

5.5

Community Ethics and Challenges to Intellectual Property

Kaido Kikkas

Abstract

The chapter will discuss current intellectual property (IP for short) mechanisms and their ethical background, as well as some alternatives which have increasingly surfaced during the last decade. The author aims to show that the currently prevalent approach to IP was perhaps adequate in its time but is largely outdated by now, making thorough change a necessity.

While the original aim of IP was in line with ethical considerations (to provide authors their rightful share of the benefits from their creation), it has largely failed to keep pace with both social and technological development. At the beginning of the XXI century, the IP mechanisms have fallen seriously behind as illustrated by numerous cases – some of which will be described in the chapter.

From ethical viewpoint, intellectual property was originally a liberating factor - due to patent protection, inventors could publish their inventions without fear of losing their benefits to competitors copying them. This was a win-win situation – inventors were compensated while the society was able to enjoy the new invention. This has gradually changed – excessive copyright and patent mechanisms have effectively blocked new inventions due to being too broadly issued (examples range from early days of radio to current software issues), while the increasing complexity of the IP issues has shifted the main focus from the author towards lawyers and other enforcers

2 · *Community Ethics and Challenges to Intellectual Property*

of IP. This is a lose-lose situation for both authors/inventors and the society in general – the original liberator has turned into an oppressor.

The growing inadequacy of IP has caused the emergence of alternative models. Probably the oldest and best known is free and open source software which has its roots already in the early days of computing, although its wider recognition came during the last decade. In its wake, new trends appeared in creative arts (Creative Commons, Free Art License etc) and research (Open Access publishing).

In the chapter, we argue that the changing times need another kind of ethics – the community ethics (as described by Himanen, Lessig and others). While it is often labelled egalitarian, libertarian or even communist by the traditionalists, the change seems inevitable. However, the question whether it means total uprooting of the previous proprietary models or a smooth synthesis of old and new remains to be answered.

The paradigm shift

Portuguese programmer José Luís Malaquias has written an essay titled “A New Economic System for the Information Era” (available at his personal domain at <http://www.malaquias.net/en/joseluis/articles/copyright.pdf>), where he has drawn a humorical but thought-provoking parallel between a comedy movie “Gods Must Be Crazy” and today's situation in intellectual property. In the movie, Bushmen in Africa find a Coca-Cola bottle that has fallen from an airplane. While the novel object is pleasing in many ways (looks beautiful, can be used to crush grain or hold water), it cannot be reproduced – for the first time, the Bushmen are forced to abandon their practice where the scarce resources are used equally by everyone. The initially wonderful “gift of the Gods” turns out to be the Pandora's Box.

The problem, as also pointed out by Malaquias, seems to be rooted in a simple notion – throughout the human history, resources have very rarely been plentiful, satisfying everyone in need. During the early days, people had to fight over hunting game or arable land, later they fought over natural resources. The very value of resources was often measured by their scarcity – essential-to-have, but widespread resources like water and wood measured only a fraction against scarce, even if practically nearly useless things like precious stones and gold, even the value of simple drinking water was totally different for, say, Vikings and Arabs at around 1000 AD. Finally, being brutally fought over for centuries, use of resources was attempted to be regulated by legal means during the later, “more civilised” times. The paradigm of scarcity got entrenched so deeply into the human mind that when things started to change, there was a huge moment of inertia.

During the last decades, technology has changed the world in many ways, but perhaps the greatest of changes was that of the paradigm. A new resource – information - has emerged to acquire a central position in social life. Bill Gates, the founder of Microsoft, describes in his best-selling book “The Road Ahead” a hypothetical dialogue sometime in the future, citing Switzerland to be a great country for its abundance of information (not the money in the famous Swiss banks!). However, while recognising the central position and great value of information, Gates proceeds to quote another hypothetical person about the information price indexes starting to rise. This is the exact point where the two paradigms clash.

Information, in contrast with nearly all the previously important resources, has a fundamental difference – it does not disappear from its original location when handed over. When one has a piece of bread and she gives it to another person, she does not have it any more. However, when one tells her friend a joke, there will be two people who know it instead of one. Information in its pure form can only be copied, not moved. This makes it behave very differently from other resources, also meaning that legal regulations which were appropriate for others do not necessarily work here.

