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# Copyfarleft and Copyjustright

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Challenges to traditional copyright resulting from peer-to-peer applications, free software, filesharing and appropriation art have caused a wide ranging debate on the future of copyright. Dmytri Kleiner brings existing critiques of material property from the left to bear upon the realm of copyleft artistic production and asks how, within the existing copyright regime, can artists earn a living?

In the area of software development copyleft has proved to be a tremendously effective means of creating an information commons which broadly benefits all those whose production depends on it. However, many artists, musicians, writers, film-makers and other information producers remain sceptical that a copyleft based system where anyone is free to reproduce their work, can earn them a living.

Copyleft licenses guarantee intellectual property freedom by requiring that reuse and redistribution of information be governed by 'the four freedoms,' the freedom to use, study, modify and redistribute.

However, property is the enemy of freedom. It is property, the ability to control productive assets at a distance, the ability to 'own' something being put to productive use by another person that makes possible the subjugation of individuals and communities. Where property is sovereign, the owners of scarce property can deny life by denying access to property, or if not outright deny life, then make the living work like slaves for no pay beyond their reproduction costs.

David Ricardo first described Economic Rent. Put simply, economic rent is income the owner of a productive asset can earn just by owning it, not by doing anything, just by owning. Thus, Rent is the economic return for allowing others to use property. What would a person pay for the right to exist? Well, they would pay everything they produce, minus their subsistence costs. This is the basic bargaining position faced by all of us who are born into a world entirely owned by others.

## THE IRON LAW OF WAGES

Rent allows owners of scarce property to drive propertyless workers to subsistence, as David Ricardo explains in his 'Iron Law of Wages' in his essay *Of Wages*: 'The natural price of labour is that price which is necessary to enable the labourers, one with another, to subsist and to perpetuate their race'.[1]

Subsistence should not be taken to mean the bare-minimum required to actually survive and reproduce. Even in Ricardo's time, most workers were generally not in the position that if they earned one penny less they would immediately fall over and die,. Rather, workers, by their very definition, are unable to earn enough to do anything more than make a living.

It is often claimed that the iron law of wages does not apply due to the difference between the theoretical 'natural' price and the actual market price of labour, but this is no argument against the iron law. So long as workers do not have property, whatever wage increases they retain are swept away by price inflation, most often as the result of increased money competition for locations and the driving up of land rents. Reducing real wages by inflation as an alternative to reducing money wages works because of the 'money illusion'. As John Maynard Keynes writes in his *The General Theory of Employment, Interest, and Money*: 'It is sometimes said it would illogical for labour to resist a reduction of money-wages but not to resist a reduction of real wages [...] experience shows that this is how labour in fact behaves'.[2]

Price inflation, mostly in the form of economic rent, prevents workers from ever earning enough to accumulate ownership of productive assets themselves and keeps them dependent on the property owners.

What the iron law of wages really means is that workers, as a class, cannot become property owners and thus cannot escape from having to allow property owners to appropriate the product of their labour. This creates different interests between ‘owners’ of scarce productive assets and the rest of society.

In modern usage economic rent is understood to apply to any scarce productive asset. In Ricardo’s time that was primarily land. In his *Essay on Profits*, David Ricardo argues: ‘the interest of the landlord is always opposed to the interest of every other class in the community.’[3]

This opposition is called class struggle – the struggle of those who produce against those who own. Socialism and all other movements of the ‘left’ start with this class struggle as their point of departure.

Socialism is the belief that producers themselves should own the means of production and that rent is nothing other than owners stealing from producers. As Pierre-Joseph Proudhon famously argued in his landmark ‘What is Property?’ published in 1840: ‘property is theft’.[4]

Property is not a natural phenomena, but rather something that is created by law. The ability to extract rent is dependent on one’s ability to control a scarce resource even when it is being used by somebody else. In other words, the ability to force that other person to pay for it. Or, in terms of production, to force them to share the product of their labour with the property owner. Control at a distance.

