Why we oppose intellectual property

Pablo Ortellado 2003-01-09 18:30

While open publishing is a well-known facet of the Independent Media Center, (2) its sister idea, copyleft - undermining copyrights, has received little attention.

At the foot of the website's main page, instead of the traditional note reminding readers of the copyrights, we read the following: "© Independent Media Center. All content is free for reprint and rebroadcast, on the net and elsewhere, for non-commercial use, unless otherwise noted by author." Instead of restricting publication, the copyleft note (a play on the word copyright) allows, and actually promotes, later distribution of the information contained on the website. This copyleft policy is part of a wider movement against intellectual property rights. (3)

COPYRIGHT

While society has long debated private property, especially over the last two centuries, little has been said about the peculiar nature of this odd form of property known as intellectual property. In general, (private) property is justified as a guarantee of the owner's use and disposal of that which belongs to him or her by right (whether by inheritance or as the product one's labor). In other words, someone who has acquired property is guaranteeing the use of a good for him or herself - and he or she is guaranteed such use because of some merit. If someone owns a house, for example, the private property of this house guarantees the owner access to it whenever he or she so desires and use thereof for the purposes he or she so chooses (in addition to being able to dispose of it, sell it, lend it, etc.). If the owner shares this house with other people, as long as such people are using it, the owner is deprived of the house that he or she merits. When one person uses the house, the other cannot use it. This concept holds for all material goods.

However, intellectual property is a different case, and its theorists have known this from the beginning. Legislation regulating intellectual property has its origin in England, in a law dating from 1710, but it was in the United States that this idea was conceptualized and given form by the founding fathers. Those men who founded the United States of America and who wrote the Constitution knew that intellectual property is very different from material property. They knew that songs, poems, inventions and ideas are fundamentally different from the material objects guaranteed by laws designed to protect property. While my using a bicycle prevents another person from using it (because, by nature, two people cannot use the same bicycle at the same time, especially if they are headed in different directions), my reading a particular poem does not prevent another from doing the same. I can read the poem at the same time as the "owner," and the act of my reading neither prevents the owner from doing the same nor does it get in the way of his or her reading of the poem. Thomas Jefferson, one of the founding fathers and one of the first individuals responsible for the U.S. Patent Office discussed this in a famous letter to Isaac McPherson, where he stated:

"If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. 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." (4)

Based on the foregoing, it seems there is no reason to transform ideas (and songs, books and inventions) into property. Nevertheless, Thomas Jefferson himself reminds of the need to stimulate the creation of inventions "for the benefit of society", and this stimulus, for him, can only be compensation (in material goods) for the "inventor". Ideas, precisely for having the particular quality of, once expressed, being assimilated by all who hear them, should be especially protected so that the inventors of ideas do not feel dissuaded from forming or expressing them. The person who comes up with an idea should have the right to it such that the inventor receive material compensation any time other people use or incorporate his or her idea. The author of a book should receive publication copyrights, and the inventor should receive patent rights. Thus, the Constitution of the United States says: "The Congress shall have the power ... to promote the progress of science and

useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries." (5) With exclusive right to their creations, authors and inventors may commercialize their ideas and receive just compensation for their efforts and talents. Compensation is a stimulus for the inventor to produce yet more and for society to progress in the direction of the common good.

However, this common good can be threatened by excessive protection of property related to ideas. Placing too many obstacles could impede, rather than promote, the "mutual instruction of man, and improvement of his condition." Based on his experience in the U.S. Patent Office, Jefferson observed that, "considering the exclusive right to invention as given not of natural right, but for the benefit of society," there are innumerable "[difficulties in] drawing a line between the things which are worth to the public the embarrassment of an exclusive patent, and those which are not." In other words, the question is: at what point does the application of intellectual property rights cease to promote, and instead begin to constrict, intellectual, cultural and technological advancements? If the criteria for establishing property are too rigid and the duration of the rights are too long, then the social utilization of the invention could be hindered. This is the fundamental question discussed in all legislation regarding the extent of intellectual property rights.