Sure, information has been like this throughout the human history. But only recently, with the emergence of the Internet and the “information superhighway”, has this exceptional resource become the most critical one. One of the main factors here is the multiplication of information, or simply copying. For example, early books were rare and expensive due to the great effort needed to produce them. Thus books were regarded not so much as information per se but as definite material objects which were subject to legal treatment similar to other material resources (e.g. someone bought a book for 15 gold coins). XX century with its multitude of new data carriers (vinyl records, magnetic tapes etc) started to gradually change the situation and when the days of universal networks arrived, information had gone through a major shift from something attached to a material object (record, tape, book) towards a much purer form available on networks. This is where the old legal measures started to fall behind – and currently the situation is most probably irreversible.

Ethical questions about intellectual property

Wynants and Cornelis (2005) have made an interesting notion about Leonardo da Vinci, one of the most hallowed inventors of his time: “But why then did Leonardo never allow his anatomical studies to be examined during his life? Maybe the answer lies in his explicit comment on intellectual property: *”Do not teach your knowledge, and you alone will excel”* (Wynants and Cornelis 2005).

Actually, this argument can be used both for and against intellectual property – its supporters can argue that if Leonardo had had restrictive enough protection for his innovations, he would have had no need to cover everything up behind his mirrorwriting. But even if to consider it a valid argument (while many practical examples show that the extreme protective measures of today can make an invention almost as useless for a society than Leonardo-style coverup), it leaves open one of the main question concerning intellectual property – *how much is enough?* How many and how long-lasting privileges must be secured for an author that s/he feels content? Should the protection also allow criminal passiveness (e.g. a pharmaceutical company discovers AIDS vaccine but patents it, leaving thousands of people to die without cure – even if in another continent)? What if the protective measures will drastically inhibit the development in a certain field? Martin (1998) has produced some thought-provoking examples:

- The development of radio communication was effectively halted for 20 years (patent protection period) by the Bell patents on telephone.
- General Electric, the major provider of incandescent lamps, blocked the development of fluorescent lamps which were invented by Edmund Germer in Germany.

Other sources like Wikipedia mention that Germer's patent was bought by GE around 1926, yet GE did not start to market the fluorescent lamp until 1938, validating the main point made by Martin. He then goes on to mention a number of outright ridiculous cases of IP (e.g. the suggestion to patent sports techniques like flopstyle in high jump).

Another quite notable example is provided by Lessig (2004), telling the story of Edward Howard Armstrong, the inventor of FM radio. His creation was extremely received by the public, however his that time employer RCA, who was the main provider of AM radio in the US saw him as a threat. Lessig proceeds to provide a very telltale quote by the director of RCA:

”I thought Armstrong would invent some kind of a filter to remove static from our AM radio. I didn’t think he’d start a revolution - start up a whole damn new industry to compete with RCA” (Lessig 2004)

As it usually happens, the sole inventor was no match for the patent empire. Being defeated and bankrupt, he committed suicide in 1954.

A powerful, if unexpected comparison is made by Stallman (2002), regarding the copy protection measures which increasingly turn into a human rights issue: ”The U.S. though is not the first country to make a priority of this. The Soviet Union treated it as very important. There this unauthorized copying and re-distribution was known as Samizdat and to stamp it out, they

developed a series of methods: First, guards watching every piece of copying equipment to check what people were copying to prevent forbidden copying. Second, harsh punishments for anyone caught doing forbidden copying. You could be sent to Siberia. Third, soliciting informers, asking everyone to rat on their neighbors and co-workers to the information police. Fourth, collective responsibility - You! You're going to watch that group! If I catch any of them doing forbidden copying, you are going to prison. So watch them hard. And, fifth, propaganda, starting in childhood to convince everyone that only a horrible enemy of the people would ever do this forbidden copying." (Stallman 2002).

