

# All property is theft; all intellectual property, however, is mind control

Trying to write a new piece on the iniquities of intellectual property law for the first time in ten years, I find my opinions on the matter have hardened somewhat. *Copyright or copyleft?* No available option really outlines the true nature of ‘proprietary rights’.



Paul Mobbs, *The ‘Meta-Blog’*, issue no.2 12<sup>th</sup> June 2019

**Copyright. Intellectual property. Content licensing. Could there be anything further from the heart of ecological change?**

**No! In a perverse way it goes to the heart of the values in the ecological debate – of global shared resources, and of how we value the connections with those around us.**

**Strange then that so many environmental campaigns should, emulating the corporate entities they often express a contempt for, actively emulate their practices when it comes to how they allow others access to their ‘intellectual property’.**

**Sometimes though, reflecting on these matters can lead you into some troubling discussions; even with many people you once thought were, “friends”.**

## Supping with the ‘Marxist vanguard’

Many, many years ago, when I used to hang-out with the “leftie” crowd in town, I did something to cause great offence. Nothing I said. Nothing outrageous that I did. It was just that one evening in the pub, sat waiting for others to arrive, I read an old battered junk shop copy of Pierre-Joseph Proudhon’s 1840 book, *‘What is Property?’*.

Let’s just say that the earnest Marxist-Leninist’s in the group found this particularly disturbing. It was explained to me that Proudhon was worse than a capitalist. He was, I was told, “*an anarchist*”.

The admonishment of the group didn’t stop me completing the book (in fact, some weeks later I caused an equally disruptive episode with Kropotkin’s, *‘Mutual Aid’*).

What’s so bad about ‘anarchists’ that both the Left-, Centre- and Right-wing of political ideology really don’t like them? – *I mean, seriously don’t like!*

Perhaps the answer lies in that most (in)famous of passages from that particular book:

*“If I were asked to answer the following question: What is slavery? and I should answer in one word, It is murder!, my meaning would be understood at once. No extended argument would be required to show that the power to remove a man’s mind, will, and personality, is the power of life and death, and that it makes a man a slave. It is murder. Why, then, to this other question: What is property? may I not likewise answer, It is robbery!, without the certainty of being misunderstood; the second proposition being no other than a transformation of the first?”*

When Proudhon [conceived of those words](#) in the third decade of the Nineteenth Century there was a minimal concept of [‘intellectual property’](#). The [Berne Convention](#), which founded the modern system of copyright and intellectual property law, would not be agreed for almost another half-century – in 1886.

In the Nineteenth Century economic inequality was far more stark than today; you either had wealth, or you did not. The fact that the resources and tools from which all things were produced – be that the land or the factories – were owned by one class, which denied the other class the means to address their condition.

That is the slavery-like ‘theft’ at the heart of Proudhon’s proposition.

That is also why political parties of “the Left” today still cling to the legacy debate over the *‘means of production, distribution, and control’*; though in our modern world, where (in the ‘Western’ states at least) material commodities are easy to come by, such arguments about who owns land or factories

seem as remote as the Nineteenth Century, late-industrial-era, absolute poverty from which that debate arose.

## Freedom without equality is a pretence

In today's [Information Society](#), however, 'intellectual' or 'intangible' assets are practically every bit as important as 'real', 'physical', 'tangible' assets.

In contrast to the Nineteenth Century debate over the access to the physical resources of society, we are all able to 'think'; to create or view the world around us without any dependency on physical assets (other than the food in our bellies, *but that's another issue*). Therefore if I can think of a tune, or compose a couplet, I can create on an equal basis to anyone else in society. The physical restrictions on who controls the much-fabled '*means of production*' do not apply.

That, unfortunately, is *not* the legal reality today. The reason why is quite simple. In the modern world our capacity to think and then express those thoughts as art, or music, or writing, or crafts, is as controlled and caged as the Nineteenth Century capacity to grow food or manufacture resources.

What in essence the modern law on copyright means is that if I have an idea *first* – be that a song or a sonnet, a story or software package – then I get the right to prevent you from thinking and doing something the same.