In England, which was the pioneer in the establishment of intellectual property legislation, the debate concerning this concept began in the eighteenth century and continued throughout the following three centuries. In 1841, there was yet another attempt to extend copyrights, which, at the time, ceased 20 years after the author's death. The famous historian Thomas Babington Macaulay made a historic speech in the Parliament during which he criticized a law that proposed an extension of copyrights to 60 years after the author's death. Following a long Anglo-Saxon legal tradition regarding copyrights, Macaulay balanced the author's right to be financially rewarded and the social interest in making good use of the inventions as soon as possible and at the lowest possible cost. According to the historian, the system of copyrights has advantages and disadvantages and, therefore, cannot be seen as a black-and-white situation, rather as some murky in-between. Exclusive intellectual property rights, for him, are fundamentally evil because they create a "monopoly," which increases the cost of the "product" and makes it less accessible to all. (6) However, the rights are good because they allow the inventor to be remunerated for his or her intellectual invention. On the one hand, we have the need for a monopoly in the commercial exploitation of a book - such that no more than one publisher may produce or sell a book. Yet, on the other hand, this monopoly that sustains the author harms society, making the book more expensive and its reach less extensive. In his words: "It is good that authors should be remunerated; and the least exceptionable way of remunerating them is by a monopoly. Yet monopoly is an evil. For the sake of the good we must submit to the evil."

The whole question for Macaulay (and for most of the dominant Anglo-Saxon tradition) is centered on knowing the exact measure to which submitting the good to the evil is advantageous: "but the evil ought not to last a day longer than is necessary for the purpose of securing the good." But, what should be the length of this period? The bill proposed to the British parliament sought to extend this right from 20 to 60 years following the author's death. According to Macaulay, this period was very long and brought no advantage over the period of twenty years that was then in effect (which he understood as being already excessive). If the objective of copyrights is to stimulate invention, such a distant, and posthumous compensation seemed inefficient. Macaulay argued: "We all know how faintly we are affected by the prospect of very distant advantages, even when they are advantages which we may reasonably hope that we shall ourselves enjoy. But an advantage that is to be enjoyed more than half a century after we are dead, by somebody, we know not by whom, perhaps by somebody unborn, by somebody utterly unconnected with us, is really no motive at all to action."

With minimal focal shifts, the debate surrounding intellectual property rights has been always marked by the dispute over the fine line between the stimulus for invention and the public enjoyment of the creation. (7) The first English law of 1710 gave the inventor exclusive right to a book for a period of 14 years and, if the author were still alive upon the expiration of said period, he or she could renew the right for another 14 years. U.S. legislation was based on English law, and the patent and copyright laws of 1790 assumed the 14-year periods renewable for a further fourteen. In 1831, the American Congress revised the copyright laws, substituting the initial 14-year period for one of 28 years that was renewable for a further fourteen. In 1909, the laws were revised once again, and the period was expanded yet again to 28 initial years renewable for a further twenty-eight.

More recently, with the growing power of the culture industry, the extent of the right to intellectual property far surpassed the twenty posthumous years that so bothered the historian Thomas Macaulay in 1841. Pressure mounted in 1955, when the U.S. Congress authorized the Patent Office to conduct a study to consider revision of existing copyright laws. The final report recommended an extension of the renewal period from 28 to 48 years. Organizations for writers and the culture industry (mainly publishing companies), however, insisted upon a period covering the life of the author plus fifty years following his or her death. The justification for this very long period was the "modernization" of copyright laws and their adherence to the Berne Convention. (8) As it became apparent that the dispute could not be resolved in the short term, and as rights were beginning to expire, lobbyists managed to obtain an extraordinary extension of the expiration dates for nearly expired rights - from 1962 to 1965 - even as the subject had not been voted upon definitively in Congress. Despite repeated objections by the Department of Justice, the debate surrounding the matter brought another eight "extraordinary" extensions - from 1965 to 1967; from 1967 to 1968; from 1968 to 1969; from 1969 to 1970; from 1970 to 1971; from 1971 to 1972; from 1972 to 1974; and from 1974 to 1976 - all in the interest of those who held the rights (generally companies, not authors' descendents) and to the detriment of the public domain. Finally, in 1976, Congress approved a new and "modern" copyright law, allowing a copyright to be in effect for the life of the author plus 50 posthumous years, and a period of 75 years following publication or 100 years following creation, whichever the shorter, for works ordered by companies.

