational development in civil society for increasing public participation in technology design. They could prefigure the participation of a greater number of associations in e-government projects. But such a process of democratisation, as we have underscored throughout, implies a sea change in government approaches to technical design, development and deployment. The pre-occupation of governments with cost-effectiveness, technical efficiency and security would have to be met with a recognition of the socio-political implications of technical development and a willingness to forge a meaningful role for civil society associations. In emerging e-governments that address the citizen as user, the user is currently covertly defined and configured primarily by state administrators and private interests. By recognising the socio-political nature of 'technical' decisions, space can be afforded for citizens and associations to have a more active role in the software design process.

For one thing, increased public involvement in e-government design would avoid the temptation of creating simplified and standardised models of the 'citizen-user'. Most e-government models have what has been termed a 'crippled model', using a data flow that is unidirectional, from government to the individual (Richard 1999: 75-76). These 'citizen-oriented' (Lenk 1999: 88) systems are on the whole consumer-orientated information retrieval systems, and thus fail to offer opportunities to increase participation in public life and decision-making. It is not surprising, then, that such systems typically fall short of realising the democratic 'potential' that 'e-democracy' advocates have for some time attributed to new media technologies.

There is a danger that emergent e-government technology and the discourse that it instantiates will simply interpolate a passive political subject, based on this model of a consumer-producer relation. Yet, in democratic terms, it is important that the concept of the citizen be carefully transferred to that of a 'user' without reducing the activity of the former to the passivity of the latter. In our view, following Mouffe's

(2000:95) theory of radical democracy, the core democratic objective must be to multiply 'the institutions, the discourses, the forms of life that foster identification with democratic values'. When constructing the user position and repertoire of the citizen, it is necessary that citizens should help define and participate in their construction. This is something that associational democratic practices surrounding non-proprietary software production and development could facilitate and encourage.

Conclusion

Governments are in the process of transforming themselves into 'e-governments', and 'citizens' are being reconfigured as 'users'. Now is a time when the application of new technologies in emerging e-government systems is being discursively constituted. On the whole this process is dominated by discourses of technical and economic efficiency. Governments have been relatively quick to recognise that non-proprietary software may be more cost-effective, technically efficient and secure than proprietary software. A number of governments are considering introducing (or already have introduced) non-proprietary software for these reasons. We have been agnostic about the 'truth' or 'falsity' of such an interpretation of non-proprietary software throughout. We have chosen to focus on the democratic implications of how these technologies and development processes are interpreted. We have argued that by interpreting non-proprietary software only as a question of economic and technical efficiency, democratic features of the software development model are at best downplayed, worse, overlooked and, worse still, endangered.

However, we have also looked tentatively towards a value-based discourse surrounding the production of software code and to progressive movements monitoring and modifying values embedded within technology. We have done so in order to envisage a scenario where the discourse and practice of non-proprietary software prises open and democratises the e-government black-box. In these circumstances, non-proprietary software use in e-government contributes to core democratic values: transparency, accountability and participation. When the relationship between citizens and governments is digitally mediated, transparency of code is crucial in allowing the public to monitor and contest government processes. Whereas

102

proprietary software development typically offers a black box in which knowledge and values are enclosed, non-proprietary software development can expose technical activity to supervision. Non-proprietary software, we have also argued, can facilitate a broad exchange of knowledge, values (and source code) between government, representatives, software developers and citizen associations in terms of democratic institutions and procedures, and also of the technical processes that serve these functions in software code.

11. On Byways and Backlanes: The Philosophy of Free Culture

— David M. Berry

We see before us a turning in free culture. This turning, lies between the claims of the ordinary against those of the extraordinary, and suggests that we need to carefully examine our current situation. The ordinary highlights the fact that even in the beginnings of free culture there existed its middle and its end, that its past invaded its present, and even the most extreme attention to the present is invaded by a concern for the future. Whereas the extraordinary highlights the possibility of thinking that brings us out of this life-world and instead opens out and unfolds the way in which we might reveal a different world. This world could be said to be both *within* capitalism and *between* capitalisms. Here we might think about the transformation of the economic base from an industrial *fordist* form of capitalism, to an economy founded on the valorisation of information and code, a postfordist capitalism. Free culture, then, could be said to lie in the interstices, and in so doing could be a rare chance to help to point the way from the lived to the desired.

In this short chapter I attempt to follow Heidegger (2000) in suggesting that the work of a philosophy of free culture is to awaken us and undo what we take to be the ordinary; looking beyond what I shall call the ontic to uncover the *ontological* (Heidegger 2000: 28-35). In this respect we should look to free culture to allow us to think and act in an untimely manner, that is, to suggest alternative political imaginaries and ideas. For this then, I outline what I think are the ontological possibilities of free culture and defend them against being subsumed under more explicitly ontic struggles, such as copyright reform. That is not to say that the ontic can have no value whatsoever, indeed through its position within an easily graspable dimension of the political/technical the direct struggles over IPR, for example, could mitigate some of the

worst effects of an expansion of capital or of an instrumental reason immanent to the ontology of a technological culture. However, to look to a more primordial level, the ontological, we might find in free culture alternative possibilities available where we might develop free relations with our technologies and hence new ways of being-in-the-world.

For Heidegger the ontic is at one step removed from the more fundamental level of analysis, the ontological. The ontic is the level of everyday existence and our thought, practices and knowledge with which we go about our normal lives. Within the bounds of the ontic lie our universe of perception and contain the formal and tacit rules and meanings by which we structure our understanding of the world, and indeed on which we rely in order to make the very possibility of action possible at all. Nonetheless, there are important boundaries to the ontic, manifested most clearly in the difficulty we have when confronted by radical difference, that which lies outside the categorical system of perception which structures existence; and hence why some have argued that the possibility of a radically original creativity is impossible. In some important sense, as Derrida observed, our categories are already constituted by their other, 'black,' for example is immanent to the concept of 'white,' or 'in' to the concept of 'out.' This then presents an important starting point in our understanding of how free culture can act to shed light and open up that which is presently hidden so that we can penetrate through the ontic to the possibilities that are concealed.

We might look at a fundamental level at how free culture relates to being-in-the-world in terms of being thrown into a world of meaning, in other words, how we as 'beings' engage with an already existing culture. Here the possibilities of culture within the philosophy of free culture are unfolded and geared to that of a *gathering* (Heidegger 2000: 355) — here I am including the sphere of technical as well as explicitly cultural production or *techno-cultural* works. In this way the artefact has a social role, it is itself a locale that can make space for a site and therefore express more than merely its own properties. We could look at the way in which free/libre and open source software (FLOSS) has revealed the social dimensions of technology in a profound manner and has been key to creating spaces of sociality through the freeing of something within a boundary (Stallman 1992, 1993; Hill 2005). Here, though, I do not mean boundary in terms of something which *stops* but rather as something which begins an essential

unfolding, an opening that is presented as a locale, a site which is in anticipation of dwelling by others. This dwelling can be conceptualised as a warm social space where we can share our experiences and welcome each other. This is the common space of free culture (see Berry and Moss 2006), a space of dwelling in which we can build, but importantly this is a commons that is revealed and through dwelling is lived through our being-in-the-world.

Nonetheless, for free culture there is a danger that we will be distracted by the immediate concerns expressed over the current struggles in setting the boundaries of intellectual property rights. Again, to reiterate, that is not to say that these are not to be ignored, nor to be forgotten, but rather the question of free culture is whether it is explicitly concerned with the ontic question of copyright (and other intellectual property rights) or rather with the deeper question of the nature of culture, sharing and being-in-the-world at a more fundamental level? For a preliminary answer to this question we can look to the discourses and practices of the Free Software Foundation which appears manifestly concerned at a deeper level with the question of being and the threat that particular modes of relation (which are then solidified into particular legal/ontic discourses) present to the activity of dealings within the world, in this case *hacking* as a social activity. In contrast to this, we can examine the Creative Commons movement and its overwhelming lack of application to any question of being-in-the-world, rather it is more concerned with resources and functions, and indeed its approach is manifested through its desire to provide justifications for its ontic reforms, expressed through its creative commons licences. These are explicitly linked to the possibility of turning the outputs of creative licences into profit, or in more Heideggerian terms, maximising culture that is produced through these licences as standing-reserve [1] (Heidegger 2000: 322).

Creative Commons seeks not a dwelling, but a database or repository of artefacts. This repository is envisioned as a collection of works which are not organised in relation to one another but collected in a haphazard fashion, made more productive and efficient by an ordering through creative commons licences that allow the individual expression of ownership and authorship to be manifest, to be searched, combined and re-ordered indefinitely. The concept of sharing here, is not that of a social space or dwelling within which we can persist, rather it is the negation of a dwelling, it is a cold and

inhuman place, rather like a multi-storey car-park which is a temporary location for the positioning and storage of an assorted array of vehicles but is not meant for human habitation or unfolding. The commons of the Creative Commons is therefore a simulacra of a commons (Berry and Moss 2006), a database that is constructed to reflect the bias of an economic system geared towards the maximisation of efficiency and productivity but promoted through a rhetorical veneer of community, friendship and social exchange.

This then is the beginning on our way into rethinking free culture and preventing us from being blinded by the apparent ontic success of the Creative Commons. It would be more surprising if the Creative Commons movement should not be successful; after all it offers a highly flexible, low-cost ordered collection of resources for use by post-fordist capital. We can see with our own eyes the advantages of a deterritorialised form of fragmented database-stored culture for the vast new corporations that are profitable by virtue of their lucrative foundation in information ordering, reordering and searching. We can also see that we must be careful in differentiating the form of sharing that is loudly proclaimed by the Creative Commons movement with the more significant building and dwelling that is suggested within free culture.

Now we must turn to the form of association under which free culture could be organised to realise this ontological possibility. To do this we must also understand that we must look beyond politics as enacted in the ontic realm of common sense to that which is the very condition of possibility for our shared life-world. This is the realm of the political, and it is here that the ultimate categories for drawing the boundaries of political and social life are lain contestable and open to the project of free culture. Here though is a danger as well as a salvation, as we must be careful to keep uppermost in our minds the difficulty of linking diverse political struggle to a common articulation so that the democratic equivalence between competing groups are transformed rather than lost (Berry and Moss 2006). This is the definition of reality that will provide for the form of political experience within free culture and it is here that the work of Mouffe (2005b) is suggestive in her discussion of a redeemed civic republicanism which draws on a radical pluralism ensuring the necessary conditions for avoiding coercion and servitude (Mouffe 2005b: 9-21). If we are to exercise civic virtue and serve the common good, we must balance the fact that we are multiple and contradictory subjects,

inhabitants of a wide range of different communities, structured by a number of dominant discourses and lying at the intersection of alternative possibilities for subject-hood. It is here that we see the outlines of a politics that lies in linking the ontological possibilities of free culture with the democratic struggles that are presented in anti-racism, anti-sexism, anti-capitalism and ecological and green movements. As Mouffe argues this associational form could 'give us an insight into ways of overcoming the obstacles to democracy constituted by the two main forms of autocratic power, large corporations and centralized big governments, and show us how to enhance the pluralism of modern societies' (Mouffe 2005b: 99). However, these struggles will not naturally converge, and will require the free culture movement to engage in dialogue and shared meanings and understandings in order to develop a democratic framework that can articulate an alternative to our existing life-world.

