COPYRIGHT, COPYLEFT AND THE CREATIVE ANTI-COMMONS

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> A Genealogy of Authors' Property Rights

The author has not always existed. The image of the author as a wellspring of originality, a genius guided by some secret compulsion to create works of art out of a spontaneous overflow of powerful feelings, is an 18th century invention. This image continues to influence how people speak about the "great artists" of history, and it also trickles down to the more modest claims of the intellectual property regime that authors have original ideas that express their unique personality, and therefore have a natural right to own their works - or to sell their rights, if they should choose. Although these ideas appear self-evident today, they were an anomaly during their own time. The different pre-Enlightenment traditions did not consider ideas to be original inventions that could be owned because knowledge was held in common. Art and philosophy were products of the accumulated wisdom of the past. There were no authors - in the sense of original creators and final authorities - but only masters of various crafts (sculpture, painting, poetry, philosophy) whose task was to appropriate existing knowledge, re-organize it, make it specific to their age, and transmit it further. Artists and sages were messengers, and their ability to make knowledge manifest was considered a gift from the gods. Art was governed by a gift economy: aristocratic patronage was a gift in return for the symbolic gift of the work. Even the neoclassical worldview that immediately preceded Romanticism viewed art as imitation of nature and the artist as a craftsman who transmitted ideas that belonged to a common culture.

The Romantic revolution marked the birth of proprietary authorship. It abolished the belief that creations of the human intellect were gifts from the gods that could be policed by royal decrees. But while it liberated the productive capacity of individuals from supernatural causes and political control, it located this capacity in the sovereignty of the individual, ignoring the larger social context of production. And it chained the production of knowledge to the idea of private property that dominated philosophical and economic discourse since Locke. Romanticism's re-definition of the artist as an original creator was an effect of a combination of political, economic and technological transformations. Industrial production during the 18th century led to increasing commodification. The enclosure of the commons forced many farmers who had lived off the land to become workers in industrial cities, and the dominance of market relations began to permeate all spheres of life. The sharp rise in literacy created a new middle-class public of consumers – a necessary precondition for commercializing culture. The capacity of the printing press to mass reproduce and distribute the written word destroyed established values, displacing art from the courts to coffee houses and salons. And as the feudal world of patronage withered away, along with the system of political sovereignty that had supported it, for the first time writers and artists tried to live from the profits earned from the sale of their works.

Romanticism was born as a contradictory response to these developments. It was an opposition to capitalism, but one expressed through the language of private property and the assumptions inherited from the philosophical discourse that legitimated capitalism's mode of production. Romanticism denounced the alienation and loss of independence spawned by industrial production and market relations, and portrayed the artist in heroic opposition to the drive for profit. Adopting Rousseau's metaphors of organic growth and Kant's notion of genius as an innate force that created from within, Romantic authors celebrated the artist as a spontaneous, untamed being (like nature itself), guided by intuitive necessity and indifferent to social rules and conventions. By locating the work of art in a pre-social, natural self, its meaning was free from contamination with everyday life. Art was neither public, nor social, nor similar to the labour of workers who produced commodities. It was self-reflexive, offering a window to a transcendent subjectivity.

In the mid 1750s, Edward Young and Samuel Richardson were the first to argue that the work of an author, since it was a product of his unique personality, was more truly an author's property than the material objects produced by a worker. This idea found its most enthusiastic supporters among German and English Romanticism, but also echoed in wider literary circles. In 1772 Lessing connected originality to rights over ideas and argued that authors were entitled to economic profits from their works. Realizing that the problem with defining ideas as property was that many people seemed to share the same ideas, in 1791 Fichte argued that for an idea to be regarded as property it had to have some distinguishing characteristic that allowed only a single individual to claim it. That quality lay not in the idea itself but in the unique form the author used to communicate it. Ideas that were common could become private property through the author's original form of expression. It is this distinction between content (ideas) and form (the particular style and expression of those the ideas) that provided an initial foundation for intellectual property law. By the 1830s Wordsworth had effectively linked the notion of genius - defined as the introduction of a new element into the intellectual universe - to legal stakes in the copyright wars. Arguing that artistic genius was often not recognized by contemporaries but only after an author's death, he became an active lobbyist for extending copyright to 60 years after an author's death. Wordsworth's duality in invoking the author as a solitary genius as

well as an interested economic agent was symptomatic of the complicity between Romantic aesthetics and the logic of commodification. The Romantic worldview tried to elevate art to a pure space above commodity production, but its definition of the creative work as property reintegrated art into the very sphere it sought to negate.