Thing is though, in a legal framework where intellectual property-holders can strategically buy or sell collections of rights, and use their economic power to access the mechanisms of courts in many countries, you need not be 'first' to claim control of the idea. It is possible for one '[legal person](#)' (since, on the whole, we're talking about 'bodies corporate' here) to make claims over another as to who holds the rights; and if their relative economic standing is greater, chances are that they will succeed in that legal process because of how it is structured.

In that sense every evolutionary development of intellectual property law has not only extended the economic rights of, practically, the small group of global corporations who increasingly control the world's intellectual property; they have concurrently lessened the expressive and creative rights of the population as a whole as their governments cede ever-greater power to corporate rights-holders.

In the *Information Age*, when [digital rights management](#) holds the technological key to enforcing strict copyright controls on everyone, ubiquitously, the strict notions of what is and is not "property" can have intrusive and vexatious effects on our use of the technology which – it was envisioned by its creators – would '*set us free*'.

In the modern era then, Proudhon might amend his previous statement:

*All property is theft; all intellectual property, however, is mind control.*

## Untouchable agents of exploitation

If anyone hits the spot on how we ask people to think about an uncertain future, under the seeming 'affluence' in a ever-more mechanised world, then it was Murray Bookchin in his 1971 book, '[Post-Scarcity Anarchism](#)'...

*Oh dear! While talking about 'property' I seem to be quoting exclusively from anarchists works!*

Anyhow, to continue: Bookchin highlights how the innate tendencies of capital to concentrate power, accentuated by technological control, will create inevitably more alienating and distorted means of control the public's perceived freedoms:

*“Technology and the resources of abundance furnish capitalism with the means for assimilating large sections of society to the established system of hierarchy and authority. They provide the system with the weaponry, the detecting devices and the propaganda media for the threat as well as the reality of massive repression. By their centralising nature, the resources of abundance reinforce the monopolistic, centralising and bureaucratic tendencies in the political apparatus. In short, they furnish the state with historically unprecedented means for manipulating and mobilizing the entire environment of life – and for perpetuating hierarchy, exploitation and un-freedom.”*

In a society where information is key to economic and political power, those with ability to exert pressure over the public's use of information can, by the use or abuse intellectual property law, easily extend that power ever further. The nature of that 'pressure' on society is, essentially, the business model of the [copyright troll](#).

It matters not if you're a Californian litigation lawyer, chancing a case to speculatively make

money, or Google, buying yet another small tech. company with a potentially valuable idea to exploit. The outcome is the same: ever-more concentrated control on intellectual property; and more diluted rights for those not economically able to participate in that legal contest.

The globalisation of trade requires that the whole world has compatible intellectual property rules, enabling goods to be designed in one country, manufactured in a second/third/fourth/fifth country, and sold in another.

As a result, when we talk of '*legal persons*', we have to consider that corporate rights-holders – like global financial capital – can move their country of residency to get the best deal for their requirements. As intellectual property has become a greater part of a corporation's "[intangible assets](#)", they might also set-up subsidiaries in certain legal jurisdictions in order to [funnel finance](#) through the entity holding the intellectual property, to avoid tax/increase profits for the group as a whole. That in turn can lead states to compete with one another to provide the most competitive intellectual property regimes, to attract more companies taking residence in order to gain from local laws.

As a result whole industries may write their license or rights agreements within the legal framework of a certain state – where they have used political funding to capture the local legislature, to write favourable laws, and thus sway the courts to favour their rights over anyone who seeks to challenge the terms of those rights (the State of California and the IT corporations of Silicon Valley being a prime example).

Though you may not realise it, when you buy a piece of software, or [sign-up](#) to a [streaming service](#), you might not be doing so under the laws of your own country. In this contract process you may automatically agree to litigate in a different jurisdiction, should a dispute ever arise over the use of the intellectual property licensed by the contract or purchase.

It may be difficult to launch a legal action against a large corporation in your own country; *could you do it any easier in a different one?*

## The “Acronym Mafia”

Like ‘real’ property, intellectual property only exists through the guarantee of *state violence* – via

the threat of the law, and the enforcement of the law through the courts. Though government's predicate wider intellectual property law on the basis of ‘public goods’, they in fact lead directly to the greater accumulation of private wealth.