At this point, of course, it is impossible to suggest what a free culture or *libre society* might look like, and it is never safe to write the recipes for the cook-shops of the future (Marx 1990:99). However, in the dim outlines suggested by the early experiments within free culture, it suggests that we can begin the revolution along byways and backlanes on and in the periphery. Here and now and in little things, it seems that free culture fosters latent possibilities within an alternative to the post-fordist ontology of a connectionist capitalism (Chiapello and Fairclough 2002: 191). Possibilities that we may use in terms of their ability to uncover, to reflect, but also redirect the ontological self-understanding of the age.

Notes

[1] Everywhere everything is ordered to stand by, to be immediately on hand, indeed to stand there just so that it may be on call for a further ordering. Whatever is ordered about in this way has its own standing. We call it the standing-reserve [*Bestand*] (Heidegger 2000: 322).

Appendix I (translations of the Libre Culture Manifesto)

Manifeste pour une société libre

Auteur(s) : David Berry et Giles Moss

Traduction : N. Jolly
Date : 26 avril 2004
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David M. Berry et Giles Moss sont deux juristes qui se penchent depuis quelques temps déjà sur la problématique du mouvement libre en général, et sur ces éventuelles applications économiques et sociales en particulier. Dans l'optique de passer de l'analyse théorique à la pratique, ils ont créé un site, Libre society, destiné à devenir un lieu de collaboration et de production commune. L'esprit de leur initiative s'exprime à travers ce manifeste politique et polémique qui ne manquera pas, nous l'espérons, de susciter le débat.

Une galaxie d'intérêts accroît actuellement son appropriation et son contrôle de la créativité. Ils affirment avoir besoin de nouvelles lois et de nouveaux droits afin de contrôler idées et concepts et de les protéger de toute exploitation illicite. Ils disent que cela enrichira nos vies, créera de nouveaux produits et sauvegardera la possibilité d'un futur prospère. Mais c'est un désastre complet pour la créativité, dont la bonne santé dépend d'un échange continuel, libre et ouvert d'idées entre le passé et le présent.

En réponse, nous souhaitons défendre l'idée d'un espace créateur de concepts et d'idées libres de toute appropriation particulière.

1. Le profit s'est trouvé un nouvel objet d'affection. En fait, les profiteurs proclament maintenant sans vergogne qu'ils sont les vrais amis de la créativité et des créateurs. Partout, ils déclarent : « nous soutenons et protégeons idées et concepts. La créativité

est notre métier et entre nos mains elle est en sûreté. Nous sommes les vrais amis de la créativité ! »

2. Non contents de ces déclarations d'amitié, ces profiteurs sont aussi désireux de mettre en pratique ces penchants pour la création . « Les actes parlent plus que les mots » dans la culture capitaliste. Pour exprimer leur affection, des profiteurs utilisent la loi, comme celle sur la propriété des droits intellectuels, pour s'emparer des concepts et des idées et les protéger de ceux qui cherchent à en faire un mauvais usage. Alors que nous sommes morts au monde la nuit, ils pillent gaillardement la propriété intellectuelle à un degré effarant. De plus en plus l'espace intellectuel passe sous leur contrôle exclusif.

3. Que les profiteurs soient maintenant si protecteurs de la créativité, cherchant jalousement à protéger concepts et idées, ne manque pas de susciter la suspicion. Ils se proclament des amis mais nous savons que l'amitié, ce n'est pas la dépendance. Ce n'est pas la même chose de dire : « Je suis un véritable ami parce que j'ai besoin de toi » que de dire : « J'ai besoin de toi parce que je suis un véritable ami. ». Mais comment sortir de cette ornière ? Dans toute relation d'amitié nous devrions nous demander : « Les deux partenaires en profitent-ils mutuellement ? ».

4. Les profiteurs tirent clairement bénéfice de leur amitié nouvelle avec la création, lorsqu'elle est mesurée à l'aune de leur insatiable soif de profit. Au contraire des objets matériels, concepts et idées peuvent être partagés, copiés et réutilisés sans diminution. Quel que soit le nombre de personnes qui utilisent et interprètent un concept particulier, l'approche initiale de son créateur n'est ni exclue, ni réduite. Mais à travers l'utilisation de la propriété intellectuelle par l'intermédiaire du copyright, des licences et des marques commerciales, concepts et idées peuvent être transformés sous des formes qui sont contrôlées et appropriées. Une pénurie artificielle de la créativité peut alors être mise en place. On peut faire beaucoup d'argent quand les flots créatifs de connaissance et d'idées deviennent des biens rares (difficiles d'accès) à distribuer sur les marchés. Et d'une manière croissante, la propriété intellectuelle permet aux profiteurs une ample accumulation de richesses.

5. Pour beaucoup d'entre nous l'idée de la loi sur la propriété intellectuelle évoque encore les visions romanesques de l'artiste
110

ou de l'écrivain solitaire protégeant ses innovations. Il n'est alors pas surprenant que nous tendions à considérer les lois sur la propriété intellectuelle comme quelque chose qui défend les droits et les intérêts du créateur. Cela fut peut-être le cas en des temps éloignés et révolus. Mais cette vision romanesque est maintenant bien malade avec l'exploitation récente des œuvres intellectuelles. Les créateurs sont devenus des employés et chaque idée et concept qu'ils élaborent sont captés et appropriés par leur employeur. Les profiteurs utilisent la propriété intellectuelle pour thésauriser l'expression créative de leurs employés ou d'autres. Et qui plus est, ils exercent de continuelles pressions pour étendre l'application des lois sur la propriété intellectuelle sur des durées plus longues.

6. La « multitude » est alors empêchée d'utiliser et de réinterpréter des domaines entiers de concepts et d'idées. Les profiteurs utilisent les technologies numériques pour renforcer la législation sur le droit de copie et les licences grâce au code qui fonctionne sur les ordinateurs et les réseaux. Reposant sur des logiciels de gestion numérique des droits [1], les œuvres de création sont verrouillées et seuls les profiteurs ont les clés. Ce qui interdit la reproduction, la modification ou le réemploi d'un nombre croissant d'œuvres, qui se trouvent de cette manière sous contrôle. La liberté d'utiliser ou de réinterpréter une œuvre est restreinte par des barrières fondées légalement mais renforcées technologiquement. En cette époque de capitalisme technologique, les accès publics au flux des concepts et des idées et le mouvement de création ont été solidement verrouillés.

7. Cette évolution est un désastre absolu pour la création, dont la santé dépend d'un dialogue constant et de la confrontation entre concepts et idées du passé et du présent. Il est honteux que la multitude créatrice soit exclue de l'utilisation des concepts et des idées. L' œuvre de création n'est pas seulement le produit d'un unique créateur. La création ne peut subsister dans un néant social. Elle doit toujours à l'inspiration et à l'œuvre préalable d'autrui, penseurs, artistes, scientifiques, professeurs, amants/maîtresses ou amis. Concepts et idées sont dépendants de leur existence sociale et il ne peut en être autrement.

8. On peut faire une analogie avec le langage courant - le système de signes, symboles, gestes et signifiants utilisés pour la compréhension mutuelle. Le langage parlé est partagé par

nous tous ; il n'est à personne en particulier et libre. Mais imaginez le désastre si cela n'était plus vrai. La dystopie [2] de George Orwell, 1984 - et l'agression faite à la pensée libre par la « novlangue » - permet de l'illustrer. De la même manière, le contrôle et l'appropriation des idées et des concepts est un grave danger pour ce que nous appelons affectueusement notre libre-arbitre - c'est la tendance nouvelle de la pensée créatrice et de l'expression.

9. La multitude créatrice peut décider soit de se conformer soit de se rebeller. En se conformant elle devient créativement inerte, incapable d'élaborer de nouvelles synergies et idées, seulement consommatrice de produits standardisés qui saturent de plus en plus la vie culturelle. En se rebellant elle continue d'utiliser des concepts et des idées malgré la législation sur la propriété intellectuelle, et ses membres sont alors taxés de pirates, de détrousseurs du bien d'autrui voire de terroristes. Ces membres sont traduits comme des criminels devant les tribunaux du pouvoir global d'état. En d'autres termes, les profiteurs décrètent un état d'exception permanent qui est ainsi utilisé pour justifier l'usage coercitif du pouvoir d'état contre ceux qui se rebellent. Comme nous en discuterons plus tard, un nombre croissant de créateurs répliquent aussi par une résistance active contre la situation actuelle grâce à la mise en place d'un espace alternatif de création d'idées et de concepts.

10. Il y aura des objections immédiates à tout ce que nous venons de dire. Les profiteurs se feront prosélytes et diront : « S'il n'y a pas de propriété privée de la création, il ne peut y avoir d'incitation à produire ! » L'idée que la propriété particulière de la connaissance et des idées promeut la création est un concept honteux, aussi crédible qu'il puisse paraître dans la vision réductrice des profiteurs. Affirmer que la créativité prospèrera si la liberté d'utiliser idées et concepts est niée, c'est clairement dépasser les bornes. Après s'être esclaffés brièvement, nous devrions remettre tout cela dans le bon sens.

11. Selon ce postulat « incitatif », il ne peut y avoir eu de créativité (p. ex. l'art, la musique, la littérature, le design, la technologie) avant que les profiteurs ne s'approprient et ne contrôlent nos concepts et nos idées. Ce n'est qu'une fiction. Mais nous pourrions dire que l'histoire est pleine d'inventions qui font naître le doute à propos de précédentes incarnations de la créativité et de la création. Le postulat « incitatif » implique

malgré tout aussi qu'il ne peut y avoir de créativité en marche actuellement en dehors du système de la propriété intellectuelle. Nous sommes heureusement ici les acteurs et témoins de notre propre histoire. Nous devons commencer à savoir ce que nous avons toujours su - la créativité n'est pas réductible à l'exploitation de la propriété intellectuelle.

12. Un nouveau mouvement global, constitué de groupes reliés en réseau qui agissent grâce à un ensemble varié de moyens de création - musique, art, design, logiciel - apparaît en ce moment. Ces groupes élaborent des concepts, des idées et de l'art qui existent en dehors du régime actuel de la propriété intellectuelle - par exemple, les travaux de la communauté Libre/Open Source qui peuvent être examinés, confrontés, modifiés, expérimentés. Là, connaissances et idées sont partagées, contestées et réinterprétées entre créateurs et entre des amis. Comme les symboles et les signes du langage, leurs concepts et leurs idées sont communs et sans propriétaire. Contre les machinations du profit, ces groupes sont en train de construire un modèle alternatif réel et crédible d'une vie créative.

13. Par les principes "d'attribution" et de "partage à l'identique", les idées et les travaux antérieurs sont livrés à la reconnaissance de ces communautés. Ce qui signifie que, bien qu'un travail puisse être copié, modifié et redéfini en un nouveau projet, l'oeuvre antérieure est reconnue pour sa contribution dans la globalité de la nouvelle création. Attribution et "partage à l'identique" sont le principe constitutif des mouvements Libre/Open source, les chromosomes d'un nouveau mode de création induit par ces pratiques sociales.

