

# Hacking for money

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Many of the products we buy today are no more than large collections of zeroes

and ones. High-priced software, high-quality music, and valuable reference material such as computerized databases or CD-Rom encyclopedias are commercial

products like any other, but the media of their transmission makes them

different in at least one aspect: it is possible to copy them freely, or at

least extremely cheaply. A compact disc of Elvis Costello and the Attractions is

different from, say, a ham and swiss sandwich in many ways, but beyond the

obvious is one reason that makes the nature of the two items and their

production and purchase very different indeed: I can only eat the ham and swiss

sandwich once, while I can listen to the Attractions CD repeatedly. This is a

result of the fact that the CD contains information, rather than an actual

substance such as the sandwich has. The consumable material in the sandwich is

actual food and is gone after its consumption, while the consumable material in

the compact disc is encoded binary data that will be around for the life of the physical disc. Since the sandwich can only be consumed once, we pay out an amount of money that signifies what one sandwich is worth to us. If I want another sandwich, I pay another \$4.95. If someone were to invent a ham and swiss

sandwich that could be eaten thousands of times (let's not go into the mechanics

of how this would work) then the producer might be justified in charging many

times the cost of an ordinary ham and swiss, on the grounds that I'm getting more than just one sandwich. "Buy our sandwich once, and you'll never go

hungry again!" However, one might protest this idea if we know that it

still costs the usual amount to make the sandwich. If a producer can make a

repeatedly-edible sandwich for a couple dollars, and sell it for \$4,000, he

stands to profit hugely. The reason we might be able to justify charging four

grand for a ham sandwich is that in our usual structure of sales and ownership,

we agree with the vendor to pay a price reflective of what the product is worth

to us, the consumer. In this light, it's irrelevant that the producer only spent \$2.50 to make that repeatedly-edible sandwich, because to me as a consumer such

a sandwich is worth thousands. Or to return to the example of the compact disc;

it's irrelevant that the producer only paid a nickel to produce each disc, because to me it's worth fifteen dollars to be able to listen to "Punch the Clock" at my leisure. The problem with this scenario is that it allows the producer to profit extremely at the expense of the consumer. I don't think I'd too willingly pay more than fifteen dollars for a CD, and the record companies

know this. Five million CDs sold at whatever wholesale price gets them to be \$15

retail is a lot more profit than five million CDs sold at some lower price.

Labels could charge less, in the hopes that people would buy more CDs (and this

is the guiding principle behind distribution houses like BMG and Columbia House), but in general the cost is going towards promotion and marketing, rather

than towards the minimal expense of getting the discs made and into stores.

In a

capitalist organization, one concept inextricably linked to marketing and sales

is that of ownership, or of intellectual property. A car company might have patent rights to manufacture and sell a particular model of car, or a record label might have the rights to make and sell a particular recording. A ham sandwich is a less specific item; anyone can make a sandwich and sell it, but only McDonald's has the legal right to call it an Arch Deluxe. This structure works well for assigning rights to the inventor or patent holder of a product – if someone designs a new kind of carburetor, they should have the right to exclusive manufacturing and marketing, without worrying about someone else

capitalizing on that invention. This structure has been extended to cover the more abstract notion of intellectual property, thus giving an individual or company the exclusive legal right to manufacture a certain musical recording, to

sell a piece of software, or to use the words “ Enjoy Coke” in a

commercial context, since what is owned in these cases is intellectual property

– information, binary data, or an advertising slogan. But does it make sense to

extend the concept of ownership to these things? In all cases of ownership, or

holding the patent to an invention, the real thing being owned is the right to make use of certain information for profit. I could make and sell South Park T-shirts, but since I haven't gotten permission from its owners, I'm breaking copyright law. I could steal someone's design for a carburetor and produce them

myself, but we generally agree that the inventor's rights are being infringed upon, since I haven't arrived at that carburetor design by any effort of my own.

