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WOS4: The Creative Anti-Commons and the Poverty of Networks

ByDmytri Kleiner

This text, reviewing Lawrence Lessig's lecture at September's Wizards of OS conference in Berlin, adds to the broadening consensus that Creative Commons licenses and their apologists are more interested in mutating (intellectual) property than abolishing it altogether. Here Dmytri Kleiner warns that these Sirens of 'free culture' are diluting the efforts of those fighting for a truly free culture, i.e. one which does not merely float as a fictitious layer upon an underlying and profit-reaping capitalist base

The Wizard of OS conference is currently underway in Berlin, as is to be expected, the fourth edition of this biannual gathering of proponents of free software, free culture and alternative economics has brought together a fascinating group of presenters and participants.

The dominant themes of this year's conference are centred around the work of Lawrence Lessig and his many collaborators in the Creative Commons family of resources and projects, and Yochai Benkler's ideas relating to "commons-based peer-production" or "Social Production" as expressed in his book "The Wealth of Networks."

In his key-note address Lessig presented a history of culture framed in the idea of a "Read-Write" culture, a culture of free sharing and collaborative authorship, having been the norm for the majority of history and having been, over the course of the last century, thwarted and exterminated by Intellectual Property legislation and converted to "Read-Only" culture dominated by a regime of Producer-Control.

In his presentation Lessig bemoans a number of recent travesties where the work of artists was censored by copyright law, mentioning DJ Dangermouse and his "Grey Album" and "Jesus Christ: The Musical" by Javier Prato, both projects torpedoed by the legal owners of the music used in the production of the works, similar to the experiences of Negativland and John Oswald before them.

It is important to note here that in all of these cases the wishes of the artists, consumers in the eyes of the law of the music in question, was subordinated to the control of the legal representatives of the producers, The Beatles and Gloria Gaynor respectively.

The specific problem expressed, then, is that Producer-control of culture, by creating a Read-Only culture, is a hindrance to culture; destroying the vibrancy and diversity of popular cultural on behalf of the narrow interest of a few privileged "producers" at the expense of everybody else.

The idea of producer-control is presented in contrast to the idea of a cultural "commons" a common stock of value that all can draw from and contribute to. The "commons," then, denies the right of producer-control and instead insists on the freedom of consumers. Thus, the "free" in "free culture" specifically refers to naturally unhindered freedom of "consumers" to make use of the cultural common stock and not the state-enforced "freedom" of "producers" to control the use of "their" work. Or, more to the point, the idea of a cultural commons does away with the distinction of producers and consumers of culture — seeing them as being in fact the same actors in an ongoing iterative cultural discourse.

Lessig argues that now, as a result of the Creative Commons and commons-based peer-production, Read-Write culture is reborn anew; the beneficiary of a rich-commons and a wealthy network.

The questions must be asked: Is the "Creative Commons" really a commons? And in what way is the network really wealthy? Or more specifically, who is in a position to convert the use-value available in the "commons" into the exchange-value needed to acquire essential subsistence or accumulate wealth? Who are the real material beneficiaries of the wealth of the network?

The website of the Creative Commons makes the following statement about it's purpose:

"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."
[Creative Commons.]

The point of the above is clear, the Creative Commons, is to help "you" (the "Producer") to keep control of "your" work. The right of the "consumer" is not mentioned, neither is the division of "producer" and "consumer" disputed. The Creative "Commons" is thus really an Anti-Commons, serving to legitimise, rather than deny, Producer-control and serving to enforce, rather than do away with, the distinction between producer and consumer.

The producer is invited by the Creative "Commons" to chose the level of control they wish to apply to "their" work, including such choices as forbidding duplication, derivate works and "commercial" use of the work, specifically providing a framework then, for "producers" to deny "consumers" the right to either create use-value or material exchange-value of the "common" stock of value in the Creative "Commons" in their own cultural production.

This is more than evident by the fact that, even had the Beatles and Gloria Gaynor published their work within the framework of the 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 Creative Commons licences to enforce their control over the use of their work.

Thus, the very problem presented by Lawrence Lessig, the problem of Producer-control, is not in anyway solved by the presented solution, the Creative Commons, so long as the producer has the exclusive right to chose the level of freedom to grant the consumer, a right which Lessig has always maintained support for.

The Creative Commons mission of presenting for the producer the "freedom" to chose the level of restrictions their work is published under stands in distinct and essential contrast to the mission of advocates of commons-based production: The denial of the distinction of producers and consumers, and the denial of the right of Producer-control of the common stock.