14. Ces mouvements adoptent un ingénieux mode de dispersion virale grâce aux licences publiques connues sous le nom de copyleft. Ce qui évite que les concepts et les idées ne se voient appropriées, tout en garantissant que les futures synergies fondées sur ces concepts et idées soient également utilisables et modifiables par d'autres. Alors que les lois sur le copyright protègent contre la modification et la réutilisation des concepts et des idées, le copyleft assure qu'ils restent accessibles en évitant qu'ils ne soient de simples biens de consommation. Ainsi, le copyright (tout droit réservé) est freiné par le copyleft (tout droit reversé). Ceci constitue dorénavant le meilleur chemin pour la créativité - on peut maintenant la regarder en face.

15. Nous pensons que la multitude créatrice devrait embrasser et défendre les idées et les pratiques de ces groupes et le modèle créatif qu'ils représentent. De même, nous, qui sommes déjà une multitude, devons défendre ces idées et ces pratiques. Car seule la multitude créatrice pourra déterminer si cette mutation de notre temps est viable.

16. Tout comme la violence des profiteurs de la propriété intellectuelle cherche à s'intensifier, un véritable contre-pouvoir commence à émerger. Car la vision et les pratiques de cette arborescence de groupes gagnent en puissance, à travers une grande variété de formes d'expression. Elles offrent à voir un champ créatif en formation qui s'appuie sur des concepts et des idées librement partagés entre amis. Ces groupes agissent d'une manière qui est comptable de notre époque et, espérons-le, pour le bénéfice d'une possible époque à venir. - *la créativité crée de la resistance au présent*.

[1] DRM ou Digital Right Management. Ndt.

[2] La dystopie est l'oposée d'une utopie : la société du futur n'est plus radieuse et idylique mais chaotique et désenchantée. Quelques romans dystopiques : Fareinheit 451 (R. Bradbury), Le meilleur des mondes (A. Huxley), Tous à Zanzibar (J. Brunner). Ndt.

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Libre Society -manifesti

Kohti vapaata yhteisöä
David Berry ja Giles Moss

Kääntänyt: Paavo Parkkinen 2004-03-30 (Version 1.5.3)

Ryhmittymä erilaisia etupiirejä pyrkii lisäämään omistustaan ja kontrolliaan luovuudesta. Ne väittävät tarvitsevansa uusia lakeja ja oikeuksia, jotka sallivat niiden kontrolloida ajatuksia ja ideoita, ja suojata niitä hyväksikäytöltä. Ne sanovat, että se rikastuttaa elämäämme, luo uusia tuotteita ja suojaa tulevaisuuden hyvinvoinnin mahdollisuudet. Mutta tämä on täydellinen katastrofi luovuudelle, jonka terveys riippuu jatkuvasta vapaasta ja avoimesta keskustelusta menneiden ja nykyisten ideoiden välillä.

- Vastauksena tähän, haluamme puolustaa omistuksesta vapaiden ajatusten ja ideoiden luovan alueen käsitettä.

1. Liikevoitolla on uusi ihastuksen kohde. Todellakin, voiton tavoittelijat julistavat nyt häpeämättömästi olevansa luovuuden ja luovien tosi ystäviä. Kaikkialla he vakuuttavat "Me tuemme ja suojaamme ajatuksia ja ideoita. Luovuus on meidän alaamme ja se on turvassa meidän käsissämme. Me olemme luovuuden tosi ystäviä!"

2. Ystävyyden julistuksiin tyytymättöminä nämä voiton tavoittelijat ovat innokkaita muuttamaan teoiksi mieltymyksensä luovuutta kohtaan. "Teot puhuvat enemmän kuin sanat" kapitalistikulttuurissa. Osoittaakseen kiintymyksensä voiton tavoittelijat käyttävät lakia, kuten immateriaalioikeuksia, vahtiakseen ajatuksia ja ideoita ja suojellakseen niitä niiltä, jotka yrittävät väärinkäyttää niitä. Kun me olemme öiseen aikaan kuolleita maailmalle, voiton tavoittelijat ovat keskittyneet immateriaaliomaisuuden keräämiseen hämmästyttävällä vauhdilla. Yhä suurempi osa luovasta alueesta joutuu niiden yksinomaiseen hallintaan.

3. Sen pitäisi herättää epäilyksiä, että voiton tavoittelijat ovat nykyään niin suojelevaisia luovuutta kohtaan, yrittäen mustasukkaisesti kontrolloida ajatuksia ja ideoita. Ne väittävät

olevansa ystäviä, mutta me tiedämme, että ystävyys ei ole sama asia kuin riippuvuus. On täysin eri asia sanoa "Olen sinun tosi ystäväsi, koska tarvitsen sinua", kuin "Tarvitsen sinua, koska olen sinun tosi ystäväsi". Mutta miten voimme ratkaista tämän? Miten voimme erottaa tosi ystävän väärästä? Missä tahansa ystävien välisessä suhteessa pitäisi kysyä "Hyötyvätkö molemmat osapuolet tasapuolisesti?"

4. Voiton tavoittelijoiden kyltymätön voitonjano selvästikin hyötyy ystävyydestä luovan kanssa. Immateriaalioikeuksien käytön kautta - tekijänoikeuksien, patenttien ja tavaramerkkien muodossa - ajatukset ja ideat voidaan muuttaa tavaroiksi, joita voidaan hallita ja jotka voidaan omistaa. Siten voidaan luoda keinotekoinen niukkuus. Mutta toisin kuin fyysisiä objekteja, ajatuksia ja ideoita voidaan jakaa, kopioida ja käyttää uudelleen niiden vähentymättä. Jonkin ajatuksen alkuperäisen keksijän mahdollisuus käyttää ajatusta ei katoa tai vähene, vaikka samaa ajatusta hyödyntäisi kuinka moni muu tahansa. Kun luovista tiedon ja ideoiden virroista tulee harvinaisia tuotteita, joilla käydään kauppaa markkinoilla, on niillä mahdollista ansaita paljon rahaa. Ja yhä enenevässä määrin immateriaaliomaisuus luo voiton tavoittelijoille valtavia rikkauksia. Tosiaankin, immateriaalinen työ (informaatioon, tietoon ja kommunikaatioon perustuva työ) on korvannut teollisen tuotannon rikkauden päätuottajana teknologisen kapitalismin aikakautena. Immateriaalioikeuksiin koodattu luovuuden ja liikevoiton välinen suhde voidaan sellaisenaan nähdä tämän laajemman tuotantoprosessin rakennemuutoksen perustekijänä.

5. Monille meistä immateriaalioikeudet herättävät yhä romanttisia mielikuvia yksittäisistä taiteilijoista ja kirjailijoista suojelemassa hengentuotteitaan. Ei siis ole yllättävää, että näemme immateriaalioikeudet jonain, joka puolustaa luovien oikeuksia ja etuja. Ehkäpä jonain erillisenä ja kaukaisena aikana tällä harhaanjohtavalla käsityksellä oli hieman kunniallisuutta. Mutta tämä romanttinen näkemys sopii huonosti yhteen kapitalistisen 'todellisuuden' kanssa. Luovista on tullut työntekijöitä ja heidän työnantajansa anastaa ja muuttaa omaisuudekseen kaikki heidän ajatuksensa ja ideansa. Voiton tavoittelijat käyttävät immateriaalioikeuksia kootakseen työntekijöidensä ja muiden luovat tuotokset. Lisäksi ne jatkuvasti painostavat päättäjiä jatkaakseen immateriaalioikeuksien voimassaoloaikaa.

6. Luova moninaisuus on joutumassa tuottamiensa ajatusten ja ideoiden käytön ja uudelleentulkinnan ulkopuolelle. Lisäksi tätä oikeudellista ulkopuolelle sulkemista tuetaan nykyään teknologisin keinoin. Voiton tavoittelijat käyttävät teknologiaa toteuttaakseen immateriaalioikeuksia käyttäen hyväkseen koodia, joka ohjaa informaatiota, kommunikaatiota, tietoverkkoja ja tietokoneita. Digitaalisten oikeuksien hallintaohjelmien käyttö esimerkiksi lukitsee hengentuotteet, estäen kopioinnin, muokkauksen ja uudelleenkäytön. Nykyisenä teknologisen kapitalismin aikana julkisia väyliä ajatusten ja ideoiden vapaalle virtaukselle tuhotaan tasaiseen tahtiin - vapautta käyttää ja uudelleen tulkita töitä rajoitetaan laillisin perustein, mutta teknologisia keinoja käyttäen.

7. Tällainen kehitys on täydellinen katastrofi luovuudelle, jonka terveys riippuu jatkuvasta keskustelusta ja vastakkainasettelusta menneiden ja nykyisten ideoiden välillä. On häpeällistä, että luova moninaisuus suljetaan ajatusten ja ideoiden käytön ulkopuolelle. Luovuus ei ole koskaan yhden tekijän tai itsenäisen neron tuote. Se on aina velkaa muiden inspiraatiolle ja aikaisemmille töille, olivatpa niiden tekijät sitten ajattelijoita, taiteilijoita, tiedemiehiä, opettajia, rakastajia tai ystäviä. Luovuus, näiden singulariteettien yhteensulautumispisteenä, ei voi säilyä sosiaalisessa tyhjiössä. Ajatukset ja ideat ovat riippuvaisia sosiaalisesta elämästään, eikä voisikaan olla toisin.

8. Vertauskuvana voidaan käyttää jokapäiväistä kieltä, siis kommunikaation ymmärtämisessä käytettävien merkkien, symbolien, eleiden ja merkityksien järjestelmää. Puhuttu kieli on yhteistä meille kaikille. Merkityksellinen lausahdus on mahdollinen vain hyödyntämällä puhujien ja kuuntelijoiden kielellisessä yhteisössä vapaasti kiertäviä sanoja. Kieltä ei siten omista kukaan ja se on vapaata. Kuvittele nyt tuhoisa tilanne missä näin ei olisikaan. George Orwellin dystopia 1984 - ja vapaalle ajattelulle uuskielellä tehty väkivalta - auttaa havainnollistamaan tilanteen. Samalla tavalla ajatusten ja ideoiden hallitseminen ja omistaminen on uhka luovalle mielikuvitukselle ja ajattelulle, ja siten myös vakava vaara sille, mitä me hellitellen kutsumme vapaudeksemme tai itseilmaisuksemme.

9. Aiemmin luova moninaisuus on voinut päättää joko mukautua tai kapinoida vastaan. Mukautuessaan heistä tuli luovuudeltaan elottomia, kyvyttömiä luomaan uusia

yhteisvaikutuksia ja ideoita, pelkkiä niiden yhdenmukaistettujen tavaroiden kuluttajia, jotka yhä enenevässä määrin kyllästävät kulttuurielämää. Kapinoidessaan vastaan he jatkoivat ajatusten ja ideoiden käyttöä immateriaalioikeuksista huolimatta. Mutta silloin heidät leimattiin "piraateiksi", "varkaiksi" tai jopa "terroristeiksi", rikollisina vastuullisiksi globaalin valtiovallan oikeusistuimille. Toisin sanoen, voiton tavoittelijat julistavat pysyvän poikkeustilan, poliittisen hätätilan, jolla sitten oikeutetaan valtiovallan pakottava käyttö ja repressio vasta kriminalisoitua luovuuden kulttuuria vastaan. Kuten aiomme esittää, kasvava joukko luovia on myös siirtymässä kapinoinnin ulkopuolelle aktiivisella vastarinnalla nykyistä järjestelmää kohtaan, sekä luomalla ajatuksien ja ideoiden virroille vaihtoehtoisia luovia alueita.