However, in the mid-1990s, a series of notable works whose rights belonged to the culture industry once again neared copyright expiration. And, once again, "more modern" (9) international legislation served as a pretext to extend copyrights. In the late 1980s, companies like Walt Disney and Time Warner began to worry about some of their creations whose copyrights would run out soon after the turn of the century. Disney worried about Mickey Mouse - which would become public property in 2003, Pluto - which would suffer the same fate in 2005, and Donald and Daffy Duck - which were slotted for public domain in 2007 and 2009, respectively. In the meantime, Warner was worried about Bugs Bunny - whose rights would expire in 2015 - and with a number of creations to which it held rights, including the film "Gone with the Wind," whose rights were to expire in 2014, and a host of George Gershwin musicals, including the song "Rhapsody in Blue" and the opera "Porgy and Bess," the rights to which were set to expire in 1998 and 2010, respectively.

Afraid of suffering greatly from the loss of their copyrights, Disney, Warner and the cinematography industry waged a heavy lobbying campaign headed by Senator Trent Lott. The result, in 1998, was the extension of copyrights following the author's death from 50 to 70 years, in the case of a right held by a person, and the increase from 75 to 95 years, in the case of a right held by a corporation. The foregoing, together with the two companies' artistic works, meant more than twenty years of exclusive commercial exploitation of books like "The Great Gatsby" by F. Scott Fitzgerald and "A Farewell to Arms" by Ernest Hemingway (whose rights are retained by Viacom and were set to expire in 2000 and 2004, respectively) and of music like "Concert No. 2 for Violin" by Prokofiev and "Smoke Gets in Your Eyes" by Kern and Harbach (whose rights, belonging to Boosey & Hawks and to Universal, would expire in 1999 and 2008 respectively).

COPYLEFT

We can now return to the legislative fundamentals of intellectual property (a generic name that covers copyrights, patents and trademarks). As we can see, ever since the legislation was first drafted, it was always justified by the material stimulus the inventor would receive. But is material stimulus the only and the best stimulus that can be given for the development of knowledge, culture and technology? Was it really the case that before the advent of intellectual property laws, people had no incentive to write books and music and to invent technological devices?

Before Thomas Jefferson worked in the U.S. Patent Office, Benjamin Franklin, who drafted the Declaration of Independence with him and John Adams, had an active life as a creator, gaining universal fame for his experiments and inventions. As the father of the famous experiment using a kite to prove that lighting bolts are electrical discharges, and as the inventor of such things as bifocals and the lightening rod, Benjamin Franklin always refused to patent his inventions. In his autobiography, we can see the reasons he posited for refusing to exploit his inventions commercially. The following except is clearly pertinent:

"... having, in 1742, invented an open stove for the better warming of rooms, and at the same time saving fuel, as the fresh air admitted was warmed in entering, I made a present of the model to Mr. Robert Grace, one of my early friends, who,

having an iron-furnace, found the casting of the plates for these stoves a profitable thing, as they were growing in demand.

"To promote that demand, I wrote and published a pamphlet, entitled 'An Account of the new-invented Pennsylvania Fireplaces; wherein their Construction and Manner of Operation is particularly explained; their Advantages above every other Method of warming Rooms demonstrated; and all Objections that have been raised against the Use of them answered and obviated,' etc.