In this way, rent is only possible so long as it is supported by force, which is happily provided by the state to the owners of property. Without a means of forcing those who put property to productive use to share the product of their labour with the absent and idle property owner, the property owner could not earn a living, let alone accumulate more property. As Ernest Mandel claims in *Historical Materialism and the Capitalist State* (1980): ‘without capitalist state violence, there is no secure capitalism.’

The purpose of property is to ensure a propertyless class exists to produce the wealth enjoyed by a propertied class. Property is no friend of labour. This is not to say that individual workers cannot become property owners, but rather that to do so means to escape their class. Individual success stories do not change the general case. As Gerald Cohen quipped, ‘I want to rise with my class, not above my class!’

The current global situation confirms that it is the case that workers, as a class, are not able to accumulate property. A study by the World Institute for Development Economics Research at United Nations University reports that the richest 1% of adults alone owned 40% of global assets in the year 2000, and that the richest 10% of adults accounted for 85% of the world total. [5]

The bottom half of the world adult population owned barely 1% of global wealth. Extensive statistics, many indicating growing world disparity, are included in the report.

This is in the context of this great disparity of wealth and the struggle between classes which any investigation of intellectual property must be understood.

Intellectual Property, including copyright, is the extension of property to immaterial assets, to information. Copyright is a legal construction that tries to make certain kinds of immaterial wealth behave like material wealth, so that they can be owned, controlled, and traded.

It is often unfortunately said that intellectual property is intended to allow information producers to earn a living. To allow musicians, for instance, to earn money from the music they make. However, an understanding of class struggle makes it clear that so long as the owning class wants to have music, they must allow musicians to make a living. They do not require intellectual property for this purpose. Rather, they require intellectual property so that property owners, not musicians, can earn money on the music made by musicians.

In any system of property, musicians collectively can no more retain ownership of the product of their labour than can workers at a textile sweatshop. The purpose of intellectual property, to rephrase my earlier statement, is to ensure a propertyless class exists to produce the information profited on by a propertied class. Intellectual property is no friend of the intellectual, or creative, worker.

### **THE IRON LAW OF COPYRIGHT EARNINGS**

The system of private control of the means of publication, distribution, promotion and media production ensures that artists and all other creative workers can earn no more than their subsistence. Whether you are biochemist, a musician, a software engineer or a film-maker, you have signed over all your copyrights to property owners before these rights have any real financial value for no more than the reproduction costs of your work. This is what I call the Iron Law of Copyright Earnings.

There are, however, an important differences between intellectual property and physical property. Physical property is scarce and rivalrous while intellectual property can be copied, has almost no reproduction cost and can be used simultaneously by anyone with a copy.

It is exactly this characteristic of unlimited reproducibility that requires the copyright regime to make information into property. In the long term, the exchange value of any reproducible good is driven towards its reproduction cost by competition. Since there are few barriers to reproducing an information asset it can have no exchange value beyond the labour and resources required to reproduce it. In other words, it has no long term exchange value of its own. Thus, owners of this property (again, not to be confused with the producers) need laws to prevent this reproduction. Only by making it illegal for others to copy it can the owners extract rent for the right to copy.

While property itself is created by law, material assets are scarce and rivalrous by nature. However, because copyable information is made scarce only by law, it can also be made abundant by law, which brings us, finally, to copyleft.

### **COPYLEFT AND COPYRIGHT**

Information may not have any exchange value without copyright, but it certainly has use value without copyright and there are many information producers whose motivation to produce is motivated by creating this use value whether or not it can directly capture exchange value. It is therefore no surprise that the idea of copyleft grew to prominence in software development, in the rise of the free software community.

Software is used in production. Virtually every office, every academy and every factory relies on software in their day-to-day work, for all these organizations the use value of software can be directly translated into exchange value in the course of their normal production, not by selling the software directly, but by doing whatever business they do, selling whatever product they sell and using software to increase their productivity.

Paying for software licenses and agreeing to the restrictive terms of such licences is not in their interests. As David Ricardo said about landlords, the interest of a software company like Microsoft is always opposed to the interest of every software user.

The organizations that use software, schools, factories, offices, e-commerce enterprises, collectively employ far more software developers than the few companies who sell proprietary software, such as Microsoft. Thus, free software is very attractive to them, it allows them to reduce their individual development costs by collectively maintaining a common stock of software assets.