The existence of "copy rights" predated 18th century notions of the author's right to ownership. From the 16th to the 17th century royal licenses gave exclusive rights to certain publishers to copy (or print) particular texts. In 1557, England's Queen Anne granted an exclusive printing monopoly to a London guild of printers, the Stationers Company, because it assured her control over which books were published or banned. The first copyrights were publishers' rights to print copies, which emerged out of the ideological needs of absolutist monarchies to control knowledge and censor dissent. After the *Licensing Act* expired in 1694, the monopoly of the Stationers Company was threatened by provincial booksellers, the so-called "pirates" from Ireland and Scotland. The Stationers Company petitioned Parliament for a new bill to extend their copyright monopoly. But this was a different England from 1557: Parliament had executed King Charles I in 1649, abolished the monarchy and installed a republic under Cromwell, restored the monarchy with Charles II, overthrew James II in the Revolution of 1688, and, in 1689, it passed the first decree of modern constitutional sovereignty, the *Bill of Rights*. The *Statute of Anne*, passed in 1710 by Parliament, turned out to be a hard blow against the Stationers Company. The Statute declared authors (not publishers) to be owners of their works and limited the copyright term to 14 years for new books and 21 years for existing copyrights. The Statute, which was subtitled "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned," tried to balance the philosophical ideas of the Enlightenment with the economic interests of a nascent capitalism by creating a marketplace of knowledge through competition.

The Statute's aim was not to create an author's copyright but to break the Stationers Company's monopoly. Since this monopoly was too well established to be attacked superficially, reversing the ownership from publisher to author provided a solid basis. After the *Statute of Anne* was passed, the Stationers Company ignored its time limitations and a battle over literary property began in the law courts that lasted more than 50 years. In Millar vs. Taylor (1769), a London publisher belonging to the Stationers Company won a verdict supporting a common-law right of perpetual copyright despite the *Statute of Anne*. This decision was overturned in the landmark case of Donaldson vs. Becket (1774); the ruling in favor of the Scottish bookseller Donaldson rejected the argument for perpetual copyright and upheld the limits set out in the *Statute of Anne*. The principal players in what the press hailed as the great cause concerning literary property were not authors. Publishers sued each other in the courts, invoking the author's rights as a pretext in their battle for economic power. The notion of the author as an originator with a natural right to own ideas may have been invented by artists and philosophers, but it was publishers who profited from it. Laws are not made by poets but by states, and states exist to enforce economic privilege, adopting whatever philosophical legitimation they find convenient at any given time. The *Statute of Anne* codified the capitalist form of the author-publisher relationship: copyright was attached to the author at birth but automatically assumed by publishers through the "neutral" mechanisms of the market. Authors had a right to own the products of their labour in theory, but since they created immaterial ideas and lacked the technological means to produce books, they had to sell their rights to another party with enough capital to exploit them. In essence, it was no different than having to sell their labour. The exploitation of the author was embedded in the intellectual property regime from its inception.

Intellectual property laws have shifted with the winds of history to justify specific interests. Countries that exported intellectual property favored the notion of authors' natural rights, while developing nations, which were mainly importers, insisted on a more utilitarian interpretation that limited copyright by public interest. During the 19th century, American publishing companies justified their unauthorized publication of British writers on the utilitarian grounds that the public's interest to have great works available for the cheapest possible price outweighed authors' rights. By the beginning of the 20th century, as American authors became popular in Europe and American publishing companies became exporters of intellectual property, the law conveniently shifted, suddenly recognizing the natural rights of authors to own their ideas and forgetting previous theories of social utility. During the 20th century, intellectual property law has extended the rights of owners in several ways: by increasing the duration of copyright to lifetime plus 70 years, by standardizing international IP regimes to benefit corporations in economically dominant countries (achieved through shifting IP governance from the World Intellectual Property Organization to the World Trade Organization), and by redefining the means of protection and the types of intellectual property that could benefit from protection. Until the middle of the 19th century, copyright meant only protection against verbatim copying. Toward the end of the 19th century, this was redefined so that the property protected by copyright consisted (against Fichte's definition) in the substance, and not in the form alone – which meant translations were also subject to copyright. Later this protection was extended to any close approximation of the original, like the plot of a novel or play or the use of the characters from a movie or book to create a sequel. The types of property protected by copyright have also expanded exponentially. In the beginning, copyright was a regulation of the reproduction of printed matter. But the legislation changed with each new technology of reproduction (words, sounds, photographs, moving images, digital information). At the beginning of the 20th century copyright was extended from covering texts to covering "works." During a landmark court case in 1983 it was argued that computer software was also a "work" of original authorship analogous to poetry, music and painting in its ability to capture the author's originality and creative imagination. This illustrates the wildly different contexts in which the myth of the creative genius has been invoked to legitimate economic interests. And in each of the landmark cases the focus has always shifted away from corporations (the real beneficiaries) to the sympathetic figure of the author, who people identify with and want to reward.