"This pamphlet had a good effect. Gov'r. Thomas was so pleas'd with the construction of this stove, as described in it, that he offered to give me a patent for the sole vending of them for a term of years; but I declin'd it from a principle which has ever weighed with me on such occasions, viz., That, as we enjoy great advantages from the inventions of others, we should be glad of an opportunity to serve others by any invention of ours; and this we should do freely and generously." (10)

The fact that talented men like Benjamin Franklin never felt incentives as derived from material compensation for their discoveries was always taken into account in serious debates on intellectual property rights. The historian Thomas Macaulay, for example, who defended the rights according to classic principles, was obligated to make exceptions when he mentioned the contribution the rich gave to artistic creations and inventions: "The rich and the noble are not impelled to intellectual exertion by necessity. They may be impelled to intellectual exertion by the desire of distinguishing themselves, or by the desire of benefiting the community." But is it really the case that the vanity of producing something unique or the generosity of producing some common good are exclusive virtues of the rich? A good part of artistic development seems to demonstrate otherwise. Important painters like Rembrandt, Van Gogh and Gauguin died without recognition and in poverty, as did musicians like Mozart and Schubert; and the writer Kafka, although never being truly poor, was not recognized in his lifetime. Did a lack of perspective on material compensation at some point impede them from dedicating themselves to painting, music or literature? Can we not accept that they had some other type of motivation - the expectation of posthumous recognition or a simple love for their art?

The question of intellectual property, when considered outside the traditional image of a scale that gauges material incentives for the creator on one hand and social interest in making invention available on the other hand, can be thought in many lights. Should artists be remunerated for their creations? Is it even possible for an artist to contribute to this collective and anonymous good that is human culture without having used and incorporated the rich and generous contribution of other artists, whether living or dead? And if we do find that a material incentive, beyond personal vanity and a will to contribute to the common good, is indeed necessary, could we not develop a public system of compensation for inventors, as suggested by Harvard economist Stephen Marglin? (11) Could we not conceive of a system that allows for the propagation of great ideas - by means of public contests, for example - but that doesn't limit the use of such ideas to an individual entrepreneur?

Actually, questions such as these - if we should or should not offer material compensation for inventions and whether or not the best form of remuneration is via private commercial exploitation - are questions to which there should be no theoretical answers. The social movements searching for concrete alternatives should present the answers, and, in fact, they already are doing it.

Ever since the implementation of registering creations and patents, the rights thereto have been violated. Part of the violation of these rights is, doubtless, mere crime. However, aside from the marginalized and clandestine violation of these intellectual property rights (which actually may occur on a large, even dominant, scale), there has always been a different phenomenon related to them - that of a civil disobedience towards the laws that spawned these rights. Civil disobedience is very different from crime. Crime is a clandestine violation of the law, carried out in secret and with the understanding that the law being violated is actually a legitimate law. Civil disobedience, on the other hand, is a public violation of the law, carried out in the open, and it does not recognize the law being infringed as an innately just law.

Ever since intellectual property rights were established, there has been open resistance to their application in both the public and private sector. The enormous difficulty of levying fines on these violations of rights meant that this civil disobedience was quite passive in nature; it did not engage in responding to intellectual property laws, rather it simply ignored them. People knew the laws existed and should be respected, but they simply went around them because they found the laws absurd. I clearly am not referring to commercial piracy, which is, without exaggeration, mere crime. The pirate industry recognizes the laws in effect and clandestinely skirts these laws, without answering to them. In fact, the whole industry of

pirated goods can only aspire to the transformation of its black market into a legal industry and thus to use the copyrights in its own favor.

Yet, it is a whole other ballgame with users who reproduce art for non-commercial purposes, - "for the moral and mutual instruction of man, and improvement of his condition," as Jefferson said. When reproduction apparatuses began to spread (the mimeograph, the audiocassette, the photocopier and then digital computer reproduction), people automatically began copying books, songs, photographs and videos, for themselves and for their friends, without paying due rights, just as generations earlier had staged plays in schools and neighborhoods and had sung and played songs for friends and the community without paying the corresponding copyrights. As much as the "civic" campaign promoted by industry and the government reminded all of the importance of "paying copyrights," people still frequently and intuitively doubted that such payment was at all sensible, since whoever simply made good use of this collective good we know as human culture could not be robbing anything from anyone. As Benjamin Franklin wrote in his autobiography, no culture (or knowledge or technology) can be produced without first learning from the huge community of other inventors, both living and dead. Just as we make good use of and learn freely from all other creators - so ample in scope that we could not even name them individually - we should make our contribution available to the education of later generations.