The Free Software foundation, publishers of the GPL, take a very different approach in their definition of "free," insisting on the "four freedoms:" The Freedom to use, the freedom to study, the freedom to share, and the freedom to modify. This is consistent with the idea of "free" in the history of free culture, for instance, the journal *Situationist International* was published with the following copyright statement:

"All texts published in *Situationist International* may be freely reproduced, translated and edited, even without crediting the original source."

Even earlier, Woody Guthrie including the following note in a 1930s songbook distributed to listeners who wanted the words to his recordings had the following message:

"This song is Copyrighted in U.S., under Seal of Copyright #154085, for a period of 28 years, and anybody caught singin' it without our permission, will be mighty good friends of ours, cause we don't give a dern. Publish it. Write it. Sing it. Swing to it. Yodel it. We wrote it, that's all we wanted to do."

In all these cases what is evident is that the freedom being insisted upon is the freedom of the consumer to use and produce, not the "freedom" of the producer to control.

If free culture is really intended to create a common stock for cultural peer-production, then the framework provided must specifically be designed in such a way that can not be used to attack free culture, the GPL and the terms presented by Woody Guthrie and the *Situationist International* pass this test, the Creative Commons does not. Moreover, proponents of free cultural must be firm in denying the right of Producer-control and denying the enforcement of distinction between producer and consumer, Lawrence Lessig and the Creative Commons, affirm both the right and distinction of the Producer and therefore are the sworn enemies of free culture, and thus their usage of the cases of DJ Dangermouse and Javier Patro to promote their cause is nothing other than an extravagant dishonesty.

However, despite the fact that the Creative Commons is an Anti-Commons, there is indeed a free culture movement, since the emergence of copyright law it has been denied by cultural actors such as Woody Guthrie, the Situationist and countless others within such movements as Folk, Dada, Neoism, Incidentalism and other manifestation of denial of producer-control too numerous to mention. There is indeed a large stock of free culture and free software that make up the common stock in Benkler's wealthy network.

Yochai Benkler's conception of Social Production, where a network of peers apply their labour to a common stock for mutual and individual benefit, certainly resonates with age-old proposed socialist modes of production, particularly in the libertarian socialist tendencies, where a class-less community of workers ("peers") produce collaboratively within a property-less ("commons-based") society. Clearly, even Marx would agree that the ideal of Communism was commons-based peer production.

The novelty of Social Production as understood by Benkler is that the property in the commons is entirely non-rivalrous property: Intellectual property and network transferable or accessible resources. Property with virtually no reproduction costs.

There is no denying that Benkler's wealthy network has creating astounding amounts of wealth. The use-value of this information commons is fantastic, as evident by the use-value of Free Software, of Wikipedia, of online communications and social networking tools, etc.

However, if commons-based peer-production is limited exclusively to a commons made of digital property with virtual no reproduction costs then how can the use-value produced be translated into exchange-value? Something with no reproduction costs can have no exchange-value in a context of free exchange.

Further, unless it can be converted into exchange-value, how can the peer producers be able to acquire the material needs for their own subsistence?

The wealthy network exists within a context of a poor planet. The root of the problem of poverty does not lay in a lack of culture or information (though both are factors), but of direct exploitation of the producing class by the property owning classes. The source of poverty is not reproduction costs, but rather extracted economic rents, forcing the producers to accept less than the full product of their labour as their wage by denying them independent access to the means of production.

So long as commons-based peer-production is applied narrowly to only an information commons, while the capitalist mode of production still dominates the production of material wealth, owners of material property, namely land and capital, will continue to capture the marginal wealth created as a result of the productivity of the information commons.

Whatever exchange value is derived from the information commons will always be captured by owners of real property, which lays outside the commons.

For Social Production to have any effect on general material wealth it has to operate within the context of a total system of goods and services, where the physical means of production and the virtual means of production are both available in the commons for peer production.

By establishing the idea of commons-based peer-production in the context of an information-only commons, Benkler is giving the peer-to-peer economy, or the competitive sector, yet another way to create wealth for appropriation by the property privilege economy, or the monopoly sectors.

The Read-Write society as described by Lessig and the Peer-to-Peer economy as described by Benkler is therefore nothing but a mirage.

For free cultural to create a valuable common stock it must destroy the privilege of the producer to control the common stock, and for this common stock to increase the real material wealth of peer producers, the commons must include real property, not just information.

There is no doubt that the work of Lessig and Benkler can help us understand the issues faced in the ongoing class struggle of labour against property, however their work, as presented, is at best insufficient and at worst, just another attempt of apologists of property-privilege to confuse the discourse, poison the well, and crowd-out a genuinely revolutionary analysis.

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Links

1.

"Dmytri Kleiner" - <mailto:dk@trick.ca>

2.

"Creative Commons" - <http://creativecommons.org/learnmore>