For outsiders, this may sound a bit exaggerated. However, Stallman goes on to point out similarities between the USSR and current U.S. policies in all the five points:

- guarding of copying equipment – this is done by including DMCA-warranted copy protection mechanisms to software (including many very widely used applications).
- harsh punishments – Stallman cites the current U.S. prosecution mechanisms for copyright violators which can include real imprisonment
- eavesdropping – the "nail the pirate"-type campaigns which encourage informing BSA or other similar organisation of fellow people infringing copyright (while these campaigns have been toned down recently, a good example is still visible at e.g. <http://www.netscum.dk/australia/genuine/piracy/report/default.aspx>).
- propaganda – using the same word for IP offenders and notorious pillagers, murderers and robbers. Stallman also notes that "pirate" used to be a term for publishers who did not pay to authors – nowadays they have effectively reversed the term.

This is indeed something to think about.

The Mindquake of IP

Robert Theobald has used the term "mindquake" for situations where one realises that his/her previous knowledge which applied to certain situations does not work any more. A good example of this in Estonia were people who were trained to operate under the Soviet-style planned economy: economists, bookkeepers, business lawyers. A large portion of their working knowledge turned to dust just in a few years, after the free market economy came to Estonia along with the regained independence in 1991. Many of them were able to re-learn their craft, but others had to leave. In many ways, IP in general has increasingly been facing mindquakes since the 90s.

6 · *Community Ethics and Challenges to Intellectual Property*

It actually started much earlier. Lessig in his book (2004) describes a tragicomical case of Causby brothers – a pair of farmers, whose chickens were terrorised by low-flying military planes from a nearby base. During that time, the legal system assumed that someone owning the land also owned everything below down to the centre of the Earth, and everything above it up to an undefined height. Building their case on the abovementioned assumption, the Causby brothers sued the U.S. Air Force for violating their property rights. However, the judge harshly dismissed their case, boldly stating: “Common sense revolts at the idea.” (Lessig 2004). Thus, the decision of a single judge effectively changed the whole legal interpretation of the issue – an almost classic example of Theobald's mindquake. But this time, it was the U.S. versus a couple of poor farmers. Today, similar cases are more likely the U.S (or EU) vs some huge multinational corporation – this makes fighting excesses like this much more difficult.

A major problem concerning IP can be summed up with an old Oriental saying: “Those who know, do not talk. Those who talk do not know.” One of the biggest negative impacts of IP comes from issuing too broad patents and other forms of protection. This is mostly due to patent officials being unable to fully grasp technical details of proposed invention. A good example is the telephone case mentioned above – the problem here was not the patent existing *per se*, but it being issued for a far too extensive field of communication.

This is especially true concerning patents on software – even if the evaluator is qualified (which have been not the case in many times – finding a person being simultaneously and equally expert in legal details of patent law and finesses of computer programming is quite improbable), software as a phenomenon is far too complicated to identify if the novelty clause has been satisfied. This has led to incompetent decisions, some of which can be seen at <http://webshop.ffii.org>. The situation will likely escalate further if no measures will be taken. As expressed by Lessig, “What the law demands today is increasingly as silly as a sheriff arresting an airplane for trespass. But the consequences of this silliness will be much more profound.” (Lessig 2004).

Another problem with the current system of IP when applied on software and other objects of new media, is the duration of protective measures. If the 20 years of patent protection might have been appropriate for Watt's steam engine, it is a hopelessly too long time for many today's new creations. Perhaps the best example of this would be imagine if *sir* Timothy Berners-Lee had patented his newly-created Hypertext Transfer Protocol and other crucial components of the World Wide Web in 1991. We would perhaps have some well-controlled applications, but definitely not the ubiquity of today (a good example is provided by Ted Nelson's Xanadu project which started already in the 60s, featured many similar ideas to the Web, but failed to materialise – being proprietary by nature was possibly not the smallest reason for this). No Internet banking, no web media, no blogs or web forums – not until 2011.

As we have seen, the current approach to the IP has been running wild for some time. The problem may well be not limited to insufficient or overtly harsh legal regulations – a new kind of ethical approach could be necessary.

The new old ethics and the age of communities

People of today, especially the technology-savvy ones, may often take all the surrounding infrastructure for granted. As noted by George (2003), the technological shift we are living amidst can be explained with the well-known parable about the frog in hot water – if we put a frog into a bowl of hot water, it will immediately jump out of it, but if we place the frog into cold water and then start to gradually heat the bowl, the frog will boil to death as it does not register the change.