Although neither industry nor governments have succeeded in effectively restraining private and communal use of artistic creations without payment of corresponding copyrights, (12) they certainly have done everything possible to block the spread of domestic reproduction technology. (13) Such was the case in 1964 when Phillips launched the audiocassette, and the phonographic industry first tried to block the product's release. It then lobbied Congress to impose a tax on blank tapes so as to compensate it for the resulting industry "losses" from the copies users would make from their LPs to cassettes. The same thing happened in 1976 when Sony launched its Betamax videocassette. Universal Studios and Walt Disney filed a suit against Sony, accusing it of promoting a violation of copyrights and, after an eight-year battle in court, the Supreme Court finally recognized that the person taping a TV show was not practicing piracy. Later, in 1987, a new reproduction device hit the market: the digital audiotape, which allowed for faithful digital recordings without the need to compress data (as is the case with the compact disc). Although initially it has not been well accepted on the market and, until now, it has only gained wide acceptance among audio professionals, the digital audiotape has driven the phonograph industry to desperation. Owing to industry pressures, the U.S. Congress proposed various laws and amendments seeking to limit the ability to create copies using the new device and to tax blank tapes. After many disputes, in 1992, on his last day in office, President Bush (Sr.) ratified the Audio Home Recording Act, which had been approved earlier in Congress by a voice vote (which means there is no record of who voted in favor and who against). The Act, among other measures, obligated all digital audio apparatuses to include a device to block serial copying of a cassette tape (that is, once a copy was made, another copy could not be made of it) and imposed a tax on the apparatuses (2% sales tax) and on blank tapes (3% sales tax). The tax, after being collected, was distributed as follows: 57% for corporations (recording companies and music publishing companies) and just 43% for authors. Was this the type of incentive for the author that guided the musings of Thomas Jefferson and the founders of the United States of America when they drew up the laws and institutions that regulate copyright laws?

Corporations' growing interest in the maintenance and expansion of copyrights owes itself to the specific manner in which the laws were originally established. When intellectual property was conceived at the end of the eighteenth century, its purpose was to grant to the author a monopoly on the commercial exploitation of the innovation such that whoever wished to read the book that the author had written or listen to the music that the artist had composed had to pay for such. The artist could insist upon such payment because he or she had the exclusive right to market the innovation without competition. But it is obvious that the authors could not do this. Unless the author of a book became its own publisher, he or she could not directly commercialize the book. He or she would need a publisher, a capitalist, to sell the book for him or her and to take a part of the profits as compensation for the publisher's investment. Thus, authors began to cede their exclusive rights to sell, without competition - the selfsame right the author had received from the state - to the capitalist and consequently shared the dividends of his or her creation with the capitalist. But, in this relationship, the weak link was clearly the author. The distribution of books, records and other products has always been relatively expensive, and there have been many authors for the few companies interested in promoting them. This has given the companies a lot of power to determine the conditions

of contracts and thus has guaranteed publishing companies' hefty participation in the income generated from the sale of books and other works. It is clear that if the objective were to stimulate the author and not to benefit corporations, there would be no reason to concede the monopoly of commercialization to a company. The best way to benefit the author would be for the author to maintain his or her own sales monopoly and to cede the non-exclusive right to publish the work to various competing companies. Thus, with companies in clear competition, the work could be sold at a cheaper price and would reach a much wider audience with dividends going mainly to the authors, who could bargain for more advantageous sales licenses. With the monopoly of sales being ceded wholly to companies, the large companies in the culture industry - not the authors - were the prime beneficiaries.