Stealing, we say, is wrong. The question is, what is stealing? The most obvious

kind of property theft is that of stealing tangible physical objects. If I take someone's ham and swiss without their permission, it's theft. The difference between this and what we call intellectual property theft is the fact that if I

take someone's sandwich, they can no longer eat it, but if I take (say, make a copy of) their software or musical recording, they're not at any real loss – they can still use the software or listen to the music. But, if they had intended to sell copies of said software or music, they are losing in that I've just acquired for free what they had intended to charge me money for. Often the two kinds of theft are considered as one, but I feel that a distinction needs to be made due to the two very different natures of what is being stolen. Let's push this a little further with an example that is commonly debated in the music industry regarding its morality – sampling. Now, a sampler is a tool like any other, and plenty of musicians use it to record original samples for musical composition purposes, but plenty of others also use sampling technology to outright plagiarize other musicians' work. Legal and permissions issues aside, this can be a dubious artistic undertaking, and there are artistic differences between what Puff Daddy is doing with sampling, and what the Future Sound of

London is doing with it. The fact is, sampling has become simply another musical

tool – a logical extension of what composers have done throughout history by

borrowing melodic and tonal ideas from one another – albeit one that can be quite easily abused. Music isn't the only art form to involve dubious kinds of

originality. Phraseology and style are borrowed, traded, and stolen in the literary world constantly – a creative writing professor once told me that

“ Bad writers borrow; good writers steal.” Visual arts are often built upon styles throughout history, and forms such as photomontage or collage may

involve copyrighted pictures of other artists' works. Photography itself is a way of artistically capitalizing on images and scenes that anyone can see with

their own eyes, the camera a kind of visual “ sampler.” In these cases

it comes down to a question of whether the writer or artist being stolen from is

losing anything in terms of intellectual property and marketability. It's



certainly true that some artistic statements can only be made by outright theft

of another's creation, for the purposes of placing the original work in a new context. A good example is a sculpture on Bowling Green State University's campus. This sculpture is simply a large recreation, in aluminum, of Rodin's "The Thinker," reclined back into the ground, chin propped in his hand as though watching television. Here, the famous statue is put into a new context

to make the statement that we're doing more TV-watching than thinking nowadays,

especially those of us that are in university. The sculpture would not have nearly the same effect if the subject were not such an already famous statue;

the artist is aware of this. In this case, is Rodin's original work being stolen? The reason the sculpture is effective is that we immediately recognize

it as "The Thinker." We also immediately recognize "Every Breath

You Take" in a particular Puff Daddy hit, but what's the difference here?

What statements are being made? Depending on our tastes, we might argue that one

kind of stealing should be permissible, another not so permissible. What's at issue here is whether a certain amount of restriction in the arts should exist so that artists, writers, or musicians, can be assured a degree of protection from intellectual property theft. We may argue that those who wish to be protected by copyright law are free to be so, and few could reasonably deny an

artist the right to have her work protected in this way, but I maintain that there's something more at stake here - that our older notions of ownership and

property fail to effectively apply to a modern, usually electronic method of storage and transmission - and that the nature of these modern storage media

necessitates a reevaluating of what ownership entails. I recently received a web

pointer to a commented, internal Microsoft memo discussing the effect that GNU/Linux will likely have on the immediate business future of commercial software companies, particularly Microsoft itself. It seems that Microsoft feels

threatened by the presence of an efficient, well-supported, versatile, and most

importantly, free operating system such as GNU/Linux, and is beginning to

question whether they as part of the commercial software industry will be able

to compete with this seemingly superior product. The memo details various

possible strategies for counterattack, and its authors are certainly more

knowledgable than I am about the pros and cons of each system. One thing is

clear, though - the possibility of such a free, user-created open-source

operating system becoming the universal standard over Windows or MacOS is more

present now than ever; the OS wars are an analogy for a phenomenon that is

constantly occurring in the world of electronic media, the appearance of a

revised concept of ownership. Ownership in the case of a piece of software rests

with the company or individuals who design and program it. Since GNU/Linux has

generally been treated as a community-owned product (which is the idea behind

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open-source software), there are different restrictions on its distribution and licensing than there are on commercial software products like Windows or Wordperfect. To use a specific example, the GNU public license (which you can

read here) roughly states that you can legally distribute or sell GNU/Linux or a

derivative of it, provided you give the recipients all the rights that you have.