10. Kaikelle mitä sanomme tulee löytymään välittömiä vastalauseita. Voiton tavoittelijat muuttuvat käännyttäjiksi ja sanovat, "Jos ei ole luovuuden yksityisomistusta, niin ei ole myöskään mitään kannustinta tuottaa uutta!" Ajatus siitä, että omistusoikeus tietoon ja ideoihin edistäisi luovuutta on häpeällinen, vaikka se vaikuttaisi kuinka uskottavalta voiton tavoittelijoiden lyhytnäköisestä näkökulmasta. On selvästi nurinkurista väittää, että luovuus kukoistaisi kun vapaus käyttää ajatuksia ja ideoita puuttuu. Naureskeltuamme tälle älyttömyydelle hieman, meidän täytyy kääntää tällainen ajattelu oikein päin.

11. Tämän "kannustinväitteen" mukaan luovuutta (eli taidetta, musiikkia, kirjallisuutta, suunnittelua ja teknologiaa) ei ole voinut olla ennen kuin voiton tavoittelijat omistivat ja kontrolloivat ajatuksiamme ja ideoitamme. Tämä vaikuttaa puhtaalta kuvittelulta. Historioitsijat väittävät yhtenään, että luovuus oli hyvissä voimin esikapitalistisena aikana, ennen immateriaalioikeuksien keksimistä. Mutta voimme silti myöntää, että historia on nykyään riittävän suurelta osin fiktiota, jotta luovuuden ja luovien aikaisempia ruumiillistumia voidaan epäillä. Ehkäpä omituisemmin se tosin merkitsee myös sitä, että tälläkään hetkellä ei voi olla minkäänlaista luovaa toimintaa immateriaalioikeusjärjestelmän ulkopuolella. Tämä on ristiriidassa tämän hetkisten kokemuksiemme kanssa historiallisina näyttelijöinä ja todistajina. Voimme nyt olla varmoja sellaisesta minkä olemme aina tienneet - luovuus ei ole pelkistettävissä immateriaalioikeuksien hyväksikäytöksi.

12. Erilaisten luovien medioiden parissa - esim. musiikki, taide, suunnittelu, ohjelmistot - toimivien verkottuneiden ryhmien keskuudessa on syntymässä uusi globaali liike. Nämä ryhmät tuottavat ajatuksia, ideoita ja taidetta, jotka ovat olemassa nykyisen immateriaalioikeusjärjestelmän ulkopuolella. Näin ollen esimerkiksi vapaiden ohjelmistojen liikkeen hengentuotteita voivat kaikkia tutkia, haastaa ja muokata. Tässä tieto ja ideat jaetaan, kilpailutetaan ja tulkitaan uudelleen luovien kesken ystävien tavoin. Kuten kielen merkit ja symbolit, heidän ideansa ovat julkisia, eikä niitä omista kukaan. Nämä ryhmät ovat muodostamassa todellista vaihtoehtoa liikevoiton koneistoa vastaan - rakentamassa uudenlaista luovan elämän mallia, joka kuvastaa luovan moninaisuuden voimaa ja haluja.

13. Tunnustuksen antamisen ja jakamisen periaatteiden myötä aikaisemmat teokset ja ideat saavat näissä yhteisöissä tunnustuksen. Tämä tarkoittaa, että vaikka teoksia kopioidaan, muokataan ja yhdistellään uusiksi teoksiksi, niin silti aikaisempia teoksia arvostetaan niiden antamasta panoksesta luovuuden kokonaisuuteen. Tunnustuksen antamisen ja jakamisen periaatteet ovat vapaiden ohjelmistojen liikkeen muodostava periaate, ja sen luovan elämän uuden mallin kromosomeja, jonka kanssa niiden sosiaaliset käytännöt ovat läheisiä.

14. Nämä liikkeet ovat ottaneet käyttöön nerokkaan "virusmaisen" keinon nimeltään copyleft, joka toteutetaan julkisten lisenssien avulla. Näin varmistetaan, että ajatukset ja ideat eivät ole kenenkään omaisuutta, ja samalla taataan, että myös tulevaisuudessa näihin ajatuksiin ja ideoihin perustuvat yhdistelmät säilyvät yhtälailla avoimina kaikkien käytettäväksi. Kun copyright toimii lain välityksellä estääkseen ajatusten ja ideoiden muokkauksen ja uudelleenkäytön, niin copyleft takaa että ne pysyvät vapaasti saatavilla eikä niitä voi muuttaa tavaramuotoon. Tällä tavalla copyright ('all rights reserved') käännetään jaloilleen copyleftissä ('all rights reversed'). Nyt se seisoo luovuuden kannalta oikein päin ja voi jälleen katsoa luovuutta silmiin.

15. Uskomme, että luovan moninaisuuden pitäisi omaksua ja puolustaa näiden ryhmien ideoita ja toimintatapoja sekä sitä tähän aikaan sopimatonta luovan elämän mallia, minkä kanssa ne ovat läheisiä. Todellakin, meidän, jotka olemme jo aikamoinen joukko, täytyy puolustaa näitä ideoita ja käytäntöjä.

Koska vain luova moninaisuus tulee määräämään toteutuuko tämä aikakautemme mahdollinen muodonmuutos.

16.   Juuri   kun   voitontavoittelijoiden immateriaalioikeusjärjestelmän väkivalta pyrkii vahvistumaan, todellinen vastavoima alkaa nyt asettua vastatusten sen kanssa. Todellakin, näiden verkostomaisten ryhmien näkemykset ja käytännöt voimistuvat uhmakkaasti, syventyen ja laajentuen eri muotoisten medioiden välityksellä. Ne tarjoavat näkemyksen muodostumassa olevasta luovasta alueesta, joka tukee ajatusten ja ideoiden virtoja, jotka jaetaan vapaasti ystävien kesken. Nämä ryhmät toimivat tavalla, joka on vastoin aikaamme ja, toivottavasti, mahdollisen tulevan ajan hyödyksi - *luovuus on vastustuksen luomista nykyisyydelle*.

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Manifest for LibreSociety

Version 1.5.2 (translation version 0.15b)

David M. Berry og Giles Moss
Oversatt av Arne Andreassen & Trine B. Andreassen

En konstellasjon av interesser søker nå å øke eierskap og kontroll over kreativiteten. De forteller oss at de har behov for nye lover og rettigheter som vil gi dem tillatelse til å kontrollere konsepter og ideer, samt beskytte disse mot utnyttelse. De sier at dette vil berike våre liv, skape nye produkter og trygge muligheten for fremtidig velstand. Dette er imidlertid en katastrofe for kreativiteten, hvis sunnhet avhenger av en kontinuerlig, fri og åpen konversasjon mellom tidligere og nåværende ideer.

- Som svar på dette, ønsker vi å forsvare ideen om en kreativ sfære av konsepter og ideer fri fra eierskap.

1. Profitten har et nytt hengivenhetsobjekt. Profitører proklamerer nå skamløst at de er oppriktige venner av kreativitet og det kreative. Overalt erklærer de: "Vi støtter og beskytter konsepter og ideer. Vi driver med kreativitet og det kreative er trygt i våre hender. Vi er kreativitetens sanne venner!"

2. Ikke fornøyd med erklæringer om vennskap, er profitørene i tillegg ivrige med å sette sin hengivenhet for kreaivitet ut i praksis. "Handlinger sier mer enn ord" i kapitalistisk kultur. For å vise sin hengivenhet, benytter profitørene juridiske mekanismer, nemlig Loven om Opphavsrett til Åndsverk, for å vokte over konsepter og ideer, og for å beskytte dem mot de som prøver å misbruke dem. Mens vi sover om natten, er de hektisk opptatt med å øke samlingene av intellektuel eiendom i en forbausende fart. Mer og mer er den kreative sfære lagt under deres eksklusive kontroll.

3. Det faktum at profitørene nå er så beskyttende overfor kreativitet, og sjalu søker etter kontroll av konsepter og ideer, bør skape mistenksomhet. Mens de påstår å være oppriktige venner av kreativitet, vet vi at vennskap ikke er det samme som

avhengighet. Det er svært forskjellig å si: "Jeg er din sanne venn fordi jeg trenger deg", enn å si " Jeg trenger deg fordi jeg er din sanne venn". Hvordan skal vi løse denne utfordringen? Hvordan kan vi skille en virkelig venn fra en falsk? I enhver relasjon mellom venner bør vi kunne spørre: " Har begge partnere gjensidig utbytte?".

4. Profitørenes utilfredstilte tørst etter profit tjener klart på deres nye vennskap med det kreative. Gjennom bruk av åndsverksloven – i form av copyright, patenter og varemerker - kan konsepter og ideer bli konvertert til varer og artikler som er kontrollert og eid. En kunstig etterspørsel kan således bli etablert. I motsetning til fysiske gjenstander, kan konsepter og ideer deles mellom flere, kopieres og brukes om igjen uten forringelse. Uavhengig av hvor mange mennesker som bruker og tolker ett spesielt konsept, er oppfinnerens bruk av konseptet ikke overgitt eller redusert. Derimot, mye penger kan genereres når kreative flyt av kunnskap og ideer blir gjort til etterspurte varer og produkter i markedet. Således gir åndsverksloven i økende grad profitører enorm akkummulert rikdom. Immatrielt arbeid (basert på informasjon, kunnskap og kommunikasjon) har nå erstattet den industrielle produksjon som samfunnets bærebjelke i den teknologisk kapitalistiske tidsalder. Som sådan kan forhold som er uttrykt i opphavsrettsloven mellom kreativitet og profitt, bli sett som et kjerneelement i en videre strukturell transformering av de produktive prosesser.

5. For mange av oss gir tankene rundt åndsverksloven fortsatt romantiske fremtoninger om en ensom artist eller forfatter som forsøker å beskytte sitt kreative arbeid. Det er derfor ikke overraskende at vi tenderer til å mene at åndsverksloven er noe som beskytter rettighetene og interressene til det kreative. Kanskje, i en fjern fortid, var der en beskjeden respekt for denne villedende fortolkning, men denne sentimentale visjonen om det kreative, er utvilsomt utilpass innenfor den kapitalistiske "realitet". Oppfinnere har blitt ansatte og etthvert konsept eller idé de produserer, er tilegnet og eiet av arbeidsgiveren. Profitører bruker åndsverksloven til å høste fruktene av de kreative ardeider fra deres ansatte og andre. I tillegg driver de kontinuerlig lobby virksomhet for å utvide kontrollen over opphavsretten for lengre og lengre tidsperioder.

6. Det kreative mangfold er i ferd med å bli juridisk ekskludert fra å bruke og igjentolke de konsepter og ideer de produserer. I

tillegg er denne juridiske ekskludering nå støttet av teknologiske metoder. Profitører bruker teknologi for å opprettholde kopi- og patentlover, gjennom den tekniske kode som konfigurerer informasjon, kommunikasjon, nettverk og maskiner. Bruken av Digital Rights Management (digitale opphavsrettsbeskyttelse), for eksempel, binder kreativt arbeid, og forhindrer kopiering, modifisering og gjenbruk. I den nåværende epoke av den teknologiske kapitalisme, blir offentlige avenuer for fri flyt av konsepter og ideer, samt utvikling av kreatitiv aktivitet, konstant utsatt for forvitring – friheten til å bruke og tolke kreativt arbeid blir begrenset gjennom juridisk baserte men teknologisk opprettholdte innsnevringer.