> Intellectual Property as Fraud

If property is theft, as Proudhon famously argued, then intellectual property is fraud. Property is theft because the owner of property has no legitimate claim to the product of labour. Except by denying workers access to the means

of production, property owners could not extract any more than the reproduction costs of the instruments they contribute to the process. In the words of Benjamin Tucker, the lender of capital is entitled to its return intact, and nothing more. When the peasants of the pre-industrial age were denied access to common land by the new enclosures, it can be said that their land was stolen. But if physical property can be stolen, can intelligence or ideas be stolen? If your land is stolen, you cannot use it anymore, except on the conditions set by its new private "owner." If ownership of an idea is analogous to the ownership of material property, it should be subject to the same conditions of economic exchange, forfeiture, and seizure - and if seized it would then cease to be the property of its owner. But if your idea is used by others, you have not lost your ability to use it – so what is really stolen? The traditional notion of property, as something that can be possessed to the exclusion of others, is irreconcilable with intangibles like ideas. Unlike a material object, which can exist in only one place at a given time, ideas are non-rivalrous and non-exclusive. A poem is no less an authors' poem despite its existence in a thousand memories.

Intellectual property is a meaningless concept - ideas don't behave like land and cannot be possessed or alienated. All the intellectual property debates fought in courthouses and among pamphleteers during the 18th century intuitively grasped this contradiction. What became obvious in these debates was that the rights to own ideas would have to be qualitatively different from the rights to own material property, and that the ease of reproducing ideas posed serious problems for enforcing such rights. In parallel to the philosophical debates about the nature of intellectual property, a monumental discourse criminalizing piracy and plagiarism began to emerge. The most famous rant against piracy was Samuel Richardson's 1753 pamphlets denouncing unauthorized Irish reprints of his novel *Sir Charles Grandison*. Contrasting the enlightened English book industry with the savagery and wickedness of Irish piracy, Richardson criminalizes the reprints as theft. In actuality his claims had no legal basis since Ireland was not subject to England's intellectual property regime. And what he denounced as piracy, Irish publishers saw as a just retaliation against the Stationers Company's monopoly. A year before Richardson's pamphlets, there were street riots in Dublin against British taxation policies, which were part of a larger political struggle of Irish independence from Britain. By arguing that this Cause is the Cause of Literature in general, Richardson framed the battle over literary property in purely aesthetic terms, isolating it from its political and economic context. But his use of the piracy metaphor recalled Britain's colonial history and brutal repression of sea pirates. 18th century maritime piracy has itself been interpreted as a form of guerilla warfare against British imperialism, which also created alternative models of work, property and social relations based on a spirit of democracy, sharing, and mutual insurance.

Richardson's account of originality and propriety excluded any notion of cultural appropriation and transmission. Never was work more the property of any man than this is his, he claims, portraying his novel as New in every sense of the word. His claim is especially ironic given his own appropriation, both in the novel and in the pamphlets, of stories of piracy and plagiarism from the popular literature of his time and from Heliodorus' *The Ethiopian*, a 3rd century romance which was widely parodied throughout the 18th century. The idea of originality, and the possessive individualism it spawned, created a tidal wave of paranoia among the author "geniuses," whose fear of being robbed seemed to mask a more basic fear that their claim to originality was nothing but a fiction.

Artistic creation is not born ex nihilo from the brains of individuals as a private language; it has always been a social practice. Ideas are not original, they are built upon layers of knowledge accumulated throughout history. Out of these common layers, artists create works that have their unmistakable specificities and innovations. All creative works reassemble ideas, words and images from history and their contemporary context. Before the 18th century, poets quoted their ancestors and sources of inspiration without formal acknowledgement, and playwrights freely borrowed plots and dialogue from previous sources without attribution. Homer based the *Iliad* and the *Odyssey* on oral traditions that dated back centuries. Virgil's *Aeneid* is lifted heavily from Homer. Shakespeare borrowed many of his narrative plots and dialogue from Holinshed. This is not to say that the idea of plagiarism didn't exist before the 18th century, but its definition shifted radically. The term plagiarist (literally, kidnapper) was first used by Martial in the 1st century to describe someone who kidnapped his poems by copying them whole and circulating them under the copier's name. Plagiarism was a false assumption of someone else's work. But the fact that a new work had similar passages or identical expressions to an earlier one was not considered plagiarism as long as the new work had its own aesthetic merits. After the invention of the creative genius, practices of collaboration, appropriation and transmission were actively forgotten. When Coleridge, Stendhall, Wilde and T.S. Eliot were accused of plagiarism for including expressions from their predecessors in their works, this reflected a redefinition of plagiarism in accordance with the modern sense of possessive authorship and exclusive property. Their so-called "theft" is precisely what all previous writers had regarded as natural.