Yet during the early days of computing, there were lots of discussions over the possible consequences of the “onslaught of technology”. George mentions a number of fears concerning the “inhumanisation” of work process and loss of a number of jobs from lowly office clerks to middle managers. These fears were largely unfounded, as were the fears concerning “skills mismatch” or “deskilling vs upskilling” discussion during the 80s and 90s (see George, also Mishel & Teixeira 1991). But the roots of today's negative thinking stamps concerning telework, e-learning and community models of software development which are still prominent in business circles are likely to be rooted in these skeptical days.

However, one of the fears of these distant times still have some ground – namely the fear of emerging “techno-elite” (as George calls it), which relates closely to a much better-known term of “digital divide” or the gap between social groups which is created by different access to new technology. Another still-ongoing discussion is whether the “cyberspace” is just a mirror image of “the real world” with all its hierarchies and inequalities intact, or do specific features of online communication overcome those. Smith and Kollock (1999) have outlined it well:

“Online interaction strips away many of the cues and signs that are part of face-to-face interaction. This poverty of signals is both a limitation and a resource, making certain kinds of interaction more difficult but also providing room to play with one's identity. The resulting ambiguity over identity has been a source of inspiration to many who believe that because people's physical appearance is not manifest online (yet), individuals will be judged by the merit of their ideas, rather by their gender, race, class, or age. But others (including authors in this volume) argue that traditional status hierarchies and inequalities are reproduced in online interaction and perhaps even magnified.”

8 · *Community Ethics and Challenges to Intellectual Property*

The truth might well be somewhere in between. On one hand, inequality of “the real world” reflects in the cyberspace at least at the very entrance - you need some resources (e.g. a computer and network access) to participate. This is especially visible in developing countries.

On the other hand, the very cyberspace itself was in fact created by people who can generally be characterised as middle (not upper) class – scientists, researchers, students. And the spirit of its creators still rules the majority of the Internet, even after the rapid commercialisation during the recent years. Barrett and Wallace (1994) state: “On the Internet, height, weight, race, and gender may be unknown. Beauty doesn't impress us, nor does ugliness appall. We become our messages, purely and simply.” People who experience disadvantages, prejudices and bigotry in “the real world” (examples include racism, sexism, homophobia, prejudices towards people with disabilities, “incorrect” political or religious views, and many others) have often established themselves successfully via cyberspace.

So we can say that the Internet has been an inherently suitable medium for developing various communities. However, the mindset goes back to much earlier times. The spirit of sharing can be seen throughout the human history, but the direct predecessor of today's online communities and community ethics can perhaps be found in the first generations of computer enthusiasts in the 60s. The story of these *hackers* (remaining true to the original meaning, this text uses the term to denote an independent-thinking and dedicated computer *aficionado* and not in its widespread but perverted meaning to denote a computer criminal) can be found in many sources, Levy (2001) being perhaps the most prominent. The original hacker teams were in a sense similar to the Bushmen described in the beginning of the chapter – before they found the bottle. The scarce resources were used in common interest. Someone who wrote a program left the listing into a drawer for others to study, improve and build upon. According to Stallman, there were no passwords on early computers, and the attempts to introduce them were treated as “outsiders” trying to interrupt the free flow of information (Stallman 2002). Later, the early networks were used to further distribute things of interest – documentation, applications and the source code of software (note: early software was similar to today's free software simply because hardware was diverse, most programs were not portable between the computers and therefore were viewed only as a complementary feature for hardware, not as a separate object). “Information wants to be free” was the banner under which the early hackers marched (Levy 2001, Moody 2001).

The 70s and 80s of the XX century were the golden age of proprietary paradigm. Gradual standardisation of computers (peaked by the emergence of the IBM PC, “the” personal computer) led to software becoming portable and gradually acquiring the commercial qualities. In those days, the mind-quake hit the “old school” hackers, who were often unable to fit into the

commercialising world of software. The old community habits became to be regarded as impractical idealism, as the future was shaped by Microsoft and other large players in commercial landscape.

Yet, the community mindset had only retreated inside the walls of academia and research facilities, not disappeared. Starting in 1983 with the GNU project and fueled remarkably with the emergence of Linux in 1991, the hacker way entered the Microsoft-dominated computer world again. Still being mostly a software-related phenomenon until the end of the century, the community mindset and development models exceeded the limits of software in the first years of the new millennium. These developments are briefly reviewed below.