Mikko Mustonen of the Helsinki School of Economics, even argues that sometimes companies that do sell proprietary licenses have a strong incentive to contribute to free software. In his 2005 paper 'When Does a Firm Support Substitute Open Source Programming?' Mustonen argues:

A firm selling a copyright program has an incentive to support substitute copyleft programming when support creates compatibility between the programs and programs exhibit network effects.[6]

Thus the use value of free software is wanted by organizations who can and do pay software developers to make it, even though they have no exclusive copyright on it.

Yet, free software was not conceived as merely a way to reduce the cost of corporate software development. Richard Stallman, The inventor of the General Public Licence (GPL) under which a lot of free software is released writes on his organisations website:

My work on free software is motivated by an idealistic goal: spreading freedom and cooperation. I want to encourage free software to spread, replacing proprietary software that forbids cooperation, and thus make our society better.[7]

This spirit of cooperation is certainly not unique among software developers, other creative producers have expressed the desire to work on a common-stock, a 'commons' of intellectual material in their practice. As a result copyleft has moved beyond the world of software and into art as well. musicians, writers and other artists began releasing their work under GPL-style copyleft licences.

However, there is a problem, art is not, in most cases, a common input to production as software is. Owners of property will support the creation of copyleft software, for the reasons described, however in most cases, they will not support the creation of copyleft art. Why would they? Like all copyable information, it has no direct exchange value, and unlike software it generally has no use value in production either. It's use value exists only among the fans of this art, and if owners of property can not charge these fans money for the right to copy, what good it is for them? And if owners of property will not support copyleft art, which is freely distributed, who will? The answer is unclear. In some cases institutions such as private and state cultural funds will, but these can only support a very small number of artists, and only by employing a dubious and ultimately somewhat arbitrary selection criteria in deciding who does, and who does not, receive such funding.

Copyleft, as developed by the free software community, is thus not a viable option for most artists. Even for software developers, the iron law of wages applies, they may be able to earn a living, but nothing more, owners of property will still capture the full value of the product of their labour.

Copyleft is thus not able to 'make society better' in any material sense, because not only is it not viable for many kinds of workers, but the majority of the extra exchange value created by producers of copyleft information is in every case captured by owners of material property.

As copyleft cannot allow workers to accumulate wealth beyond subsistence, copyleft alone cannot change the distribution of productive assets, which is what any revolutionary strategy must seek to do. Yet the emergence of free software, filesharing and art forms based upon sampling and reuse of other media has created a serious problem for the traditional copyright system.

The music and film industries, in particular, are in the middle of what basically amounts to an all out war against their own consumers to prevent them from downloading and sampling their property. It is clear that digital network technology poses a serious problem to the recording and film industries.

In the earlier stages of the free software movement most corporations, especially software companies, reacted very negatively to the idea of copyleft, and tried to fight it with the same aggressive tactics. The Recording Industry Association of America (RIAA) and its friends are unleashing attacks on the filesharing community. Most famously these was the SCO Group's legal actions against companies that use or promote Linux.[8]

The actions of RIAA can be understood in that same way, a conservative reaction to protect their interests. However, not all owners of property believe that legal action can stop new technologies from emerging. Many believe that the music and film industry will need to adapt and that copyright law must be modified for this changing environment.

## **COPYJUSTRIGHT**

Thus, just as capital joined the copyleft software movement to reduce the cost of software development, capital is also joining the copyright dissident art movement to integrate filesharing and sampling into an otherwise property-based system of control.

As copyleft does not allow the extraction of rent for the right to copy, and what owners of property want is not something that will challenge the property regime, but rather to create more categories and subcategories so that practices like filesharing and remixing can exist with the property regime. In other words, copyjustright. A more flexible version of copyright that can adapt to modern uses but still ultimately embody and protect the logic of control. The most prominent example of this is the so-called Creative Commons and its myriad of 'just right' licenses. 'Some rights reserved,' the motto of the site says it all.