The extension of intellectual property laws creates a charge on society – rather like taxation. As a result, spending money to lobby for more restrictive copyright laws can actually pay for itself in future revenues. This has engendered a cosy relationship between legislators, and the intellectual property groups who influence or directly fund them; and in turn it has spawned a network of lobby groups and public relations bodies whose purpose of to represent that relationship to wider society.

As intellectual property rights have expanded and differentiated with each legal revision, so the number of organisations lobbying and enforcing intellectual property rights – most of which have catchy acronyms used to identify them – has blossomed into what could best be called the “Acronym Mafia” (their full names are usually reduced to acronyms when referenced in the media).

They are quite literally an organised syndicate, demanding money with menaces on behalf of their property-owning membership (which is where their funding primarily arises). In Britain, from the government's IPO (*Intellectual Property Office*), to AAIPT (*Alliance Against IP Theft*), FACT (*Federation Against Copyright Theft*), FAST (*Federation Against Software Theft*), A©ID (*Anti-Copying in Design*), DACS (*Design and Artists Copyright Society*), CITMA (*The Chartered Institute of Trade Mark Attorneys*), and – standing above them all, the colossus that visits any pub, club, shop or office that dares to play music or even a radio in public – the P . R . S (*Performing Rights Society*), the UK's Acronym Mafia has grown because of the money to be made by the tighter enforcement of IPRs (*‘intellectual property rights’*).

You've more-than-likely already seen the the menaces Acronym Mafia; perhaps without realising it. Those [scary videos](#) at the beginning of rented DVDs or cinema screenings; threatening [all sorts of nastiness](#) if you were to copy the ‘thing’ you're watching or reading. They promise un-tolled sorrows from on high unless you respect the legal authority by which the media corporation holds those rights from the state.

In turn, this lobby has used its large funding base to extend their power by lobbying ministers and the UK Parliament for more restrictive intellectual property law. This lobby has, over the last fifty years, consistently reduced our [‘fair dealing rights’](#), while at the same time lengthening the period that creative works are legally protected for.

## You can’t ‘steal’ a state-sanctioned concept

In terms of the public menaces promoted by the Acronym Mafia, let’s get something clear: [copying is not theft](#).

In the Twenty-First Century *Information Age*, Nineteenth Century notions of ‘property’ have become a hindrance to human creativity: In law “theft” is taking something with ‘the intention to permanently deprive’; in the ‘virtual domain’ of the on-line world, when you copy you deprive a copyright-holder not of the ‘thing’, but of the [‘rent’](#) that they demand for your access to that thing.

Withholding ‘rent’ for a service you believe you should not pay, or because you believe the contracts or legal principles upon which it are based is not fair, is not criminal “theft”; it is a civil dispute.

Over the long study of economics and the well-being of society, the role of the [‘rentier class’](#) has a long and sordid history. When we view the modern intellectual property framework not as protecting creativity, but as a means to guarantee rent-taking from society as a whole, then it becomes something wholly different.

Consequently – in a society where economic inequality is perpetuated by those with economic power, through exerting pressure on the political process to enhance the value of their assets yet further, and in the process further deprive the economically power-less – intellectual property becomes a means of social control, exploitation, and cultural servitude...

*Which gives Proudhon's theories on property a whole new lease of life in our modern, Information Age.*

Copyright is meaningless for the ‘average’ person because the application of the law is not exercised on an equal basis; it favours those who have already become wealthy through the exploitation of intellectual property.

While the law, menacingly implemented via the “Acronym Mafia”, creates potentially huge penalties for copying the protected works of corporations, it does not enable ordinary people to protect their own creative works to the same extent. That’s because the law on copyright over the last few decades has been skewed towards the needs of large media corporations, serviced via the influence of the “Acronym Mafia”, rather than equitably serving the needs of every single ‘creative’ person who puts their work out into the world.

If copyright is meaningless for those without the where-with-all to prosecute infringement, how then does the ‘average’ person apply the law? In reality, [they do not](#). Instead their best option is to subvert the concept of the law by making their content open the everyone except those who want to commercially exploit their creativity.