Right to copy: the community licenses

The question is still justified – if IP does not work well anymore, what is the alternative? To start looking for this, one needs first to go back to the history of technology.

While the mindset was present from the early days of computing - an excellent account of this is Levy (2001) - , the story of free, community licenses started with a man called Richard Stallman. Dubbed "the last of the true hackers" by Levy (the title proved to be incorrect though, as the culture which was fading during the initial release of Levy's book resurfaced and started to flourish during the 90s), was one of the staff members of the famed AI (artificial intelligence) Lab at Massachusetts Institute of Technology. Both Moody (2001) and Levy describe the Lab as a haven for "playful cleverness" - actually the same community-oriented mindset which values creativity over profit and has been characteristic to hacker community since then.

Unhappy with the breakup of the Lab after a decade (in which quarrels over IP were not the least important), Stallman decided to remain true to his ideals and create a new kind of software which would stress user rights instead of IP of the creator. Free software movement (due to ambiguity of "free" in English, often an explanation "free as in freedom, not as in free beer" is added) was born.

Stallman started out to create a whole new implementation of the well-known (but commercialised by then) Unix operating system. While the GNU project has not fully reached its goals, it has produced some essential components for the new way of software development: lots of free software tools, and perhaps the most importantly, the new kind of software license in GNU GPL (General Public License).

GPL takes authorship as its starting point – thus being fundamentally different from public domain in which author gives up all rights on her creation. In this, GPL shares a common ground with the "traditional" IP approach. However, GPL then proceeds to guarantee four basic freedoms, or rights, for users of the creation as stated at the FSF website:

- The freedom to run the program, for any purpose (freedom 0).
- The freedom to study how the program works, and adapt it to your needs (freedom 1). Access to the source code is a precondition for this.
- The freedom to redistribute copies so you can help your neighbor (freedom 2).
- The freedom to improve the program, and release your improvements to the public, so that the whole community benefits (freedom 3). Access to the source code is a precondition for this.

While giving users extensive rights (especially when compared to Microsoft-style, ultra-restrictive licenses), GPL is not incompatible with business. Well-known companies like IBM, Novell, Sun, Red Hat etc have all strong business cases on making money on GPL-licensed software.

GPL has a distinct feature which has been both praised and cursed by different parties: the license extends to the derivatives. Therefore, GPL cannot be revoked and requires everything derived from a GPL-ed software to be put under GPL as well. This has been a very good guarantee for continuity of free software, but has also been seen as a deterrent against business usage (the latter is actually true only for a small minority of cases).

GPL has been a dominant free software license since its early days – a large part of this being due to another famous community-based project launched in 1991: Linux, which switched to GPL soon after its creation). However, as the community model spread among software developers, two schools of thought were formed – those who chose to follow Stallman's ideals and philosophy, stayed in the free software camp (led by Stallman's Free Software Foundation; <http://www.fsf.org>). More business-oriented, pragmatic people who valued free software mostly as a superior development and delivery mechanism compared to the proprietary (as exemplified by Microsoft) model and did not agree to Stallman's philosophy, established the open-source movement in 1998, starting the Open Source Initiative (OSI; <http://www.opensource.org>). Since then the two camps have maintained their different emphasis, resulting in a number of new licenses which are recognised by OSI, but not by FSF. On the practical level, however, the two camps have always been cooperating, making the differences largely irrelevant for the end user.

GPL was mostly designed for software. To provide similar legal space for documentation, FSF created the Free Documentation License, which is similar to GPL in its settings. Perhaps the best-known entity using this license is Wikipedia (<http://www.wikipedia.org>) – a large, multi-language, freely editable web encyclopedia, which has surpassed Encyclopedia Britannica by volume, approaching 1 million articles in its English version only.

In 2001, a group of people led by Lawrence Lessig established a new model of IP. Naming it "Creative Commons", they aimed for a balanced approach to IP – even their slogan "some rights reserved" mirrored their middle-of-the-road approach between the "all rights reserved" of the traditional copyright (which by then had already shown its shortcomings) and "all rights reversed", a Stallman's pun on copyright which he considers unethical. CC is interesting in the sense that it attempts to stay in the domain of traditional IP while introducing most of the qualities of the community approach (like GPL). Lessig has expressed it as follows:

"A free culture is not a culture without property; it is not a culture in which artists don't get paid. A culture without property, or in which creators can't get paid, is anarchy, not freedom." (Lessig 2004).