Ideas are viral, they couple with other ideas, change shape, and migrate into unfamiliar territories. The intellectual property regime restricts the promiscuity of ideas and traps them in artificial enclosures, extracting exclusive benefits from their ownership and control. Intellectual property is fraud - a legal privilege to falsely represent oneself as the sole "owner" of an idea, expression or technique and to charge a tax to all who want to perceive, express or apply this "property" in their own production. It is not plagiarism that dispossesses an "owner" of the use of an idea; it is intellectual property, backed by the invasive violence of the state, that dispossesses everyone else from using their common culture. The basis for this dispossession is the legal fiction of the author as a sovereign individual who creates original works out of the wellspring of his imagination and thus has a natural and exclusive right to ownership. Foucault unmasked authorship as a functional principle that impedes the free circulation, the free manipulation, the free composition, decomposition, and recomposition of knowledge. The author-function represents a form of despotism over the proliferation of ideas. The effects of this despotism, and of the system of intellectual property that it shelters and preserves, is that it robs us of our cultural memory, censors our words, and chains our imagination to the law.

And yet artists continue to be flattered by their association with this myth of the creative genius, turning a blind eye to how it is used to justify their exploitation and expand the privilege of the property owning elite. Copyright pits

author against author in a war of competition for originality – its effects are not only economic, it also naturalizes a certain process of knowledge production, delegitimates the notion of a common culture, and cripples social relations. Artists are not encouraged to share their thoughts, expressions and works or to contribute to a common pool of creativity. Instead, they jealously guard their "property" from others, who they view as potential competitors, spies and thieves lying in wait to snatch and defile their original ideas. This is a vision of the art world created in capitalism's own image, whose ultimate aim is to make it possible for corporations to appropriate the alienated products of its intellectual workers.

> The Revolt against Intellectual Property

The private ownership of ideas over the last two centuries hasn't managed to completely eradicate the memory of a common culture or the recognition that knowledge flourishes when ideas, words, sounds and images are free for everyone to use. Ever since the birth of the proprietary author, different individuals and groups have challenged the intellectual property regime and the "right" it gave to some private individuals to "own" creative works while preventing others from using and re-interpreting them. In his 1870 *Poesies*, Lautreamont called for a return of impersonal poetry, a poetry written by all. He added, Plagiarism is necessary. Progress implies it. It closely grasps an author's sentence, uses his expressions, deletes a false idea, replaces it with a right one. His definition subverted the myth of individual creativity, which was used to justify property relations in the name of progress when it actually impeded progress by privatizing culture. The natural response was to reappropriate culture as a sphere of collective production without acknowledging artificial enclosures of authorship. Lautremont's phrase became a benchmark for the 20th century avant-gardes. Dada rejected originality and portrayed all artistic production as recycling and reassembling - from Duchamp's ready-mades, to Tzara's rule for making poems from cut-up newspapers, to the photomontages of Hoech, Hausmann and Heartfield. Dada also challenged the idea of the artist as solitary genius and of art as a separate sphere by working collectively to produce not only art objects and texts, but media hoaxes, interventions at political gatherings and demonstrations on the street. Its assault on artistic values was a revolt against the capitalist foundations that created them.

Dadaist ideas were systematically developed into a theory (if often suffering on the level of real practice) by the Situationists. The SI acknowledged that detournement - putting existing artworks, films, advertisements and comic strips through a detour, or recoding their dominant meanings - was indebted to Dadaist practices, but with a difference. They saw Dada as a negative critique of dominant images (one that depended on the easy recognition of the image being negated), and defined detournement as a positive reuse of existing fragments simply as elements in the production of a new work. Detournement was not primarily an antagonism to tradition; it emphasized the reinvention of a new world from the scraps of the old. And implicitly, revolution was not primarily an insurrection against the past, but learning to live in a different way by creating new practices and forms of behavior. These forms of behavior also included collective writings, which were often unsigned, and an explicit refusal of the copyright regime by attaching the labels "no copyright" or "anticopyright" to their works, along with the directions for use: any of the texts in this book may be freely reproduced, translated or adapted even without mentioning the source.

It is these twin practices of detournement (Lautremont's necessary plagiarism) and anticopyright that inspired many artistic and subcultural practices from the 1970s to the 1990s. John Oswald started doing sound collages that remixed copyrighted works during the 1970s. In 1985 he coined the term plunderphonics for the practice of audio piracy as a compositional prerogative, which he and others had been practicing. Oswald's motto was: if creativity is a field, copyright is the fence. His 1989 album *Plunderphonics*, which contained 25 tracks that remixed material from Beethoven to Michael Jackson, was threatened by legal action for copyright violation. Negativland has become the most infamous of the plunderphonic bands after their parody of U2's song "I Still Haven't Found What I'm Looking For" was sued by U2's record label for violating both copyright and trademark law. Plundervisuals also has a long tradition. Found footage film goes back to Bruce Connor's work in the 1950s, but became more prevalent after the 1970s with Chick Strand, Mathew Arnold, Craig Baldwin and Keith Sanborn. With the invention of the video recorder, the practice of scratch video, which detourned images recorded directly from television programs and ads, became very popular during the 1980s because of the relative ease of production compared to the found film's splicing of celluloid. A form of more depolititicized, postmodern plagiarism has also achieved widespread reputation in literary and artistic circles during the 1990s with Kathy Acker's novels - her *Empire of the Senseless* plagiarized a chapter of William Gibson's *Neuromancer* with only minor rewriting - and with Sherrie Levine's image appropriations of Walker Evans, Van Gogh and Duchamp.