## ‘The illusion of exclusivity’ – open licensing

Gerrard Winstanley, in the 1649 pamphlet, [‘A Declaration From The Poor Oppressed People Of England’](#), produced a view of the public’s rights to a basic subsistence in the then *Agrarian Society* of England. His words are equally prescient for our participation in the *Information Society* of today – and for how we should respond to those who would restrict and privatise those rights:

*Therefore we require, and we resolve to take both Common Land, and Common woods to be a livelihood for us, and look upon you as equal with us, not above us, knowing very well, that England the land of our Nativity, is to be a common Treasury of livelihood to all, without respect of persons.*

By limiting people’s ability to manipulate information, intellectual property rights can define the terms of their everyday lives. ‘Intangible’ rights, which are in reality nothing but a ‘conspiracy of bureaucrats’, limit not only their ability to express themselves in that moment, but also to create and curate our future cultural inheritance. We do not agree. Instead we choose to change the basis upon which we create and share our creativity; upon the notion that human expression and creativity is a [‘common treasury’](#). By that process we can change or subvert the economic relationships that intellectual property rights have historically sought to enforce.



From the time that our ape-ancestors started playing with sticks and stones to make primitive tools, humans have copied one another; in the process transmitting our culture and technological knowledge over the generations, slowly modifying and improving it as time passed. Looking back over the last two or three million years of human history intellectual property rights are just a blip; they have arisen over the last three hundred years in parallel with the Industrial Revolution, and most of the restrictions that we see today have arisen in the last fifty to sixty years.

In political terms, we can see the rise of intellectual property rights taking place in parallel to the development of the mass media, and the modern economic pedagogy which operates through the [mechanisms of the Information Society](#). From this point of view, the intellectual property rights of the *Information Revolution* are simply an extension, specifically designed to influence our use of 'intangible' commodities, of the economic domination that arose out of the earlier *Industrial Revolution*.

## © Copyright & ☺ Copyleft

There is a curious contradiction at the heart of the use of information technology by activists; especially many of the larger campaign groups.

They seek to remove or reform the adverse impacts of corporate globalisation, but at the same time most of them use the tools of this system to work and communicate. In particular, activists rail against the excesses of aggressive corporations, but then use Microsoft software on their computers, and Google cloud services to communicate and share information.

*Why?... there are alternatives!*

'[Copyleft](#)', '[free](#)', or '[open](#)' information still relies on the notion of intellectual property rights; not to create the scarcity of 'exclusivity', but to protect the information from inclosure by private interests.

Arising at the same time as the lobbying for stronger intellectual property rights by the computer

**This 'do it yourself' approach of past social movements – from Nineteenth Century anarchist colonies to Twentieth Century punk communes – is also a practical means to manage without large amounts of funding; by learning creative skills with the tools we have to hand, and finding new ways to reconfigure what resources we already have, to avoid the barrier of how we obtain the 'stuff' we need to express our desired lifestyle.**

**For the practical detail of that?; see [my own 'copyright' page](#).**

and data industry, the copyleft movement sought to escape the restrictive controls of the property rights by developing its own, freely available framework for protecting and distributing creative works.

For example, the computer operating system on which I am writing this, [Fedora](#), is a free-to-download incarnation of the 'open source' [Linux system](#) – that was developed, and is maintained today, by thousands of contributors around the world.

The rise of copyleft is another thread in a wider movement against the norms of the contemporary economic culture. It takes many forms, and has many names, but is best summed-up as '[the gift economy](#)'. People seek to openly share what they have in order that all might benefit, even where there is scarcity amongst those who take part in this process, as sharing makes very little go a long way.

For this reason the gift economy is seen as a more ecological alternative to mainstream economics and intellectual property rights, and is far closer to the arrangement by which human societies have worked successfully over our history – echoing the ideas from Bookchin's '*Post-Scarcity Anarchism*' treatise, referenced earlier.

The structure of the law, both in Britain and internationally, means that it's not possible to fight the intellectual property establishment on their own terms; *you'll lose!*

Instead we have to take their rule book and, within its own terms, subvert its principles to meet our needs. In this way they cannot seek to attack our use of these principles without attacking their own rules. This is precisely what the use of copyleft licenses does; it works within the legal confines of intellectual property law in order to ensure that once released, a creation cannot be chained within the private property rights of others.

Rather than fighting against intellectual property rights, we must work more creatively around the obstacle that property rights represent – we redesign the framework of the existing system in a form that works for us!