7. Denne utvikling er en absolutt katastrofe for kreativiteten, hvis helse avhenger av en kontinuerlig konversasjon og konfrontasjon mellon konsepter og ideer fra fortid og nåtid. Det er skammelig at det kreative mangfold blir ekskludert fra å benytte konsepter og ideer. Kreativiteten er aldri utelukkende et produkt av en enslig skaper eller individualisert geni. Den står alltid i gjeld til inspirasjonen og tidligere arbeid av andre, uansett om disse er tenkere, kunsnere, vitenskapskvinner, lærere, elskere eller venner. Kreativitet, som et samlingspunkt for disse uensartede kilder, kan ikke eksistere i et sosialt tomrom. Konsepter og ideer avhenger av et sosialt liv, og det kan ikke være anderledes.

8. En analogi kan trekkes med dagligtalen, det vil si, systemet av tegn, symboler, gestus og betydninger som vi benytter i kommunikativ forståelse. Talespråket deles med andre. En meningsfull yttring er bare mulig ved å benytte ordene som flyter fritt innenfor et linguistisk fellesskap av sendere og mottakere. Språk, derfor, er nødvendigvis ikke eiet men fritt. Forestill deg da en ødeleggende situasjon hvor dette ikke lenger var mulig. George Orwell's 1984-dystopia – og volden utøvd over fri tenking gjennom "nytalen" – hjelper for å illustrere dette. På lignende vis, kontroll og eierskap av konsepter og ideer er en trussel mot kreativ fantasi og tanke, og dermed også en alvorlig fare for det vi hengivent kaller vår frihet og yttringsfrihet.

9. Tidligere kunne det kreative mangfold velge enten å tilpasse seg eller gjøre opprør. Ved tilpassing ble de lammet, ute av stand til å skape nye synergier og ideer, forbrukere av standardiserte varer som i stigende grad mettet det kulturelle liv.

Ved opprør, fortsatte de å benytte konspeter og ideer til tross for åndsverksloven. Bare, da blir de kalt "pirater", "eiendoms tyver", tilogmed "terrorister", og som kriminelle trukket for retten av globale statsmakter. Med andre ord deklarerer profitørene en permanent untakstilstand, en politisk nødssituasjon, som så blir anvendt for å rettferdiggjøre statlig maktbruk og undertrykkelse av en nylig kriminalisert skapende kultur. Som vi snart vil drøfte, beveger et økende antall av de kreative seg nå utover det å være i opposisjon gjennom en aktiv motstand mot det bestående til oppbygging av en alternativ kreativ sfære for fri flyt av konsepter og ideer.

10. Det vil komme umiddelbare protester til alt vi har sagt. Profitørene vil gjøre det til et politisk spørsmål og si: " hvis det ikke finnes et privat eierskap over kreativitet, vil det ikke være noe insitament for å produsere". Idéen om at eierskap til kunnskap og ideer fremmer kreativitet er skammelig, uansett hvor rimelig det kan synes fra det kortsiktige perspektivet til profitørene. Det å si at kreativitet kan trives mens det mangler frihet for å benytte konsepter og ideer om igjen, er klart opp ned. Etter å ha smilt litt av denne absurditet, skal vi nå snu denne tankegangen den riktige veien opp.

11. I følge denne "oppmuntrende" påstanden kan det ikke ha vært noen kreativitet (for eksempel kunst, musikk, litteratur, design og teknologi) før profetørene eide og kontrollerte våre konsepter og ideer. Dette virker som ren fantasi. Historikere erklærer ofte til oss at kreativitet levde og blomstret i før-kapitalistisk tid, før åndsverksloven ble utformet. Likevel kan vi vedgå at historien nå er fiktiv nok til at vi kan reise tvil om tidligere inkarnasjon av kreativitet og de kreative. Kanskje enda mer bissarr, påstanden impliserer også at det ikke kan være noen kreativitet som for tiden virker utenfor det intellektuelle eiendoms regimet, og slik motsi vår eksisterende erfaring som historiske aktører og vitner. Vi kan derfor nå være sikker på noe som vi allerede alltid har visst – kreativitet er ikke reduserbart til utnyttelsen av opphavsrett.

12. En ny global bevegelse av nettverksgrupper som opererer på kryss av diverse kreative media - for eksempel musikk, kunst, design og programutvikling – er nå i utvikling. Disse gruppene produserer en samling (gathering) av konsepter, ideer og kunst som eksisterer utenfor det etablerte åndsverk regimet. På den måten kan det kreative arbeidet innen Fri/Libre og Open Source
124

(åpen programvare) miljøene, for eksempel, bli undersøkt, utfordret og modifisert. Her er kunnskap og ideer delt, bestridt og tolket omigjen blant de kreative som i en vennskapsgruppe. Deres konsepter og ideer, som symboler og tegn innen språket, er offentlige og ikke-eiet. Mot konspirasjonen for profitt er disse gruppene i en prosess for å etablere et virkelig alternativ – for å konstruere en model for kreativt liv som reflekterer styrken og ønsket i det kreative mangfold.

13. Gjennom prinsippene om attribution og share-alike, blir eksisterende arbeider og ideer gitt anerkjennelse i disse miljøene. Dette betyr at selv om et arbeid kan kopieres, modifiseres og bindes sammen til nye arbeid, blir tidligere kreativt arbeid verdsatt og anerkjent for dets bidrag til kreativiteten som en helhet. Attribution og share-alike er grunnleggende prinsipper innen Fri/Libre og Open Source bevegelsene, og kromosomer i et nytt modus av kreativt liv, oppstår som deres sosiale praksis.

14. Disse bevegelsene adopterer en oppfinnsom viral plan, implementert gjennom offentlig lisenser, kjent som Copyleft. Denne lisensen forsikrer at konsepter og ideer er ikke-eiet, samtidig som de garanterer at fremtidige synergier basert på disse konseptene og ideene er tilsvarende åpen for andres bruk. Mens opphavsrett (Copyright) opptrer gjennom lovverket for å forhindre forandringer og gjenbruk av konsepter og ideer, forsikrer copyleft at de forblir åpent tilgjengelig og ikke delfabrikata til komersielle varer. På denne måten er copyright (all rights reserved) , satt tilbake på beina av copyleft (all rights reversed). Den står nå rette veien opp for kreativiteten og kan igjen se den rakt inn i øynene.

15. Vi mener at det kreative mangfold burde omfavne og forsvare idéene og praktisen til disse gruppene og den betimelige modellen for kreativt liv som de foreslår muligheten av. Selvfølgelig, vi som allerede er mange, må forsvare disse ideene og arbeidsmetoder. For det er bare det kreative mangfold som vil avgjøre om denne mulige forvandling av vår tid blir realisert.

16. Samtidig som volden fra profitørenes opphavsretts-regime intensifiseres, har en virkelig motstandskraft nå begynt å konfrontere den. Visjonen og praktisen til dette nettverk av undergrunnsgrupper vokser ulydig i styrke, både i dybde og

bredde gjennom forskjellige typer media. De tilbyr et glimt av et kreativt felt under utvikling, som støtter flyt av konsepter og ideer, og som er delt fritt mellom venner. De handler på en måte som er motstrøms til vår tid og, la oss håpe, for suksess i fremtiden – *Kreativitet skaper motstand til nåtiden*.

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Farsi

بیانیه Libre Society[1]

نسخه

۱.۵.۲

نوشته دیوید بری و جیلس موس

امروزه مجموعه‌ای از صنایع درصد افزایش مالکیت و کنترل بر خلاقیت هستند. آنها به ما می‌گویند که برای کنترل مفاهیم و اندیشه‌ها و نیز برای محافظت آنها در برابر استثمار، آنها نیازمند قوانین و حقوق تازه‌اند. آنها می‌گویند این امر به غنای زندگی ما، آفرینش محصولات نو و تضمین امکان رفاه در آینده منجر خواهد شد. اما برعکس این فاجعه‌ای برای خلاقیت است. خلاقیتی که سلامتش به گفتگویی جاری، آزاد و باز میان اندیشه‌های حال و گذشته بستگی دارد.

—در پاسخ ما مدافع ایده عرضه‌ای خلاق و عاری از مالکیت برای مفاهیم و اندیشه‌ها هستیم.

۱. سود شکار تازه‌ای برای خویش یافته است. در واقع سودجویان اکنون بیشرمانه ادعا می‌کنند که آنان دوستان واقعی خلاقیت و عنصر خلاق هستند. همه جا اعلام می‌کنند "ما محافظ مفاهیم و اندیشه‌ها هستیم. خلاقیت پیشه ماست و در دستان ما دارای امنیت ما درستان راستین خلاقیت هستیم".

۲. ناخرسند از صرف اعلام دوستی خود، سودجویان اکنون مشتاق عملی ساختن دلبستگی خود به خلاقیت نیز هستند. در فرهنگ سرمایه‌داری "صدای کردار رساتر از گفتار است". سودجویان برای نشان دادند علاقه‌شان به مکانیسم‌های قانونی متوسل می‌شوند. این مکانیسم‌ها عموماً شامل قانون مالکیت بر تولیدات فکری است که با توسل به آن مفاهیم و اندیشه‌ها مراقبت می‌شوند و در برابر کسانی که مترصد سوءاستفاده از آنان هستند محافظت

127

میشوند. شبهنگام آنگاه که غرق خواب مرگ آسای خویشیم، آنها بیوقفه سرگرم بسط مالکیت بر تولیدات فکری هستند. عرصه خلاقیت به شکل

فزایندهای در حال ضمیمه شدن به حیطه کنترل انحصاری سودجویان است.

۳. این واقعیت که سودجویان اکنون اینگونه به محافظین خلاقیت بدل شدهاند و حاسدانه سرگرم کنترل مفاهیم و اندیشههایند، بایستی سوءظن و گمان را

بر انگیزد. آنان ادعا میکنند که دوستان راستین خلاقیت هستند، اما ما میدانیم که دوستی و وابستگی مترادف نیستند. "من دوست راستین توام چرا

که من نیازمند تو هستم." و "من نیازمند توام زیرا من دوست راستین تو هستم" بسیار متفاوتند. اما چگونه این معضل را باید چاره کرد. ما

چگونه میتوانیم دوست واقعی و غیر واقعی را از یکدیگر تشخیص دهیم؟ در هر رابطهای بین دو دوست بایستی بپرسیم "آیا هر دو طرف متقابلاً از

این رابطه منتفعند؟"

۴. عطش سیری ناپذیر سودجویان آشکارا از دوستی جدیدشان با عنصر خلاق منتفع میشود. از طریق به کارگیری قانون مالکیت بر تولیدات فکری-که

اشکالش شامل حق تالیف، گواهی اختراع و علامت تجاری میشود- مفاهیم و اندیشهها قابل تبدیل به کالاهای قابل تملک و کنترل هستند. در چنین

حالتی کمیابی مصنوعی قابل ایجاد است. اما برخلاف اشیاء، فیزیکی، مفاهیم و اندیشهها قابل اشتراک و تقسیمشدن، نسخبرداری و استفاده مجدد

بدون آن که دچار کاستی شوند. صرف نظر از این که چند نفر از یک مفهوم بخصوص استفاده کنند یا آن را تعبیر کنند، استفاده آفرینندگان اولیه آن

مفهوم از تولید خویش دچار نقصان و یا کاستی نمیشود. اما هنگامی که جریان خلاق دانش و اندیشهها تبدیل به کالاهای کمیاب قابل خرید و فروش

در بازار شوند میتوان صاحب مبالغ هنگفت پول شد. بدین ترتیب قانون مالکیت بر تولیدات فکری به طور فزایندهای سودجویان را صاحب مقادیر عظیم

ثروت میکند. در واقع امر اکنون کار غیرمادی (که مبنایش دانش، اطلاعات و ارتباطات است) جایگزین تولید صنعتی به مثابه منبع اصلی تولید

ثروت در عصر سرمایهداری تکنولوژیکی شده است. در این معنا میتوان رابطه بین خلاقیت و سود که در قانون مالکیت بر تولیدات فکری مدون شده

است را به عنوان عنصر اصلی یک تحول وسیع ساختاری در نیروهای مولده در نظر گرفت.