Steward Home, a well-known proponent of plagiarism and organizer of several Festivals of Plagiarsm from 1988-1989, has also advocated the use of multiple names as a tactic for challenging the myth of the creative genius. The significant difference is that whereas plagiarism can be easily recuperated as an artform, with star plagiarists like Kathy Acker or Sherrie Levine, the use of multiple names requires a self-effacement that draws attention away from the name of the author. The use of multiple names goes back to Neoism, which encouraged artists to work together under the shared name of Monty Cantsin. After his break with Neoism, Home and others started using the name Karen Eliot. The practice also caught on in Italy, where the Luther Blissett name was used by hundreds of artists and activists between 1994 and 1999. Luther Blissett became a kind of Robin Hood of the information age, playing elaborate pranks on the culture industry, always acknowledging responsibility and explaining what cracks in the system were exploited to plant a fake story. After Luther Blissett's symbolic suicide in 1999, five writers who were active in the movement invented the collective pseudonym Wu Ming, which means "no name" in Chinese. The collective, anonymous name is also a refusal of the machine that turns writers into celebrity names. By challenging the myth of the proprietary author, Wu Ming claims they've only made explicit what should already be obvious - there are no "geniuses," thus there are no "lawful owners," there is only exchange, re-use and improvement of ideas. Wu Ming adds that this notion, which once appeared natural but has been marginalized for the past two centuries, is now becoming dominant again because of the digital revolution and the success of free

software and the General Public License.

Digitalization has proven to be much more of a threat to conventional notions of authorship and intellectual property than the plagiarism practiced by radical artists or critiques of the author by poststructuralist theorists. The computer is dissolving the boundaries essential to the modern fiction of the author as a solitary creator of unique, original works. Ownership presupposes a separation between texts and between author and reader. The artificiality of this separation is becoming more apparent. On mailinglists, newsgroups and open publishing sites, the transition from reader to writer is natural, and the difference between original texts vanishes as readers contribute commentary and incorporate fragments of the original in their response without the use of quotation. Copyrighting online writing seems increasingly absurd, because it is often collectively produced and immediately multiplied. As online information circulates without regard for the conventions of copyright, the concept of the proprietary author really seems to have become a ghost of the past. Perhaps the most important effect of digitalization is that it threatens the traditional benefactors of intellectual property since monopolistic control by book publishers, music labels and the film industry is no longer necessary as ordinary people are taking up the means of production and distribution for themselves.

Free software guru Richard Stallman claims that in the age of the digital copy the role of copyright has been completely reversed. While it began as a legal measure to allow authors to restrict publishers for the sake of the general public, copyright has become a publishers' weapon to maintain their monopoly by imposing restrictions on a general public that now has the means to produce their own copies. The aim of copyleft more generally, and of specific licenses like the GPL, is to reverse this reversal. Copyleft uses copyright law, but flips it over to serve the opposite of its usual purpose. Instead of fostering privatization, it becomes a guarantee that everyone has the freedom to use, copy, distribute and modify software or any other work. Its only "restriction" is precisely the one that guarantees freedom – users are not permitted to restrict anyone else's freedom since all copies and derivations must be redistributed under the same license. Copyleft claims ownership legally only to relinquish it practically by allowing everyone to use the work as they choose as long the copyleft is passed down. The merely formal claim of ownership means that no one else may put a copyright over a copylefted work and try to limit its use.

Seen in its historical context, copyleft lies somewhere between copyright and anticopyright. The gesture by writers of anticopyrighting their works was made in a spirit of generosity, affirming that knowledge can flourish only when it has no owners. As a declaration of "no rights reserved" anticopyright was a perfect slogan launched in an imperfect world. The assumption was that others would be using the information in the same spirit of generosity. But corporations learned to exploit the lack of copyright and redistribute works for a profit. Stallman came up with the idea of copyleft in 1984 after a company that made improvements to software he had placed in the public domain (the technical equivalent of anticopyright, but without the overt gesture of critique) privatized the source code and refused to share the new version. So in a sense, copyleft represents a coming of age, a painful lesson that relinquishing all rights can lead to abuse by profiteers. Copyleft attempts to create a commons based on reciprocal rights and responsibilities – those who want to share the common resources have certain ethical obligations to respect the rights of other users. Everyone can add to the commons, but no one may subtract from it.