As the culture industry's power grew, so did the campaigns aimed to fight copyright violations. This pressure, in a way, caused passive civil disobedience, which had previously appeared when people simply had ignored the laws, became more visible and, thus, movements opposed to copyrights began to appear. While small groups of radical hackers launched campaigns of deliberate copyright violations, by distributing music, videos, text and programs for free over the Internet under the motto "Information wants to be free", huge, spontaneous movements, which were less conscious and less radical, reached a much wider public. Among these movements, the greatest impact was undoubtedly made with the formation of the Napster community.

Napster was a point-to-point program developed in 1999 by the student Shawn Fanning, who had been searching for a way to overcome the difficulties of finding MP3 format music on the Internet. Until then, music in MP3 format had been made available mainly through FTP servers that generally remained on-line only until a recording company found them and sent a message threatening to file a lawsuit. To avoid this problem, Fanning came up with a point-to-point system where users could access files in shared folders on other users' computers through links collected by a server. In that way, the file-storing servers were bypassed. The music files remained on each user's computer, and the Napster server merely made the access links available. Napster was a smart conception that decentralized file storage. It thus created an ambiguous legal situation. It was not a huge server that distributed music; it was rather a network of users who generously shared music files among themselves. In a way, there was little differentiating file exchange over Napster network and people's earlier habit of taping records for their friends. The big difference was that the former was conducted over a network that linked five million users, and it was on this key dimension that the RIAA (Recording Industry Association of America) based its lawsuit against Napster.

One of the most relevant facts related to the Napster phenomenon was the make-up of the Napster community. The lack of a server to store files meant that for Napster to function, it demanded users to generously share their music. If all members were on-line merely to download music and if they failed to make their own files available to others the network would collapse. It is notable that, despite earning nothing and, on the contrary, spending considerable access bandwidth, millions of people made their music available to others they did not even know, forming a true virtual community.

The Napster phenomenon initiated huge public debates on copyrights between 1999 and 2001, when Napster lost the lawsuit. On the one hand, this discussion brought to light the phenomenon of civil disobedience surrounding the use of the program. While Napster's legal status was being debated in court, in press and in public opinion, the only voice that could be heard was that of the big recording companies and the big artists who condemned Napster and accused it of robbery, piracy and bringing losses to thousands of hardworking artists. Despite this massive propaganda campaign held by corporate press (part of which belongs to corporate conglomerates that also control recording companies), people did not stop signing on to the Napster network in a clear demonstration that they did not consider as legitimate a law that hindered the free exchange of cultural goods.

The discussion over Napster, on the other hand, generated a debate on artists' remuneration and on the difficulties of keeping at the same time a free exchange of information and the sustenance of remunerated professional creators and artists. Not only did the big recording companies oppose Napster, but a number of established artists, from Metallica to Lou Reed, (14) argued that the free exchange of music without payment for copyrights took off their source of income. And while this debate has been quite one-sided - because a true opposition to copyrights was never heard - it at least has brought the primary objective of the institution of copyrights to the forefront of the debate.

While some alternative forums theoretically discussed the possibility of a world without copyrights, a movement headed by computer programmers began to demonstrate the effective viability of this project. This movement did not merely imagine how a society without copyrights would function; it began to put its ideas into practice.

While many stories can be told regarding the origin of this movement, we can say that it first started back in the early 1980s, when programmer Richard Stallman, from MIT's Artificial Intelligence Laboratory, quit his job because he felt restricted by copyright licenses that hindered him from perfecting programs bought from companies. Stallman felt that the copyright licenses that denied access to programs' source codes (so as to restrict illegal copying) restricted the freedoms programmers had once enjoyed before the information world was dominated by large corporations - the freedom to run programs without restrictions, the freedom to understand and modify programs, and the freedom to redistribute these programs either in the original or modified form among friends and the community. Therefore, Stallman decided to start a movement that would produce free programs, programs that guaranteed those freedoms that the world of programmers had known before corporate restrictions. It was with these ideas that Stallman began to conceive of an operational system called GNU, which, after incorporating the kernel developed by Linus Torvalds, came to be known as Linux. (15)