۵. برای بسیاری از ما، مقوله قانون مالکیت بر تولیدات فکری همچنان یادآور تلاش رمانتیک یک هنرمند یا نویسنده منفرد است که در تلاش محافظت از کار خلاق خویش است. بنابراین گرایش ما در درک قانون مالکیت بر تولیدات فکری به عنوان ابزار دفاع از حقوق و منافع عنصر خلاق هیچ جای شگفتی نیست. شاید در گذشته‌ای دور این اندیشه به ظاهر درست، قابل درک و دارای احترام بود. اما این نگرش رمانتیک به سختی با واقعیت سرمایه‌داری سازگار است. در نظام سرمایه‌داری آفرینندگان مبدل به کارمندانی شده‌اند که مفاهیم آفریده آنها و نیز اندیشه‌هایشان توسط کارفرمایشان تصرف و تصاحب می‌شود. سودجویان با توسل به قانون مالکیت فکری سرگرم انباشت تولیدات خلاق کارکنانشان و نیز دیگران هستند. علاوه بر این آنان از طریق لابی و روشهای دیگر سرگرم بسط و تمدید شمول قانون مالکیت بر تولیدات فکری هستند.

۶. توده‌های خلاق امروزه به طرق قانونی از استفاده و باز تعبیر مفاهیم و اندیشه‌های خود آفریده خویش محروم می‌شوند. به علاوه، این محرومیت قانونی اکنون به وسیله ابزار تکنولوژیک نیز حمایت می‌شود. سودجویان با توسل به تکنولوژی، حق تالیف و محدودیتهای مربوط به گواهی اختراع را اعمال می‌کنند. این کار را از طریق عایق ساختن اطلاعات، ارتباطات، شبکه‌ها و ماشینها توسط کدهای تکنیکی صورت می‌گیرد. برای نمونه نرم‌افزار دیجیتال 'اداره حقوق' آثار خلاق را قفل می‌کند و مانع هر گونه نسخه‌برداری، تعبیر و باز مصرف آنها می‌شود. در دوره کنونی سرمایه‌داری تکنولوژیکی گذرگاههای عمومی جریان آزاد مفاهیم و اندیشه‌ها و حرکت عنصر خلاق مداوماً فرسایش داده می‌شوند-آزادی استفاده و باز تعبیر کار خلاق توسط حصارهایی محدود می‌شود که پایه قانونی دارند اما به صورت تکنولوژیکی اعمال می‌شوند.

۷. این رخداد فاجعه‌ای مطلق برای خلاقیت است. پدیده‌ای که سلامتش در گرو مکالمه و برخورد مداوم مفاهیم و اندیشه‌های گذشته و حال است. محروم ساختن توده‌های خلاق از استفاده از مفاهیم و اندیشه‌ها کاری بی‌بشرمانه است. خلاقیت هیچگاه منحصراً مولود یک خالق منفرد یا نابغه تنها نیست بلکه همواره مدیون الهام و آثار دیگران پیش از خود است. این دیگران در برگیرنده متفکرین، هنرمندان، دانشمندان، معلمان، و دوستان می‌شوند. خلاقیت به عنوان نقطه درهم آمیزش این اجزاء منفرد نمی‌تواند در یک خلاء اجتماعی به حیات خود ادامه دهد. مفاهیم و اندیشه‌ها ریشه در حیات

اجتماعیشان دارند و اصولاً غیر از این غیرممکن است.

۸. این امر را می‌توان با زبان روزمره مقایسه کرد. منظور از زبان روزمره آن سیستم علامتها، سنبلها، حرکات و معانی است که در درک ارتباطی

استفاده می‌شوند. زبان گفتاری پدیده‌ای است مشترک. گفته‌ای معنادار تنها با رجوع به کلماتی میسر است که آزادانه در جامعه زبانی گویندگان و

شنوندگان آن زبان در حال گردشند. بنابراین الزاماً آزاد و عاری از مالکیت است. اما اکنون آن حالت فاجعه‌آمیز را تصور کنید که این امر دیگر

صادق نیست. ضد یوتوپیای جورج اورل، ۱۹۸۴، -و خشونتی که توسط گفتار نو علیه اندیشه آزاد اعمال می‌شود-به روشن کردن این موضوع کمک

می‌کند. به همین سیاق، مالکیت و کنترل مفاهیم و اندیشه تهدیدیست علیه نفس تصور و اندیشه خلاق و همین خطری بس بزرگ است برای آنچه ما

با کمال دلبستگی آزادی و حق خود بیانی خطابش می‌کنیم.

۹. در گذشته توده خلاق قادر به انتخاب یکی از دو گزینه مدارا و یا قیام بود. در مدارا خلاقیت آنها دچار سکون می‌شد و آنها عاجز از تولید

اندیشه‌ها و آثار نو می‌شدند و مبدل به مصرف‌کنندگان صرف کالایی یک شکل و استاندارد می‌شدند که زندگی فرهنگی را به طور فزاینده‌ای اشباع

می‌کند. در قیام، آنها علیرغم قانون حق مالکیت بر تولیدات فکری، به استفاده از مفاهیم و اندیشه‌ها ادامه می‌دادند. اما در این حالت آنان "دزدان

مالکیت" و حتی "تروریست" خطاب می‌شدند که در این مقام می‌بایست همچون جانیان پاسخگوی محاکم جهانی قدرت دولتی باشند. به عبارتی دیگر

سودجویان در واقع اعلام وضعیت فوق‌العاده دائمی می‌کنند. یک وضعیت فوق‌العاده سیاسی که به‌نوبه خود برای توجیه استفاده از قدرت سرکوبگرانه دولتی

علیه فرهنگ خلاقیتی که خود بتازگی جنایتی‌اش کرده‌اند، مورد استفاده قرار می‌گیرد. همانگونه که به زودی روشن خواهیم کرد شمار فزاینده‌ای از عناصر

خلاق به سوی آنسوی قیام در حرکتند و این کار را از طریق مقاومتی فعال در مقابل حال و ایجاد یک عرصه آلترناتیو دیگر برای جریان مفاهیم و

اندیشه‌ها انجام می‌دهند.

۱۰. به آنچه تاکنون گفتیم قطعا بلافاصله اعتراضاتی خواهد شد. سود جریان به جاء مبلغین مذهبی در خواهد آمد و خواهند گفت: "اگر خلاقیت

مشمول مالکیت خصوصی نباشد دیگر انگیزهای برای تولید وجود نخواهد داشت". این ایده که مالکیت بر اندیشه و دانش مروج خلاقیت است برای

صاحبان جای شرمساری است، گرچه از دیدگاه نگاه نزدیک بین سودجویان قابل قبول بنماید. ادعای این که خلاقیت میتواند در غیاب آزادی امکان

استفاده مجدد از ایدهها و اندیشهها رشد کند، آشکارا ادعایی وارونه است. پس از استهزاء این گفته بیمعنا ما میبایست اکنون این شیوه تفکر را

وارونه کرده و بر پاهایش بیاستانیم.

۱۱. بر اساس این استدلال مبتنی بر "انگیزه" قاعدتاً هیچگونه خلاقیتی (برای مثال در زمینههای هنر، موسیقی، ادبیات، طراحی و تکنولوژی) قبل

از اعمال مالکیت سودجویان بر اندیشهها و مفاهیم، نمیبایست وجود میداشت، این گفته به خیالبافی محض میماند. مورخین مداوماً به ما یادآور میشوند

که خلاقیت به صورت زنده و سالم در دوران ماقبل سرمایهداری یعنی قبل از ورود به صفحه قوانین مالکیت بر تولیدات فکری وجود داشته است. با

این وجود ما اذعان کنیم که امروزه تاریخ چنان دستخوش تخیلگرایی و تحریف شده که حضور و امکان وجود خلاقیت و عنصر خلاق در گذشته

را در هالهای از گمان محصور میسازد. عجیبتر از این، شاید این امر، این فکر را نیز به ذهن خطور دهد که امروزه هیچ خلاقیتی قادر به عمل در

خارج رژیمهای مالکیت بر تولیدات فکری نخواهد بود. امریکه در تضاد با تجارب فعلی خود ما به عنوان بازیگران و شاهدان تاریخی است. اکنون ما

میتوانیم از بابت یک چیز مطمئن باشیم. چیزی که ما همواره دانستهایم-خلاقیت قابل تنزل به استثمار ناشی از مالکیت بر تولیدات فکری نیست.

۱۲. امروزه جنبشی جهانی متشکل از گروههای مرتبط شبکه مانند که در عرصههای مختلفی از رسانههای عمومی خلاق -مانند موسیقی، هنر، طراحی

، نرم افزار- فعالیت میکنند در حال خیزش است. این گروهها مجموعهای از مفاهیم، اندیشه و آثار هنری تولید میکنند که در خارج از رژیم از جاری

مالکیت بر تولیدات فکری وجود دارند. در نتیجه تمامی آثار خلاق این گروها و جوامع که با تعریف منبع آزاد/رها و باز متمایزند را میتوان بررسی

کرد، تغییر داد و یا به چالش طلبید. در این عرصه دانش و اندیشه اموری مشترک و همگانیند، قابل چالشند و توسط عناصر خلاق و در شکل

جامعهای از دوستان، قابل تعبیر و تفسیر مجددند. مفاهیم و اندیشههای آنان، همانند سمبلها و علامت یک زبان عمومی و عاری از مالکیتند. در

متقابل با حکومت سود، این گروهها درحال ایجاد یک آلترناتیو واقعی هستند-ساخت مدلی از زندگی خلاق که قدرت و میل توده خلاق را منعکس

می‌کند.

۱۳. در میان این گروهها آثار و اندیشه‌های موجود از طریق اصول انتساب و 'هم سهمی'، به رسمیت شناخته می‌شوند. این امر بدان معناست که

گرچه یک اثر هنری از طریق نسخبرداری، تغییر و ترکیب مجدد با آثار دیگر قابل تبدیل به اثری نو است، اما همزمان بر کار خلاق اولیه و یا

پیشین ارزش نهاده شده و از سهم آن در کلیت امر خلاقیت و نوآوری ارج نهاده می‌شود. 'انتساب' و 'هم سهمی' اصول ساختاری جنبشهای منبع

آزاد /رها و باز هستند. این اصول کروموزومهای آن مدل نوین زندگی خلاق هستند که عمل اجتماعی این جنبشها به سویش جهتگیری دارد.