This is very different from a commercial product such as Windows 98, which can

only be sold and licensed by Microsoft, and whose source code may not be modified by anyone other than Microsoft. The benefits of free software are many;

the most obvious is that the software may be modified, for better or worse, by

its users. (“Free” in this context generally means open-source,

shared-development software, rather than implying you can always get it for free). This means that free software is infinitely customizable to those

knowledgeable enough to customize it. One may claim that anyone always has the

right to program their own piece of software. The advantage to modifying existing software is the shoulders-of-giants principle: Why design my own operating system from the ground up when I can take the work done by Linus

Torvalds and the hundreds of other skilled programmers around the world, and

bend it to my whim? This is a much more flexible system than one in which I must

depend on Microsoft to provide me with every convenience I desire. How does this

apply to the arts, though? Software is almost universally the kind of thing that

is constantly being altered, updated, and optimized. Art is generally considered

a thing that is made once and finished afterwards. I don't plan on remixing or modifying my Elvis Costello and the Attractions CDs. But should our copyright

and licensing laws necessarily prohibit those who wish to take an existing piece

of art and build upon it from doing so? Remixing is often done with the consent

of the original artist. I don't know whether the sculptor who made the

“ Thinker” adaptation on BGSU's campus consented with whoever holds

property rights on Rodin's work these days; chances are he didn't, probably

because the original work is so easily recognizable. But issues of permission

aside, how far should we restrict the right to sample, borrow, steal, or

outright plagiarize the artistic property of others? And ultimately, should art

even be subject to property laws in the same way anything else is? Our past

and

current notions of ownership entail a sense of giving rights to the creator of a

certain product to produce, distribute, and sell that product in whatever way

she chooses. Since the artist, programmer, musician, or worker-in-general in

question is putting some time and energy (and often money) into the

production

of whatever work of art, software, or music is in question, it only seems

reasonable to compensate them in some way, the most universal of which is

with

money. Obviously not everyone producing something is asking for money in return

(as the previously mentioned GNU/Linux project shows), and the compensation in

these cases is represented by the benefits experienced by the community as a

whole, rather than the recognition or financial reimbursement that the artisan

(in this case the programmer) personally receives. The artisan is usually free to choose who may profit by their creation, and the terms under which they may

profit. Although it should be the right of the programmer, artist, or musician to decide what terms of ownership or licensing shall be applicable to their

creation, the media on which they choose to distribute their work might play a

previously ignored role in the way that work will be treated by the community.

While the law has generally been extended to cover all forms of media equally,

and to give the artist copyright protection regardless of the distribution

format used, I maintain that the medium of transmission is at least as important

as the material being protected. Sometimes, the media through which a creation

is propagated has more effect on the likelihood of its being borrowed or stolen

than the creation itself or any existing laws protecting it. Just as the

invention of the printing press vastly increased distribution and thus altered

forever the ways in which ideas travel, the evolution of electronic recording

and transmission methods directly affects the way ideas are copied, distributed,

and recombined into new ideas. Prior to the printing press, communication had to

be verbal, or copied by hand. Prior to electronic media, written communication

had to be physically duplicated, at some cost to those desiring copies. Now

anything can be copied, altered, republished, and copied again, with no expense

other than time. An example is the difference between a physical medium and its



electronic counterpart: Musical recordings on vinyl LP are harder to copy than

MP3 files. A photograph or color print is considerably more expensive to replicate than a Jpeg, and a library book is more difficult to copy than a text file on a computer. The artists who choose to use traditional methods – cassettes, film, and paper – to create and distribute their work stand a lesser likelihood of having their work duplicated or altered than those who port their

creations to digital. Digital is more practical for some reasons: you can fit twice your weight in books on a CD-Rom; email is faster and cheaper than postal

mail; digital video offers possibilities undreamed of in the days of film. But with all that enhanced convenience, speed, and versatility comes the increased

risk of the previously mentioned modes of duplication. Marshall McLuhan conceived that the medium is the message – that the form which our communication