But in another sense copyleft represents a step back from anticopyright and is plagued by a number of contradictions. Stallman's position is in agreement with a widespread consensus that copyright has been perverted into a tool that benefits corporations rather than the authors for whom it was originally intended. But no such golden age of copyright exists. Copyright has always been a legal tool that coupled texts to the names of authors in order to transform ideas into commodities and turn a profit for the owners of capital. Stallman's idealized view of the origins of copyright does not recognize the exploitation of authors by the early copyright system. This specific myopia about copyright is part of a more general non-engagement with economic questions. The "left" in copyleft resembles a vague sort of libertarianism whose main enemies are closed, nontransparent systems and totalitarian restrictions on access to information rather than economic privilege or the exploitation of labour. Copyleft emerged out of a hacker ethic that comes closest to the pursuit of knowledge for knowledge's sake. Its main objective is defending freedom of information against restrictions imposed by "the system," which explains why there's such a wide range of political opinions among hackers. It also explains why the commonality that links hackers together - the "left" in Stallman's vision of copyleft - is not the left as it's understood by most political activists.

The GPL and copyleft is frequently invoked as an example of the free software movement's anticommercial bias. But there is no such bias. The four freedoms required by the GPL – the freedom to run, study, distribute and improve the source code so long as the same freedom is passed down – means that any additional restriction, like a non-commercial clause, would be non-free. Keeping software "free" does not prevent developers from selling copies they've modified with their own labour and it also does not prevent redistribution (without modification) for a fee by a commercial company, as long as the same license is passed down and the source code remains transparent. This version of freedom does not abolish exchange – as some free software enthusiasts have claimed – nor is it even incompatible with a capitalist economy based on the theft of surplus value. The contradiction inherent in this commons is partly due to the understanding of proprietary as synonymous with closed-sourced or nontransparent. Proprietary means having an owner who prohibits access to information, who keeps the source code secret; it does not necessarily mean having an owner who extracts a profit, although keeping the source code secret and extracting a profit often coincide in practice. As long as the four conditions are met, commercial redistribution of free software is nonproprietary. The problem is more obvious when translating this condition to content-based works, like poems, novels, films, or music. If someone releases a novel under a copyleft license, and Random House prints it and makes a profit off the author's work, there's nothing wrong with this as long as the copyleft is passed down. To be free means to be open to commercial appropriation, since freedom is defined as the nonrestrictive circulation of information rather than as freedom from exploitation.

It comes as no surprise that the major revision in applying copyleft to the production of artworks, music and texts

has been to permit copying, modifying and redistributing as long as it's non-commercial. Wu Ming claim it is necessary to place a restriction on commercial use or use for profit in order to prohibit the parasitic exploitation of cultural workers. They justify this restriction, and its divergence from the GPL and GFDL versions of copyleft, on the grounds that the struggle against exploitation and the fight for a fair remuneration of labour is the cornerstone of the history of the left. Other content providers and book publishers (Verso, for example) have expanded this restriction by claiming that copying, modifying and redistributing should not only be non-profit but also in the spirit of the original - without explaining what this "spirit" means. Indymedia Romania revised its copyleft definition to make the meaning of "in the spirit of the original" clearer after repeated problems with the neofascist site Altermedia Romania, whose "pranks" ranged from hijacking the indymedia.ro domain to copying texts from Indymedia and lying about names and sources. Indymedia Romania's restrictions include: not modifying the original name or source since it goes against the desire for transparency, not reproducing the material for profit since it abuses the spirit of generosity, and not reproducing the material in a context that violates the rights of individuals or groups by discriminating against them on the basis of nationality, ethnicity, gender or sexuality since it contradicts its commitment to equality.

While some have multiplied restrictions, others have rejected any restriction at all, including the single restriction imposed by the initial copyleft. It is the movement around peer-to-peer filesharing that comes closest to the gesture of anticopyright. The best example is the Copyriot blog by Rasmus Fleischer of Pyratbiran (Bureau of Piracy), an anti-IP think tank and the one-time founders of Pirate Bay, the most used Bittorent tracker in the P2P community. The motto of copyriot is no copyright, no license. But there is a difference from the older anticopyright tradition. Fleischer claims that copyright has become absurd in the age of digital technology because it has to resort to all sorts of fictions, like distinctions between uploading and downloading or between producer and consumer, which don't actually exist in horizontal P2P communication. Pyratbiran rejects copyright in its entirety – not because it was flawed in its inception, but because it was invented to regulate an expensive, one-way machine like the printing press, and it no longer corresponds to the practices that have been made possible by current technologies of reproduction.