The approach, being different from Stallman's, has thereby cause some resentment from the FSF side (e.g. http://www.fsf.org/licensing/licenses/index_html#OtherLicenses).

CC is actually not a license but a family of licenses, of which every author can choose the most suitable (this is also the main source of criticism from FSF, deeming them to be too vague). Another novel but very welcome approach was to restore the clarity of licenses – during the years, the legal language had developed to be almost incomprehensible for common people, which in turn played into the hands of the interpreters – lawyers – instead of the authors and users. CC created the license choice mechanism in three easy steps, while the legally binding full text will be constructed automatically and can then be retrieved.

Another notable thing in CC is that besides their main licenses, they have reinstated the Founders' Copyright, essentially meaning resetting the copyright terms to the initial ones established by the first copyright laws in the U.S. This sets the copyright period to 14 years (extendable to another 14) which is much more realistic than the current system (70 years after the author's death).

Finally, there is the Free Art License, which was created by a group of artists meeting in Paris in 2000. It follows quite closely the suit of GPL, but is specifically targetted towards various works of art. Being more of FSF than CC

school of thought, it is also endorsed by the FSF for works of arts and preferred to CC licenses.

From Free Software to Free Culture

A good point on the gradual “frog-boiling” which has eventually become a cultural inhibitor is made by Lessig, describing the work of Walt Disney and comparing it to today's mixing enthusiasts:

“In all of these cases, Disney (or Disney, Inc.) ripped creativity from the culture around him, mixed that creativity with his own extraordinary talent, and then burned that mix into the soul of his culture. Rip, mix, and burn.” (Lessig 2004)

It is notable that while Walt Disney did borrow extensively from earlier sources (Brothers Grimm et al), the corporation bearing his name today has become a major hardline enforcer of IP. Sad but true - if we had another Walt growing up today and wanting to build on Disney's work like Disney built on the Grimms, he might end up in jail for this (an example is found at http://www.kentlaw.edu/e-Ukraine/copyright/cases/walt_disney_productions_v_air_pirates.htm).

However, the times are changing.

While it all started with free software movement, at least comparable impact on other areas of culture has brought along by Creative Commons. Starting with relatively hobbyist things like Flickr (a free online environment for photographs released under a CC license) and gradually moving into more central cultural areas. Some examples:

- Science Commons – a sub-community of CC, formed in early 2005. Works in three main areas: publishing (with goals similar to the Open Access Movement, see below), licensing (to promote more free, socially responsible licensing) and data (to prevent raw data becoming subject to IP). A good example which has some ties to SC project is MIT's OpenCourseWare – an open-access repository of courses which, according to their website, contained materials of 1250 MIT courses in December 2005.
- The Cylinder Preservation and Digitization Project (<http://cylinders.library.ucsb.edu/>) aims to restore the early phonograph recordings, making them freely available in digital form, using CC license.
- A vinyl record label UnlockedGroove (<http://unlockedgroove.com/>) is releasing all its records under a CC license.
- Some Danes picked up the Stallman's famous “free as in freedom, not as in free beer” and brewed an open-source beer... The recipe

and process is freely available under a CC license (see <http://www.voresoel.dk/main.php?id=70>).

These are but a few examples, there are many others.

For a final example, the Open Access movement was started by an American billionaire, activist and philanthropist George Soros in 2001 as the Budapest Open Access Initiative. Its main aim is to provide alternative publishing models to the increasingly commercialised academic publishing which provided huge profits to publishers but effectively blocked access to scientific materials for those who could not afford the expensive journals, thus extending the global digital divide. Despite initial hesitation and some criticism from academic community (who apparently faced another mindquake) the process gradually emerged to become a viable way of publishing. In March 2006, the Directory of Open Access Journals (<http://www.doaj.org>) lists more than 2000 scholarly journals with more than 80 000 articles.