The significance of the development and spread of GNU/Linux operational system lies not simply on the breaking of Microsoft's Windows-system monopoly, but on doing it by means of large-scale, collective and cooperative voluntary work. With the exception of a few workers who receive relatively low salaries from Stallman's foundation (the Free Software Foundation), the majority of GNU/Linux developers are programmers at companies and universities who have contributed voluntarily without expecting any sort of return other than public recognition for a work well done. Like Benjamin Franklin, these programmers - among whom we can find some of the best in their field - donated their work "freely and generously" hoping to contribute to "the common good" and for "the improvement of conditions". And with this work that has been merely voluntary and generous (that in the last year has come to be exploited extensively by corporations), a community estimated today at fifteen million users was formed.

The success of the spread of this operating system and hundreds of other free programs was due to the fact that the programs guaranteed the permanence of their "freedom". When Stallman started the free-software movement, he came up with a type of copyright license that ensured continued freedom in the reproduced and improved versions of the software. Stallman named this type of license "copyleft," a play on the word "copyright." (16) Instead of simply giving up copyrights - what would allow companies to appropriate a free program, modifying it and redistributing it in restricted form - Stallman devised a limitation mechanism that ensured the continued freedom that the programmer originally had given the program. The mechanism he devised was to reaffirm copyrights giving up the exclusivity of distribution and alteration as long as subsequent use would not restrict those freedoms. In other words, a person who received a free program received it under the condition that, if he or she copied or improved the program, he or she would uphold the free nature of the program as it had been received: the right to circulate freely, to be modified and copied at will. With this new right, free programs, the fruits of collective, voluntary efforts, earned a license that guaranteed them that, although companies wished to use and distribute the programs, the companied had to use them in such a way as to uphold the initial freedoms.

The success of the GNU/Linux operating system and of the free-software movement have offered concrete examples of the possibility of building a system of creation and innovation where remuneration is not the main stimulus and where the collective interest in freely enjoying human culture is more important than the commercial exploitation of ideas. Of course the objection that the authors would remain deprived of sustenance and would have to do dirty non-purely creative jobs remained. Yet Richard Stallman's example, who gave up being a programmer who sooner or later would be forced to submit himself to companies for the role of conference panelist and independent technical advisor, or, better yet, the example of George Gershwin, who earned his living as a pianist and conductor, playing his own compositions, before he guarantee the sustenance for the next three generations of his family, show that a life without copyrights is indeed possible.

Today the copyleft movement, for the free circulation of culture and knowledge, has extended far beyond the world of programmers. The copyleft concept is applied to literary, scientific, artistic and journalistic creations. There is still much work to be done to spread the word and clarify the concept and we need to discuss, politically, the pros and cons of different types of license. We need to discuss if we want to reconcile commercial exploitation with free, non-commercial use or if we simply

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want to free ourselves of the means of commercial distribution once and for all; we also need to discuss questions related to any given piece's authorship and integrity, especially in an age where sampling and pasting are important artistic expressions; finally, we must discuss the innumerable nuances of each type of production, tailoring the license to what we are doing or making (the emphasis in the possibility of modifying a computer program hardly holds water when applied to a scientific creation, etc.). That is not the job of imagining a different world, but of building that world right here right now.

NOTES:

(1) Translated by Melissa Mann.

(2) http://www.indymedia.org

(3) Intellectual property rights is a generic term referring to copyrights, patents and trademarks. This article does mention patents but it mainly addresses copyrights. A more in-depth debate on trademarks can be found in: Naomi Klein, No logo. New York: Picador, 2002.

(4) Letter from Thomas Jefferson to Isaac McPherson, August 13, 1813 (The Writings of Thomas Jefferson. Washington: Thomas Jefferson Memorial Association, 1905, vol. 13, 333-335). This excerpt is cited frequently in arguments against intellectual property, but Jefferson's intention merely was to show that intellectual property is unnatural - which does not necessarily impede society's institution thereof (an idea he, in fact, defended).