Stallman's original definition of copyleft attempts to found an information commons solely around the principle of information freedom – in this sense it is purely formal, like a categorical imperative that demands freedom of information to be universalizable. The only limit to belonging to this community is those who do not share the desire for free information – they are not excluded, they refuse to participate because they refuse to make information free. Other versions of copyleft have tried to add further restrictions based on a stronger interpretation of the "left" in copyleft as needing to be based not on a negative freedom from restrictions but on positive principles like valuing social cooperation above profit, nonhierarchical participation and nondiscrimination. The more restrictive definitions of copyleft attempt to found an information commons that is not just about the free flow of information but sees itself as part of a larger social movement that bases its commonality on shared leftist principles. In its various mutations, copyleft represents a pragmatic, rational approach that recognizes the limits of freedom as implying reciprocal rights and responsibilities – the different restrictions represent divergent interpretations about what these rights and responsibilities should be. By contrast, anticopyright is a gesture of radicality that refuses pragmatic compromises and seeks to abolish intellectual property in its entirety. Anticopyright affirms a freedom that is absolute and recognizes no limits to its desire. The incompatibility between these positions poses a dilemma: do you affirm absolute freedom, knowing it could be used against you, or moderate freedom by restricting the information commons to communities who won't abuse it because they share the same "spirit"?

> The Creative Anti-Commons Compromise

The dissidents of intellectual property have had a rich history among avant-garde artists, zine producers, radical musicians, and the subcultural fringe. Today the fight against intellectual property is being led by lawyers, professors and members of government. Not only is the social strata of the leading players very different, which in itself might not be such an important detail, but the framework of the struggle against intellectual property has completely changed. Before law professors like Lawrence Lessig became interested in IP, the discourse among dissidents was against any ownership of the commons, intellectual or physical. Now center stage is occupied by supporters of property and economic privilege. The argument is no longer that the author is a fiction and that property is theft, but that intellectual property law needs to be restrained and reformed because it now infringes upon the rights of creators. Lessig criticizes the recent changes in copyright legislation imposed by global media corporations and their powerful lobbies, the absurd lengths to which copyright has been extended, and other perversions that restrict the creativity of artists. But he does not question copyright as such, since he views it as the most important incentive for artists to create. The objective is to defend against IP extremism and absolutism, while preserving IP's beneficial effects.

In his keynote at Wizards of OS4 in Berlin, Lessig celebrated the Read-Write culture of free sharing and collaborative authorship that has been the norm for most of history. During the last century this Read-Write culture has been thwarted by IP legislation and converted to a Read-Only culture dominated by a regime of producer-control. Lessig bemoans the recent travesties of copyright law that have censured the work of remix artists like DJ Dangermouse (*The Grey Album*) and Javier Prato (*Jesus Christ: The Musical*). Both were torpedoed by the legal owners of the music used in the production of their works, as were John Oswald and Negativland before them. In these cases the wishes of the artists, who were regarded as mere consumers in the eyes of the law, were subordinated to control by the producers - the Beatles and Gloria Gaynor, respectively - and their legal representatives. The problem is that producer-control is creating a Read-Only culture and destroying the vibrancy and diversity of creative production. It is promoting the narrow interests of a few privileged "producers" at the expense of everybody else. Lessig contrasts producer-control to the cultural commons - a common stock of value that all can use and contribute to. The commons denies producer-control and insists on the freedom of consumers. The "free" in free culture refers to the natural freedom of consumers to use the common cultural stock and not the state-enforced freedom of producers to

control the use of "their" work. In principle, the notion of a cultural commons abolishes the distinction between producers and consumers, viewing them as equal actors in an ongoing process.

Lessig claims that today, as a result of commons-based peer-production and the Creative Commons project more specifically, the possibility of a Read-Write culture is reborn. But is the Creative Commons really a commons? According to its website, Creative Commons defines the spectrum of possibilities between full copyright - all rights reserved - and the public domain - no rights reserved. Our licenses help you keep your copyright while inviting certain uses of your work - a "some rights reserved" copyright. The point is clear: Creative Commons exists to help "you," the producer, keep control of "your" work. You are invited to choose among a range of restrictions you wish to apply to "your" work, such as forbidding duplication, forbidding derivative works, or forbidding commercial use. It is assumed that as an author-producer everything you make and everything you say is your property. The right of the consumer is not mentioned, nor is the distinction between producers and consumers of culture disputed. Creative Commons legitimates, rather than denies, producer-control and enforces, rather than abolishes, the distinction between producer and consumer. It expands the legal framework for producers to deny consumers the possibility to create use-value or exchange-value out of the common stock.

Had the Beatles and Gloria Gaynor published their work within the framework of Creative Commons, it would still be their choice and not the choice of DJ Dangermouse or Javier Patro whether *The Grey Album* or *Jesus Christ: The Musical* should be allowed to exist. The legal representatives of the Beatles and Gloria Gaynor could just as easily have used CC licenses to enforce their control over the use of their work. The very problem of producer-control presented by Lessig is not solved by the Creative Commons "solution" as long as the producer has an exclusive right to choose the level of freedom to grant the consumer, a right that Lessig has never questioned. The Creative Commons mission of allowing producers the "freedom" to choose the level of restrictions for publishing their work contradicts the real conditions of commons-based production. Lessig's use of DJ Dangermouse and Javier Patro as examples to promote the cause of Creative Commons is an extravagant dishonesty.

