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The Open Source Revolution

The proliferation of modern technologies like the personal computer have made the need for the preservation of personal property rights a centerfold topic in today's digital age. While copyright enthusiasts and their policy writing supporters add confusing and sometimes morally translucent laws against the free redistribution of software and file sharing, proponents of the Open Source movement, GNU and the Free Software Foundation suggest that the software user have the right to use, understand, modify and redistribute source code/software for the benefit of the community. The confusion behind what is considered "intellectual property" and what an individual or corporation have the "right" to do with such property remains a conceptual muddle.

Copyright laws have finally accounted for software duplication and the monetary losses they have provoked. SBCTEA extended the length of copyright protection from the life of the author plus fifty years to the life of the author plus seventy years (Tavani 235). Effectively lengthening corporate holds on digital media in the form of software, television broadcasts, music, etc. The DMCA has entitled copyright holders protection against software "circumvents", which crosses the boundaries between a personal expression of an idea in the form of software and the rights associated with that expression and the freedom to develop media that may be inspired or influenced by that expression. A violation that may inhibit the progress of this technological era.

A balancing scheme in copyright law is the first-sale provision, which has limited application to digital media because of the unclear definition of “intellectual property rights” associated. This prevents digital media from being “sold” once bought. The first-sale provision supports physical objects being bought and resold yet does not support digital media redistributed in a similar way.

An important stepping-stone case for the development of new technologies was the Sony Corp of America v. Universal City Studios Inc. case, where Universal sued Sony for the manufacturing of the Betamax home video recorder (240). The Supreme Court’s decision in favor of Sony Corp reveals an important point: “Because VCR technology could be used to do something illegal is not sufficient grounds for banning that technology” (240). Had the Court ruled conversely, VCR technology may have been prolonged indefinitely. This demonstrates the detrimental affects DMCA may induce with prohibition against circumvents and reverse engineering. A potential technologist or engineer may then willingly decide to disband a project or idea, which may have in turn produced an exceptional piece of technology.

The traditional, philosophic theories that have been used to justify the protection of intellectual property have either assumed extrinsic criterion (labor or economic incentives), as with the Labor and Utilitarian theories, or claimed internal criterion (works are an extension of one’s personality or “soul”) for the justification of property rights. The Free Software Foundation (FSF) and examples such as the GNU Public License (GPL) offer an alternative for freely exchanging software; subsequently promoting its development for the general welfare of society. GPL uses an alternative scheme that “subverts” the traditional copyright mechanism in order to ensure that every person who receives a

copy, or derived version of a work, can use, modify, and also redistribute bot the work and the derived version of the work (250). The eventual development of Linux demonstrated the important roll of the GNU project as a means for further development “downstream”. Had certain/all parts of the original Unix kernel been kept proprietary and prohibited from redistribution, a benchmark in operating system evolution may have never come to fruition.

The Open Source Initiative shares similar goals to that of the FSF in that it allows software users to look at, understand, modify, and redistribute the source code for that software. It offers an alternative methodology to “closed-source” development for software. Alternative frameworks for the intellectual property dispute are important keystones in an argument for “free software”. Michael McFarland argued that information is about communication. And the foundation of this argument stems from the common-good analysis of property, which examines the nature of information in terms of a broader social context (253). Unfortunately it seems that within the context that “information wants to be shared”, the monetary value of information can then be evaluated by commercial distributers which in turn promotes policies and regulations against the sharing of information. DMCA discourages the practice of digital information sharing even though it has made information inexpensive and convenient and thus more accessible to a wider audience. The justifications between the right to share information and the “entitlement of recognition” an author deserves in association with existing intellectual property policies seems imbalanced. As the philosophical theories largely emphasize the entitlement of ideas expressed in software to the individual, the “free software” movements emphasize the society’s entitlement to ideas expressed by individuals in

software for the greater societal benefit. Where proprietary software is guarded by strict policy and severe punishment in the form of monetary payouts and imprisonment, the "free software" propositions are regarded as a radical movements toward the liberation of software development.

It is important to note that all intellectual information is derivative in nature, that is, all concepts and learned ideas that are implemented in the creation of software, music, television, etc, have had roots in some previous intellectual implementation. Using this logic, nothing is permissibly "unique" to a specific individual. It is unwise, however, to assert that an individual should not be recognized for manipulating a previously implemented concept. This is where the Creative Commons organization plays a notable roll. One of CC's goals is to expand the range of creative work available to others legally to build upon and share (258). Juxtaposed with the restrictive nature of current copyright law stands the CC's less protective, "some rights reserved" approach that retains the copyright's important values that are essential to creativity. Nested within the CC license is an important factor that helps preserve individual connection with a piece of published work (or altered work for that matter): A Noncommercial license allows others to copy, distribute, display, and perform the work and derivative works based upon it only for noncommercial purposes. All the while keeping creator attribution and thus keeping integrity of the piece.

Alternative solutions to copyright laws have made evident their strength in a continuously evolving digital realm. While the definition of intellectual property and the associated rights of that property have come under scrutiny between theorists, the solution seems to valence toward a less restrictive set of policies that may better our future as

an evolving society. Evolving technology has proven to "outsmart" restrictive policy setting and there may be no slowing it down. Knowing that information/multimedia will always be shared regardless of policy suggests that society needs to adapt a new way of attributing authorship while simultaneously allowing "derivative" development for the betterment of society.

Works Cited

1. Ethics and Technology; Controversies, Questions, and Strategies for Ethical Computing. Herman T. Tavani
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3. The GNU General Public License. http://www.gnu.org/copyleft/gpl.html
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