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# Signing Away Subversion

By JJ King

JJ King observes with dismay the signing of this year's Berlin Declaration on Collectively Managed Online Rights, and suggests that it's high time to consider what we really mean when we talk about the 'commons'

A major project of this year's Wizards of OS conference in Berlin was the drafting of the Berlin Declaration on Collectively Managed Online Rights (subtitled, 'Compensation without Control'). Rightly condemning mass prosecution of file-sharers by corporate copyright holders, the Berlin Declaration offers an 'alternative compensation system'. Under this system,

rights holders would license their on-line rights to a collecting society [overseeing] the measurement of transfers of protected works over the internet and then compensat[ing] the rights holders based on the actual use of their files by end users. The funds from which the rights holders are compensated could be raised through any of a number of sources: voluntary subscription payments by end-users or proxies for them or levies on relevant associated goods and services, such as broadband internet connections, MP3 players and others, in addition to the levies on blank media, photo copiers, and so on which are already collected today.

An excellent article by Rasmus Fleisher has spelt out the various shortcomings of this proposal, which are many. The surveillance implications alone – were such a system really to attempt tracking 'actual' use, rather than simply sampling it – are distressing, and suggestive of the sort of micro-control that should be lobbied against rather than for. In discussions around the proposal, network historian Florian Cramer has pointed out that it also demonstrates a limited understanding of the way in which networks are becoming increasingly ad hoc and unregulatable. The darknets growing within the internet, and the freenets gradually constituting themselves in cities and elsewhere will not submit easily to taxing and surveillance.

What is interesting about the Berlin Declaration (drafted explicitly 'to the European Commission') is that it represents one of the first real political forks within the so-called FLOSS 'movement'. It has helped define political boundaries in a field that, for some time now, has been rather resistant to delineation. The Declaration proposes a path of least resistance for a market threatened by the network/digital paradigm, using the compulsory licence model which (as must be well known by the majority of the signatories) would continue to provide revenue flow to traditional copyright holders for as long as they were able to maintain control over majority media consumption. Under the proposed system, as Fleisher points out, Microsoft would stand to gain far more than, say, Debian or any other GNU-Linux flavour; Disney would benefit as much from its millions of goggling eyeballs as Indymedia would suffer from its (relatively) critical few. Which Free Software advocate, or proponent of 'free culture', would support a system which merely reproduces, and even entrenches the prevailing media regime?

Those who have seen in certain modes of organisation and distribution offered by communications technologies the possibility of a thoroughgoing disruption in property relations – not just in software, music or other 'creative' endeavours – have been disappointed to find advocates of 'free culture' backing this 'alternative' system. Didn't free culture mean, precisely, no more Microsoft, no more Hollywood? Apparently not. Wasn't the commons we were building supposed to outmode proprietary culture? Apparently not. If the Berlin signatories still believe any of this could happen, why would they make such a huge concession now, just when things were looking so promising?

And those of us who reject 'practical' quick-fix scenarios like the Berlin Declaration will be told that we are just dyed-in-the-wool anarchists, sacrificing real, pragmatic gains to idealism. Is your alternative, we will be asked, that everyone must work for free? No: just that proposals for 'remuneration' and 'compensation' for creative works take into account what many who are working in 'commons-based peer production' take as a given: that they are not simply working for free in the hope that some bright spark will come up with a way for them to get paid. They are also labouring under the noble idea that the modes of work they are developing are delineating a set of non-proprietary social relations for the future.

The Berlin Declaration ignores this rather prevalent sentiment entirely. This may be because its drafters do not believe it is a practicable dream. But the issue goes to the heart of what 'commons' actually means to those who so often invoke its name. To the drafters and signatories of the Berlin Declaration, the commons can only be conceived as subsisting within the current order, negotiated by its rules, existing by its dispensation and, some might suspect, serving its needs. Others still hope that the new modes of peer production and consumption they are experimenting with may grow to change the fabric of today's social relations. If the dreamers are right, then a system like the one proposed by the Berlin Declaration is bound to fail, as the culture industry it panders to crumbles around it. And if the dreamers are wrong? Well, it will certainly need more than a Declaration to save us.

#### INFO

Berlin Declaration, plus list of signatories:  
[www.wizards-of-os.org/index.php?id=1699](http://www.wizards-of-os.org/index.php?id=1699)

JJ King <jamie AT jamie.com> is currently accepting rejections for his latest novel