(5) Clause regarding copyrights and patents in the Constitution of the United States of America, art. I, § 8, cl. 8.

(6) Babington Macaulay, "A Speech Delivered in the House of Commons on the 5th of February 1841" In: The Miscellaneous Writings and Speeches of Lord Macaulay. London: Longmans, Green, Reader & Dyer, 1880, vol. IV.

(7) Despite this, there have been various attempts to introduce natural law when dealing with intellectual property. If the doctrine of natural law were to prevail, the right to exclusive commercial exploitation would lose its character of justified temporary concession in order to stimulate invention and would become instead a permanent and hereditary right. In the short term, this would cause the complete commercialization of all cultural goods. Fortunately, this was nowhere adopted. In France, following the Revolution, the Constitution of 1791 wed "natural" law to intellectual property, but the legal regulation of this right always restricted the monopoly to a set period of exploitation.

(8) Evidence that adherence to the Berne Convention was a mere pretext is given by the fact that, despite the author's life plus fifty years had been adopted in the United States in 1976, the country did not sign the Convention until 1989 because it didn't renounce other "minor" items such as the need for registration. For a full account of this debate, see Tyler T. Ochoa "Patent and Copyright Term Extension and the Constitution: a Historical Perspective" Copyright Society of the USA (March 2002): 19-125.

(9) The European Union had extended the valid copyright period to the duration of the author's life plus seventy years.

(10) The Autobiography of Benjamin Franklin. New York: P. F. Collier & Son, 1909, 112.

(11) Stephen Marglin, "What Do Bosses Do?" Review of Radical Political Economy 6 (Summer 1974): 60-112.

(12) Imagine Warner demanding that the millions of people who sing "Happy Birthday to You" pay for the right to do so. (Yes, there is a copyright for "Happy Birthday to You" and it belongs to AOL Time Warner, which receives approximately two million dollars annually from copyright payments related thereto.)

(13) Long before the recent debates involving the audiocassette and the videocassette, we can recall the suit filed by the musical recording company White-Smith against Apollo Co. in 1908 for the sale of "piano rolls," cylindrical cartridges with perforated paper that were sued for a device that allowed pianos to play music automatically.

(14) Whoever looks over the history of the debate regarding copyrights is going to be disillusioned with big artists who often put small private interests over public ones. It's not only the case of Metallica who tried to make coincide the interest of young artists and big corporations, reminding us all that "while we all like to take shots at the big, bad record companies, they have always reinvested profits towards exposing new bands to the public" and adding that "without this exposure, many fans would never have the opportunity to learn about tomorrow's bands today". (Lars Ulrich, of Metallica, in statement on Napster). At a U.S. Congressional hearing to review copyright laws in 1906, writer Mark Twain, author of such classic novels as "The

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Adventures of Huckleberry Finn" and "Tom Sawyer," simply defended the natural right to intellectual property. Upon being informed that such doctrine was unconstitutional, he proceeded to then defend the extension of the copyright as long as possible. His arguments? "I like the fifty years' extension, because that benefits my two daughters, who are not as competent to earn a living as I am, because I have carefully raised them as young ladies, who don't know anything and can't do anything." (E. F. Brylawsky e A. A. Goldman, Legislative History of the 1909 Copyright Act. Littleton: Fred B. Rothman, 1976, 117 quoted by T. T. Ochoa, op cit., 36)

(15) Richard Stallman "The GNU Operating System and the Free Software Movement" In: Mark Stone, Sam Ockman e Chris DiBona (eds.) Open Sources: Voices from the Open Source Revolution. Sebastopol: O'Reilly, 1999.

(16) The term "copyleft" was coined by one of Stallman's friends who jokingly wrote once in a letter: "Copyleft: all rights reversed" in reference to the common note: "Copyright: all rights reserved." See Stallman's article quoted earlier.

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