A good quote to illustrate the shift of thinking among academics comes from a professor of economic analysis (sic!) R. Preston McAfee, stating the reason why he published his “Introduction to Economic Analysis” in web using a CC license (available from <http://www.introecon.com>) and making some interesting points:

“Why open source? Academics do an enormous amount of work editing journals and writing articles and now publishers have broken an implicit contract with academics, in which we gave our time and they weren't too greedy. Sometimes articles cost \$20 to download, and principles books regularly sell for over \$100. They issue new editions frequently to kill off the used book market, and the rapidity of new editions contributes to errors and bloat. Moreover, textbooks have gotten dumb and dumber as publishers seek to satisfy the student who prefers to learn nothing. Many have gotten so dumb ("simplified") so as to be simply incorrect. And they want \$100 for this schlock? Where is the attempt to show the students what economics is actually about, and how it actually works? Why aren't we trying to teach the students more, rather than less?” (McAfee 2005).

Community ethics and the future of Europe

First, it seemed to be a weird hippie dream. The the same ideas were picked up by hacker community and they became the moving force of the Internet. And today, these thoughts have reached the highest levels of European authorities. *The Challenges of the Global Information Society* written by Pekka Himanen in 2004 was a report for the Parliament of Finland in which he analysed the future of Europe. Some highlights from the report will follow.

According to Himanen, Finland has three established models for its future to choose from:

a) the Silicon Valley model – or “leaving the weak behind”, the neo-liberal model. Here Himanen addresses seriously the price which has been paid in California (growing inequality and crime rate, the largest prison population in the US etc).

b) the Singapore model – or “race to the bottom”, tax-competition model. Here, the main problem is continuity – after the economy has been rapidly developing for awhile by attracting large corporations with cheap labour force, the development reaches the level where the corporations will move to another “cheap area” due to rising labour costs. Without innovation and expertise, the economy will stall.

c) the European model – or “the dead hand of passivity”, welfare-state model. The main problem here according to Himanen is the threat of stagnation. When people start trying to maintain the industrial-era welfare state without allowing the changes necessary to keep pace with social and technological developments, the result can be the “society of envy”, where all initiative will be cut down to maintain a general low profile.

But instead of choosing one of those, Himanen proposes a fourth way. And this is exactly the scenario propelled by the “community ethics” (or “hacker ethics” as Himanen calls it in his book (Himanen 2001)). Instead of only reacting to things, the society must be proactive – daring to invent new things and discover new ways (by the way, the same reactivity is the main problem with IP, as seen above).

Conclusions

The new media and Internet has revolutionised many fields of human activity. While technology is a vibrant and rapidly developing sphere, the legal system has its strength in its stability. However, nowadays the radical difference of development paces has created contradictions which cannot be solved effectively inside the existing legal mechanism. While the current IP system had its time when it served humanity well, it is rapidly becoming obsolete and needs to be rebuilt. Whether the solution is a radically new, freedom-centered model based on the teachings of Stallman, or a more synthetic approach blending old and new (like the CC) remains to be seen. It is also possible that the current IP model will keep its ground in some areas, but it looks quite evident that it cannot retain its governing position for long.

The engineers of the new century will face a challenge – or to borrow from Theobald, a mindquake. Many concepts that were essential for the XX century engineer will lose their meaning. But many will also remain – the XXI century may well become the century of communities. More than often, a new thing is actually something from the past, well-forgotten...

REFERENCES

Books and book chapters:

- Donath, J.S. (1999) *Identity and Deception in the virtual community*. A chapter in the „Communities in Cyberspace“, edited by Marc A. Smith and Peter Kollock. Routledge
- Freiberger, P., Swaine, M. (2000) *Fire in the Valley: The Making of the Personal Computer*. Second edition, McGraw-Hill
- Gates, B. (1996) *The Road Ahead*. Updated version. Viking Penguin
- George, J.F. (2003) *Computers in Society: Privacy, Ethics and the Internet*. Pearson Prentice Hall, New Jersey
- Himanen, P. (2001) *The Hacker Ethics and the Spirit of the Information Age*. Penguin
- Himanen, P. (2004) *Challenges of the Global Information Society*. report for the Committee for the Future in Parliament of Finland. Available from: <http://www.eduskunta.fi/efakta/vk/tuv/challenges_of_the_globalinformation_society.pdf> [28 February 2006]
- Lessig, L. (2004). *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. The Penguin Press. Available from: <<http://www.free-culture.cc/freecontent/>> [28 February 2006]
- Levy, S. (2001). *Hackers: Heroes of the Computer Revolution*. Updated edition. Penguin Press
- Martin, B. (1998) *Information Liberation: Challenging the Corruptions of Information Power*. Freedom Press, London. Available from: <<http://www.uow.edu.au/arts/sts/bmartin/pubs/98il/>> [28 February 2006]
- McAfee, R. P. (2005). *Introduction to Economic Analysis*. California Institute of Technology. Available from: <<http://www.introecon.com>> [1 March 2006]
- Moody, G. (2001) *Rebel Code: Inside Linux and the Open Source Revolution*. Perseus Publishing, Cambridge MA
- Questier, F., Schreurs, W. (2005) *Open Courseware and Open Scientific Publications*. A chapter in „How Open is the Future? Economic, Social and Cultural Scenarios inspired by Free & Open-Source Software“, edited by M. Wynants and J. Cornelis, CrossTalks, VUB Brussels University Press 2005. Available from: <http://crosstalks.vub.ac.be/publications/Howopenisthefuture/howopenfuture_CROSSTALKSBOOK1.pdf> [27 February 2006]
- Smith, M.A., Kollock, P. (1999) *Introduction to the „Communities in Cyberspace“*. Edited by Marc A. Smith and Peter Kollock. Routledge
- Stallman, R. (2002). *Free Software, Free Society*. Ed. Joshua Gay. GNU Press
- Torvalds, L., Diamond, D. (2001) *Just for Fun: The Story of an Accidental Revolutionary*. First Edition, Harper-Collins

Wynants, M., Cornelis, J. (2005) *Preface*. „How Open is the Future? Economic, Social and Cultural Scenarios inspired by Free & Open-Source Software“, edited by M. Wynants and J. Cornelis, CrossTalks, VUB Brussels University Press 2005. Available from: <http://crosstalks.vub.ac.be/publications/Howopenisthefuture/howopenfuture_CROSSTALKSBOOK1.pdf> [27 February 2006]

Articles and reports:

Barrett, T., Wallace, C. (1994) "Virtual Encounters". In: *Internet World*, No. 8, Vol. 5, 1994: 45-48

Mishel, L., Teixeira, R.A. (1991). "The Myth of the Coming Labor Shortage: Jobs, Skills and Incomes of Americas Workforce 2000". *Economic Policy Institute Report*. Available from: <http://www.epinet.org/studies/myth_of_coming_labor_shortage-1991.pdf> [27 February 2006]

Moglen, E. (1999). "Anarchism Triumphant: Free Software and the Death of Copyright". *First Monday*, Vol. 4, Issue 8. Available from: http://firstmonday.org/issues/issue4_8/moglen/index.html> [27 February 2006]

SDForum (2006). *The Future of Commercial Open Source*. Think Tank Summary Report. Available from: <http://lwn.net/images/pdf/OpenSourceThinkTank2006_FinalReport.pdf> [1 March 2006]

Websites:

Budapest Open Access Initiative. <<http://www.soros.org/openaccess/index.shtml>> [1 March 2006]

Creative Commons. <<http://www.creativecommons.org>> [1 March 2006]

Directory of Open Access Journals. <<http://www.doaj.org>> [1 March 2006]

Electronic Frontier Foundation. <<http://www.eff.org>> [27 February 2006]

Flickr. <<http://www.flickr.org>> [1 March 2006]

Foundation for Free Internet Infrastructure. <<http://www.ffii.org>> [27 February 2006]

Free Art License. <<http://artlibre.org/licence/lal/en/>> [1 March 2006]

Free Culture. <<http://www.freeculture.org>> [1 March 2006]

Free Software Foundation. <<http://www.fsf.org>> [1 March 2006]

MIT OpenCourseWare. <<http://ocw.mit.edu/index.html>> [1 March 2006]

Open Source Initiative. <<http://www.opensource.org>> [1 March 2006]

Science Commons. <<http://science.creativecommons.org>> [1 March 2006]

Wikipedia. <<http://www.wikipedia.org>> [27 February 2006]