A similar dishonesty is present in Lessig's praise of the Free Software movement because its architecture assures everyone (technologically as well as legally, in the form of its licenses) the possibility to use the common resource of the source code. Despite its claim to be extending the principles of the free software movement, the freedom Creative Commons gives to creators to choose how their works are used is very different from the freedom the GPL gives to users to copy, modify and distribute the software as long as the same freedom is passed down. Stallman recently made a statement rejecting Creative Commons in its entirety because some of its licenses are free while others are non-free, which confuses people into mistaking the common label for something substantial when in fact there's no common standard and no ethical position behind the label. Whereas copyleft claims ownership legally only to relinquish it practically, the references to ownership by Creative Commons is no longer an ironic reversal but real. The pick and choose CC licenses allow arbitrary restrictions on the freedom of users based on an authors' particular preferences and tastes. In this sense, Creative Commons is a more elaborate version of copyright. It doesn't challenge the copyright regime as a whole, nor does it preserve its legal shell in order to turn the practice of copyright on its head, like copyleft does.

The public domain, anticopyright and copyleft are all attempts to create a commons, a shared space of non-ownership that is free for everyone to use. The conditions of use may differ, according to various interpretations of rights and responsibilities, but these rights are common rights and the resources are shared alike by the whole community – their use is not decided arbitrarily, on a case by case basis, according to the whims of individual members. By contrast, Creative Commons is an attempt to use a regime of property ownership (copyright law) to create a non-owned, culturally shared resource. Its mixed bag of cultural goods are not held in common since it is the choice of individual authors to permit their use or to deny it. Creative Commons is really an anti-commons that peddles a capitalist logic of privatization under a deliberately misleading name. Its purpose is to help the owners of intellectual property catch up with the fast pace of information exchange, not by freeing information, but by providing more sophisticated definitions for various shades of ownership and producer-control.

What began as a movement for the abolition of intellectual property has become a movement of customizing owners' licenses. Almost without notice, what was once a very threatening movement of radicals, hackers and pirates is now the domain of reformists, revisionists, and apologists for capitalism. When capital is threatened, it co-opts its opposition. We have seen this scenario many times throughout history – its most spectacular example is the transformation of self-organized workers' councils into a trade union movement that negotiates legal contracts with the owners of corporations. The Creative Commons is a similar subversion that does not question the "right" to private property but tries to get small concessions in a playing field where the game and its rules are determined in advance. The real effect of Creative Commons is to narrow political contestation within the sphere of the already permissible.

While narrowing this field of contestation, Creative Commons simultaneously portrays itself as radical, as the avant-garde of the battle against intellectual property. Creative Commons has become a kind of default orthodoxy in non-commercial licensing, and a popular cause among artists and intellectuals who consider themselves generally on the left and against the IP regime in particular. The Creative Commons label is moralistically invoked on countless sites, blogs, speeches, essays, artworks and pieces of music as if it constituted the necessary and sufficient condition for the coming revolution of a truly "free culture." Creative Commons is part of a larger copyfight movement, which is defined as a fight to keep intellectual property tethered to its original purpose and to prevent it from going too far. The individuals and groups associated with this movement (John Perry Barlow, David Bollier, James Boyle, Creative Commons, EFF, freeculture.org, Larry Lessig, Jessica Litman, Eric Raymond, Slashdot.org) advocate what Boyle has called a smarter IP, or a reform of intellectual property that doesn't threaten free speech, democracy, competition, innovation, education, the progress of science, and other things that are critically important to our (?) social, cultural, and economic well-being.

In an uncanny repetition of the copyright struggles that first emerged during the period of Romanticism, the excesses of the capitalist form of intellectual property are opposed, but using its own language and presuppositions. Creative Commons preserves Romanticism's ideas of originality, creativity and property rights, and similarly considers "free culture" to be a separate sphere existing in splendid isolation from the world of material production. Ever since the 18th century, the ideas of "creativity" and "originality" have been inextricably linked to an anti-commons of knowledge. Creative Commons is no exception. There's no doubt that Creative Commons can shed light on some of the issues in the continuing struggle against intellectual property. But it is insufficient at best, and, at its worst, it's just another attempt by the apologists of property to confuse the discourse, poison the well, and crowd out any revolutionary analysis.

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(Portugese translation at http://remixtures.com/2007/01/copyright-copyleft-e-as-creative-anti-commons-parte-i/ - in 4 parts with commentary - and compiled at http://www.openelibrary.info/autorsview.php?id_autore=745)