۱۴. این جنبشها از روشی ماهرانه که در عین حال همچون ویروس به شدت قابل تکثیر است استفاده می‌کنند. این روش خود از طریق مجوزهای

عمومی /دولتی که تحت عنوان Copyleft شناخته می‌شوند پیاده و عملی می‌شوند. از این طریق عاری از مالکیت بودن اندیشه‌ها و مفاهیم تضمینی

می‌شود ضمن آن که امکان استفاده دیگران در آینده از ترکیبات آتی مبتنی بر این اندیشه‌ها و مفاهیم به وجود می آید. در حالیکه حق تالیف

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مالکیت به آنها و تبدیلشان به کالا است. از این طریق حق تالیف (تمامی حقوق محفوظ است)، توسط کپی لفت (Copyleft) یعنی (تمام

حقوق معکوس است) وارونه شده و بر پاهایش ایستاده می‌شود و می‌تواند رو در روی خلاقیت و عامل خلاق بایستد و در چشمانش بنگرد.

۱۵. ما معتقدیم که توده‌های خلاق باید ایده‌ها و اعمال این گروهها و جنبشها را به آغوش پذیرا شده و از آنها دفاع کنند و بدین ترتیب از این

مدل دیر رسیده زندگی خلاق، که بر این ایده‌ها و اعمال مبتنی است، نیز حمایت کنند. در واقع ما، که همین حالا هم جمعیتی بزرگ هستیم، باید

مدافع این ایده‌ها و اعمال باشیم، چرا که این تنها توده‌های خلاق هستند که قادر به تعیین امکان به واقعیت پیوستن این دگرگونی بزرگ عصر ما

۱۳۲

۱۶. درست هنگامی که خشونت سودجویان حامی رژیم مالکیت بر تولیدات فکری در حال شدت گرفتن است، یک نیروی بازدارنده واقعی نیز به مصاف

آن آمده است . در واقع بینش و عمل این گروهها همچون ریشه‌های خزنده‌ایست که سه کشانه در حال رشد، نیروگیری، تعمیق و گسترش در عرصه

مجموعه‌هایی گوناگون از اشکال و شیوه‌های متنوع است . آنها فراهم کننده چشم‌انداز یک عرصه نوین خلاقیت در حال شکل‌گیری هستند که در آن سیر

مفاهیم و اندیشه‌ها به طور آزادانه در میان جمع دوستان تقسیم و توزیع می‌شود . آنها در حال مبارزه‌اند . مبارزه‌ایکه "علیه زمان ماست و بگذارید

امیدوار باشیم،در جهت انتفاع زمان ممکنی که در راه است نیز باشد"[2] . خلاقیت مولد مقاومت در برابر حال است .

Libre Society Manifesto. Written by David M.Berry and Giles Moss. Translated by [1]

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[2] نیچه ،۱۹۸۳،ص ۶۰.

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Appendix II (Libre Commons Licences)

<u>Libre Commons</u>

Welcome to the Libre Commons Licenses.

The Libre Commons project introduces non-legal licenses for common networks of creative production that are radically democratic in form. These licenses have been designed to resist the corruption of the intellectual property system and the symbolic and state violence that maintain it. They do so by locating the worldly significance and promise of shared creativity and innovation in the inter-subjective recognition and absolute democracy of commonalty. This offers glimpses of a time and place where we see in other being and things, not the limitation, but the realisation of our freedom. In this context, the Libre Commons licences project aims to contribute towards fostering desire for a more democratic present.

We should note that these licenses have been written explicitly against the presuppositions and caveats of the Creative Commons licenses and other similar legal forms. We believe that these licenses (un)consciously seek to use culture as a mere resource, establishing only a simulacra of a commons instantiated in private property, contract and possessive individualism, rather than commonalty. Instead of heralding an alternative, the creative common movement is a continuation of the miserable process by which private property and a neo-liberal worldview colonizes all aspects of our life.

In contrast, libre commons licenses are anti-licenses. They are ethical frameworks, chromosomes of social practices, laboratories for the future, machines of struggle, radical democratic assemblages, plexiform creative practices, rhizomes of autotelic afflatus, collections of promises, lines of flight… Rather than relying on law, these Libre Commons licenses are at route ethical and political. They aim to uncover and radicalise the commonalty of shared creative life and communication

which was always already irreducible to bloodless legal frameworks anyway.

The Creative Commons is currently seeking representative status for libre culture. It is trying to establish itself as a nodal or obligatory passage point through which all libre culture must pass. The Libre Commons, in contrast, rejects and seeks to bypass bureaucratic attempts to overcode the ethical and political through law. As such, it is hoped that the Libre Commons licenses will help to circumvent the claims of legal 'experts' and organisations who claim to speak for us in the courts of global state power and to assist us in our production of creativity.

We hope that you will use the Libre Commons licenses to contribute to widening and deepening practices of commonalty and to the network of both counter-power and possibility that is libre culture.

Background

The development of information and knowledge as important new economic resources differs from previous uses which were embedded within the commodity itself. There has been a move away from the importance of material inputs (which previously were critical elements in production) to ideas and knowledge as contributing significant value to the product, often referred to as trade-related intellectual property. Immaterial Labour is based on things held in common being commodified in order to generate profit. Changes in capitalism mean that profit is increasingly reliant on intellectual property, dividing different forms of social relationship so capital can benefit.

Intellectual property is a site of global struggle between those who wish to own what is currently free and held in common between us (libre culture), and those that wish to commodify all areas of our lives for the purposes of profit (capital).

We are also developing a project around the concept of Copyhold.

Choosing a License

Offering your work under a Libre Commons license does mean giving up your copyright. It's a promise to contribute the work to the commonalty and towards radical social practices.

What conditions? That you together with your work contribute to a shared resource of radical democracy and collective social transformation through social production. There are currently two Libre Commons licenses to choose from.

Note: These licenses reject state and international law and are predicating on ethical and political practices not on lawyers and state violence.

Res Communes License	This license declares your work to a common that is shared between us as human beings. It is therefore owned in common with others.
Res Divini Juris License	This license declares your work to the realm of the gods. Where as a moment of clearing it contributes to a permanent state of exception rejecting state law and liberal conceptions of the nation state.

Libre Commons Res Communes License

The commons is usually defined as that which is shared communally with others. This can, for example, be a resource, such as land or water, which is owned by the members of the community. The commons has traditionally been limited to a local community right and to a physical resource, such as a forest. But it has also been used to refer to the space of intellectual thought, ideas and concepts (e.g., 'ideas commons', an 'innovation commons', an 'intellectual commons', a 'digital commons', an 'e-commons', 'the public domain', 'Intellectual Space' and so on). The Libre Commons *Res Communes* Licence commits the work that is inscribed with this Res Communes license to the shared common that all can draw from and reuse.

Licence text

The *Res Communes* licence is designed to reject a state-centred legal construct of a commons (or commons without commonalty) in order to create a common which is shared between us in collective practices (a rightful commons with commonalty).

The 'Commune' or the 'Commonalty' originally meant 'the people of the whole realm' or 'all the King's subjects' as opposed to the King, the Nobles or the 'Commons' in Parliament. We here refer to the commonalty to refer to the global multitude, the people of the whole world.

1. This work is outside of all legal jurisdiction and takes its force and action from the constituent radical democratic practices of the global multitude against the logic of capital.

2. All work that is so inscribed should bear the text '(L) 2005 Libre Commons Res Communes License'.

3. As a user of this license the work is available to be shared and used as part of a common substrate that is shared between us.

To Use This License

Simply append the following statement to your work:

(L) <year> Libre Commons Res Communes License

Libre Commons Res Divini Juris License

Temples, tombs, religious statues and places were considered to belong to no one because they were in the service of the gods, the impediment to being turned into property was not natural but divine. Following Heidegger's call that only a God can save us, the God in question is that that can produce a clearing, the possibility of another place, making a different world. Drawn from a concept of Species Being (i.e. commonalty), works that are contributed to the *Res Divini Juris* are commited to the human specis as a whole. Beyond Temporal Law and the liberal legal system, we could think of it as a space of the permanent state of exception. For the common heritage of mankind.

License text

The *Res Divini Juris* license is designed to so that sacred spaces can be opened up, and offer the possibility of contestation and debate which can discuss matters of public importance as a practical activity. What is endangered under modern capitalism is a source of resistance. Treating everything as resources makes possible endless disaggregation, redistribution, and reaggregation for its own sake. This can be seen as a period of deindustrialisation and growth in the communicational and semiotic as generators of surplus value in the period after the second world war, the informational economy has emerged as a moment where capitalism seeks to enclosure cultural texts to maximise profit, the shift from the consumption of goods to the consumption of experiences.

Alternatively, background practices work by gathering and so bringing things into their own (i.e. uncovering). The gathering of local practices around things produces temporary, self-enclosed local worlds that can resist the totalising and

dispersing effects of the flexible and efficient ordering under capitalism.

1. By using this license you are agreeing to allow your work to be shared as a step on the path of revealing. Within the realm of the gods, the work will contribute to a shared new world of collective practices and networks of singularities operating within a non-instrumental and communal life.

2. All work that is so inscribed should bear the text '(L) 2005 Libre Commons Res Divini Juris License'.

3. This license operates under a permanent state of exception. It is a result of radical democratic practices beyond the state.

4. Users of the license are committed to political action and social struggle.

To Use This License

Simply append the following statement to your work:

(L) <year> Libre Commons Res Divini Juris License

Appendix III

A CONSTELLATION OF INTERESTS IS HOW SEEKING TO INCREASE ITS

OWNERSHIP AND CONTROL OF

CREATIVITY

LIBRE MANIFESTO

www.libresociety.org VERSION 1.61 DAVID M. BERRY & GILES MOSS

A constellation of interests is now seeking to increase its ownership and control of creativity. We are told that these interests require new laws and rights that will allow them to control concepts and ideas and protect them from exploitation.

They say that this will enrich our lives, create new products and safeguard the possibility of future prosperity. But this is a disaster for creativity, whose health depends on an ongoing, free and open conversation between ideas from the past and the present.

In response

DEFEND

we wish to _____ the idea of a creative field of concepts and ideas that are

FREE FROM OWNERSHIP

1 Profit has a new object of affection. Indeed, profiteers now shamelessly proclaim to be the true friend of creativity and the creative. Everywhere, they declare:

"WE SUPPORT AND PROTECT CONCEPTS AND IDEAS: CREATIVITY IS OUR BUSINESS AND IT IS SAFE IN OUR HANDS: WE ARE THE TRUE FRIENDS OF CREATIVITY"

2 Not content with declarations of friendship, profiteers are eager to put into practice their fondness for creativity as well. Action speaks louder than words in capitalist culture. To display their affection, profiteers use legal mechanisms, namely intellectual property law, to watch over concepts and ideas and to protect them from those who seek to misuse them. While we are dead to the world at night, they are busily stockpiling intellectual property at an astonishing rate. More and more, the creative sphere is being brought under their exclusive control.