The iron law of copyright earnings makes it obvious that it is not for the creators of the music, videos and other creative works licensed that 'some rights are reserved', as artists have no means to bargain for anything more than subsistence. Of the 'some rights' being reserved, the primary one is the right of the creators to transfer ownership of these works to the propertied class. When ever the propertied class find it in their interests to take ownership, and, of course, entirely on the terms dictated by the propertied class.

This iron law is illustrated in 'Artists' Earnings and Copyright'[9] by Martin Kretschmer where he concludes that 'The creator has little to gain from exclusivity' and in his 2006 study *Empirical Evidence On Copyright Earnings*[10] which states: 'Earnings from non-copyright, and even non-artistic activities are an important source of income for most creators' which includes many startling statistics, for example the fact that the median payment distributed by the Performing Right Society (UK) in 1994 to its copyright holders was £84.

So if neither copyleft, copyright or copyjustright can overcome the iron law and ultimately increase the wealth of artists and other workers as a class, is there any reason at all for a socialist to be interested in intellectual property licenses?

Socialists promote the idea that wealth must be more justly and equitably shared and controlled by the people who produce it. Perhaps the best method of achieving this is through decentralized, worker-owned enterprises, co-operatives, and councils. For Socialists interested in workers-self-organisation and commons based production as a means of class struggle, the answer is a 'yes'.

For the same reason that capitalist organisations support copyleft software, because it represents a common stock of use value they can apply to production to create exchange value and thus make money, commons based production and therefore all worker self-organized enterprises, can also benefit from such a common stock of copyleft art and can incorporate artists in their collective enterprises and share in the resulting income.

As the International Workers of the World state in the preamble to their Constitution (1905):

Instead of the conservative motto, A fair day's wage for a fair day's work, we must inscribe on our banner the revolutionary watchword, Abolition of the wage system.' and further that 'It is the historic mission of the working class to do away with capitalism. The army of production must be organized, not only for everyday struggle with capitalists, but also to carry on production when capitalism shall have been overthrown. By organizing industrially we are forming the structure of the new society within the shell of the old.

## **COPYFARLEFT**

For copyleft to have any revolutionary potential it must be Copyfarleft. It must insist upon workers ownership of the means of production.

In order to do this a license cannot have a single set of terms for all users, but rather must have different rules for different classes. Specifically one set of rules for those who are working within the context of workers ownership and commons based production, and another for those who employ private property and wage labour in production.

A copyfarleft license should make it possible for producers to share freely and to retain the value of their labour product, in other words it must be possible for workers to make money by applying their own labour to mutual property, but impossible for owners of private property to make money using wage labour.

Thus under a copyfarleft license a worker-owned printing cooperative could be free to reproduce, distribute, and modify the common stock as they like, but a privately owned publishing company would be prevented from having free access.

A trend in works by pro-copyleft artists seems in one sense related. The copyleft Non-Commercial licenses create two sets of rules with theoretically endogenic (originating within the commons) 'non-commercial' uses being allowed while exogenic (originating outside the commons) 'commercial' uses are forbidden except by agreement from the original authors. Examples of such licenses include the Creative Commons Non-Commercial ShareAlike license.

However, in order to create commons endogenic terms, the works themselves must be in the commons, and so long as the authors reserve the right to make money with this work and prevent other commons based producers from doing so, the work can not be considered to be in the commons at all, it is a private work. As such, it can not have commons endogenic-free terms, such as a copyfarleft license would require. This problem of creating 'commons deeds' for works that are not really a common stock is typical of the Copyjustright approach typified by the Creative Commons.

A copyfarleft license must allow commons based commercial use while denying the ability to profit by exploiting wage labour. The copyleft Non-Commercial approach does neither, it prevents commons based commerce, while restricting wage exploitation only by requiring the exploiters to share some loot with the so-called original author. In no way does this overcome the iron law for either the authors or other workers.

'Non Commercial' is not a suitable way to describe the required endogenic/exogenic boundary. Yet, no other commons license exists that provides a suitable legal framework for commons based producers to use.

Only a license that effectively prevents alienated property and wage labour from being employed in the reproduction of the otherwise free information commons can change the distribution of wealth.

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