3 The fact that the profiteers are now so protective of creativity, so eager to control concepts and ideas, ought to rouse suspicion. While they may claim to be the true friends of creativity, we know that friendship is not the same as dependency. It is easy to say, "I am, your true friend". But how are we to state any friendship? It is easy to say, "I am, your true friend because I need you", than to say, "I need you because I am, your true friend". But how do we distinguish the true friend from the falsest of any relationship between friends we should ask, "Are both partners jealously?"

6 For many of us, the thought of intellectual property law still evokes romantic apparitions of a solitary artist or writer seeking to safeguard her or his creative work. It is therefore unsurprising that we tend to view intellectual property law as something that defends the rights and interests of the creative. Perhaps, in some removed and distant time, there was a modest respect in this notion. But this romantic vision of the creative is certainly ill at ease with the current capitalist reality.

4 The profiteers' insatiable thirst for profit clearly benefits from their new friendship with creativity and the creative. Unlike physical objects, concepts and ideas can be shared, copied and reused without diminishment. No matter how many people use and interpret a particular concept, nobody else's use of that concept is surrendered or reduced. But through the use of intellectual property law – in the form of patents, trademarks and particularly copyright – concepts and ideas can be transformed into commodities that are privately regulated and owned. An artificial scarcity of concepts and ideas can then be established. Much money is to be made when creative flows of knowledge and ideas become scarce products or commodities that can be traded in the market place. And, increasingly, intellectual property law is providing profiteers with vast accumulations of wealth.

5 Informational, affective and knowledge-based labour has now become a central driver of profit. Indeed, immaterial labour is increasingly replacing industrial manufacture as the main producer of wealth in the age of technological capitalism. With these developments, a new embodiment of profit emerges. Alongside the landlords that controlled agriculture — the owners in the productive processes that controlled manufacture, _vectors_ — the factory owners that controlled manufacture, vectors — the owners of the distribution, access and exploitation of creative works through valorisation— have emerged. It is these same vectorialists, of course, that are now so vocal in their claim to be the true friends of creativity and the creative.

7 The world in which creative people now find themselves is a _social factory_ or a _society-factory_ [1]. The vectors view the whole social world of creativity and creative works as raw material for commodification and profit. Creative people have thus become _de facto_ employees of the vectors, if not their actual ones. Each concept and idea they produce is available to be appropriated and owned by the vectors through the use of intellectual property law. What is more, the vectors continually lobby to extend the control of these laws for greater and greater lengths of time. Because the vectors have now made intellectual property law their own, we can from now, more accurately, term these laws, 'vectoral laws'.

9 This development is an absolute disaster for creativity, whose health depends on a free and ongoing conversation and confrontation between concepts and ideas from the past and present. It is shameful that the creative multitude is being excluded from using the concepts and ideas that they collectively produce. Creativity is never solely the product of a single creator or individuated genius. It always owes debts to the inspiration and previous work of others, whether these are thinkers, artists, scientists, paramours, listeners, machines or friends. Creativity, as a fusion point of these singularities, cannot subsist in a social nothingness. Concepts and ideas depend upon their social life — and it could not be otherwise.

10 An analogy can be drawn with everyday language: that is, the system of signs, symbols, gestures and meanings used in communicative understanding. Spoken language is shared between us. A meaningful utterance is only made possible by drawing on the words that freely circulate within a linguistic community of speakers and listeners. Language, then, is necessarily non-owned and free. But imagine a devastating situation where this was no longer the case. George Orwell's depiction of a 1984 dystopia — and the violence done here to freethinking through newspeak — helps to illustrate this. In a similar way, the control and ownership of concepts and ideas is a grave threat to creative imagination and thought, and so also a danger to what we affectionately call our freedom and self-expression.

12 The vectors and their representatives will make immediate objections to all we have said. The profiteers will turn proselytizers and exclaim, "IF THERE IS NO PRIVATE OWNERSHIP OF CREATIVITY THERE WILL BE NO INCENTIVE TO PRODUCE!" The suggestion that the ownership of knowledge and ideas promotes creativity is a shameful one, however plausible it may seem from the myopic perspective of profit. To say that creativity can thrive while the creative lack the freedom to reuse concepts and ideas is clearly upside-down. After giggling a little at this, we should now turn this thinking the right way up.

8 The creative multitude is becoming legally excluded from using and reinterpreting the concepts and ideas that they collectively produce. In addition, this legal exclusion is being supported by technological means. Using technology as their delegates, the vectors seek to enforce vectoral law, by instantiating their interests within the technical code that configures information, communications, networks and devices. To do so, they are currently developing and configuring ever more closed technologies and disciplinary machines. Digital rights management software, for example, sequesters and locks creative works, preventing their copying, modification and reuse.

The vectors can by using these prescriptive technologies deny access to those who cannot pay or to those whose sympathies and support are not assured. They can also exclusively determine how ideas and concepts are to be used in the future. In the current era of technological capitalism, public pathways for the free flow of concepts and ideas and the movement of creativity and the creative are being steadily eroded — the freedom to use and re-interpret creative work is being restricted through legally based but technologically enforced enclosures.

11 Until recently, the creative multitude could decide either to *conform* or *rebel*. In *conforming* they became creatively inert, unable to create new synergies and ideas, mere producers and consumers of the standardised commodities that increasingly saturate cultural life. In *rebelling*, they continued to use concepts and ideas in spite of vectoral law. Labelled "PIRATES", "PROPERTY THIEVES" and even "TERRORISTS", they were then answerable as criminals to the courts of global state power. In other words, a permanent state of exception, a political emergency, was declared, which, together with the disciplinary norms of a propertised *control society*, was then used to justify and extend the coercive use of state power and repression against an increasingly criminalised culture of creativity. But as we will soon discuss, a growing number of the creative have now moved beyond both conformity and rebellion, through an active resistance to the present and the creation of an alternative creative field for flows of non-owned concepts and ideas.

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According to this "INCENTIVE" claim, there cannot have been any creativity (i.e., art, music, literature, design and technology) *before* the ownership and control of our concepts and ideas. This seems like fantasy. Historians frequently profess to us that creativity was alive and well in pre-capitalist times, *before* the advent of intellectual property laws. But even so, we might concede that history is now enough of a fiction to raise some doubt about the form of previous incarnations of creativity and the creative. The incentive claim, however, is even more risible when it implies that there cannot be any creativity *currently* operating outside of the vectoral property regime. This of course contradicts our current experiences as historical actors and witnesses. We can now be sure of something that we have always already known — creativity is irreducible to the exploitation of intellectual property.

Through the principles of *attribution* and *share-alike*, existing works and ideas are given recognition in these communities. This means that while creative work may always be copied, modified and synthesised into new works, previous creative work is valued and recognised by the community for its contribution to creativity as a whole (and rightly so). Attribution and share-alike are constitutive principles of the Free/Libre and Open Source movements, and chromosomes of the new mode of creative life that their social practice intimates.

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14. A new global movement of networked groups that operate across a variety of creative media (e.g., music, art, design and software) is now emerging. These groups produce a *gathering* [2] of concepts, ideas and art that exist outside the current vector property regime. The creative works of the *Free/Libre and Open Source* communities, for instance, can all be freely examined, challenged and modified. Here, knowledge and ideas are shared, contested and reinterpreted among the creative as a community of friends. The concepts and ideas of these groups, like the symbols and signs of language, are public and non-owned. Against the machinations of profit, these groups are in the process of constituting a real alternative — of constructing a model of creative life that reflects the force and desire of the creative multitude.

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These movements adopt an ingenious viral device, implemented through public licences, known as *copyleft*. This ensures that concepts and ideas are non-owned, while guaranteeing that future synergies based on these concepts and ideas are equally open for others to use. Whereas copyright operates through law to prevent the modification and re-use of concepts and ideas, copyleft ensures that these concepts and ideas remain openly available and not capable of being privatised. In this way, *copyright* ('all rights *reserved*') is stood back on its feet by *copyleft* ('all rights *reversed*'). It now stands the right way up for creativity and can once again look it in the eyes.

More broadly, we can say that non-owned creative works are created by singularities formed into *machines of struggle* (e.g, GNU, bit-torrent, nettime.org, autonomedia, SchNEWS, the Zapistas, Linux, Indymedia, LOCA Records). These are horizontal and decentred molecular networks of actors, both human and non-human. These can and should be differentiated from the more centralised, disciplinary machines to which the concept network is now so liberally applied (e.g., "NETWORK FIRMS", "NETWORK STATES", "NETWORK WARS"). As such, they should also be distinguished from vectoral machines (e.g, capitalist corporations, WTO, IMF, the World Bank), which are closed, hierarchical, proprietary machines that configure and territorialize networks, concepts and ideas.

·18· Machines of struggle are continually being enrolled into new alliances and relations. As the vision and practice of non-owned creativity gathers in strength, these rhizomatic arrangements are both deepening and widening. Just as the violence of the vector's disciplinary regime is seeking to intensify, it is being met with a real *counter-power*. This countervailing force finds its form and strength, not through any individual nucleus or singularity standing alone, but through broader relations and alliances. More accurately, therefore, we are talking here of *circuits of counter-power* – machines of struggle in creative alliances.

These circuits of counter-power bring forth the scope for resistance, the capacity **19** for agency and thus the hope and promise of future worlds. When linked together, machines of struggle are able to confront and challenge the vectoral regime as a real force, collectively armed against the territorializing effects of vectoralist capital. Circuits of counter-power provide the conditions and capacity for transformative constitutive action. Such circuits are but one moment of the potential power of the creative multitude as organised and effective transformative agents.

20 We believe that the creative multitude should form themselves into machines of struggle and establish alliances with broader circuits of counter-power. In so doing, they contribute towards the idea and practice of non-owned creativity and the untimely model of creative life that it intimates. Through collective production and shared creative alliance, they will defend *and extend* creativity against those who shamelessly remain wedded to the language and practice of private property and profit, and who continually attempt to territorialize and configure for the purposes of control and ownership.

Indeed, we — who are already quite a crowd — must defend the idea and practice **21** of non-owned creativity. For it is only the creative multitude, when organised and enrolled into circuits of counter-power, who will determine whether a possible transformation of our times is realised. This is a movement that is acting 'counter to our time and, let us hope, for the benefit of a possible time to come' [3].
— *Creativity is creating resistance to the present.*

NOTES

[1] Virno, P. & Hardt (1996)
[2] Versammlung (Heidegger 1951)
[3] Nietzsche (1983, p60)

Downloadable PDFs and translations available at

www.libresociety.org

typographic design: www.undt-type.com

FURTHER READING

Adorno, T. & Horkheimer, M.	(1976)	The Dialectic of Enlightenment
Benjamin, W.	(1935)	The Work of Art in the Age of Mechanical Reproduction
Deleuze, G, & Gautarri, F.	(1999)	What is Philosophy?
Foucault, M.	(1990)	The History of Sexuality, Vols 1, 2 & 3
Hardt, M. & Negri, A.	(2000)	Empire
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Machiavelli, N.	(1958)	The Prince
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We are told that these interests require new laws and rights that will allow them to control concepts and ideas and protect them from exploitation. They say that this will enrich our lives, create new products and safeguard the possibility of future prosperity. But this is a disaster for creativity, whose health depends on an ongoing, free and open conversation between ideas from the past and the present.

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Index

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