takes is of more relevance than its actual content. Now that we've grown

accustomed to the electronic medium, content is re-emerging with the rapid and

inexpensive duplication and alteration that is only possible with that

medium. I've touched upon some of the comparisons that can be made between

an electronic, or otherwise easily replicable product, and a physical,

not-so-easily replicable product. Obviously there are differences, but are these

enough to warrant the claim that ease of replicability implies a revised mode of

ownership? Just because software and digital audio are easy to copy, does that

mean we should? And does the digital nature of some products mean that the

originator of those products should benefit any less than they would have had

that product been in traditional physical form? An argument that may be used in

favor of copyright protection for electronic media is that if an artist or

programmer is hoping to make a substantial living through sale of their work,

then that work should be protected. Why should an article or novel be protected

any less merely because it is published on the World Wide Web, rather than in a

print magazine? In both cases, the original author should have the right to

claim ownership of what they've written - especially if someone else stands to

profit by taking that work and unjustly claiming it as their own. Contrastingly,

the author should also have the right to publish their work as public domain, or

anonymously - and thus claiming no ownership rights on it - but we may also

agree that it would be equally unjust if someone were again to take that work as

their own and profit by it (this latter case is different only in that the

original author is not losing out, since they had never planned to profit by

their creation in the first place). In both cases we usually consider it wrong

for the work to be stolen, regardless of what conditions the original author

published it under. Is it feasible to utilize another kind of copyright

protection - one which protects a public domain creation from being unjustly

stolen? This is something like what is happening with GNU/Linux and its source

code; part of its license provides for protection from patents. Or, to quote from the GNU General Public License itself, “...any patent must be licensed for everyone’s free use or not licensed at all.” This is quite a powerful idea. The authors of a work of public domain software have ensured that it remains public domain. The driving concept here is the idea that allowing the community to directly influence the evolution of the software (by giving them the source code and all the rights that the original authors have), everyone benefits. Rather than one company benefitting at the cost of the community (as is the case with most commercial software) the free software ethic provides a way for everyone to benefit, and moreover provides protection from those who would leverage that freedom for personal gain at the expense of the community.

Might this be applied to realms of creation other than software? Just as there

are functional advantages in allowing a community to modify a piece of software,

might there be literary advantages in publishing poems, articles, essays, or even novels as public-domain works? Or musical advantages to publishing free

sample, drum loop, or song databases? Musicians and writers are known to be a

picky bunch when it comes to letting others tamper with their work – and of course, those that don't want their work tampered with can always copyright it

and claim ownership for themselves, just as most software authors copyright their work and don't release the source code. But for those who wish to contribute artistic works to a community-based effort, under the assumption that

others will revise and improve those works, protection should also be offered.

Granted not everyone is capable of improving on someone else's creation, but as

long as everyone has equal access and privilege to alter those creations, the best end product will eventually emerge. If you stir up the pot enough, the

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cream eventually rises to the top, and it will be there for everyone to share and benefit from. One of the provisions of United States copyright law is for the copyright owner to authorize others to have any of the rights that they, the copyright owners, have. Section 106 of the U. S. Copyright Law grants the owner of a copyright "...exclusive rights to do and to authorize..." any of a number of things that we commonly assume to be the rights of a copyright holder: to reproduce the work, to prepare derivatives of it, to distribute or sell copies of it, and to present the work publicly. And Section 201d provides for the owner of a copyright to transfer ownership of that copyright to someone else, thus giving them all of the same rights - that is, the right to reproduce, modify, and sell the creation, as well as transfer ownership to someone else. Sound similar to what I've been talking about? A mistake that I often witness goes something like this: "MP3s are illegal because they're stolen from the musician who actually made the song." This misnomer is familiar to anyone who's spent any time browsing the MP3 culture on the internet; it's often

difficult to convince the mistaken party otherwise, since it is indeed common for MP3 to be used illegally, thanks to its high quality and portability. In the days when a copyright can be owned on a brand name, a trademark on a simple

phrase, or a legal claim of intellectual ownership of a bunch of zeroes and ones

that exist on someone else's hard drive, it is easy to assume that simply

because a certain file format is commonly associated with illegal activity, that

format itself is illegal. For a while I've argued that we're already progressing beyond the conventional idea of owning physical objects, to the modernized concept of owning ideas and information. Already most of the cost of a compact

disc or software package goes towards its development, advertising and marketing

- all of which are services, rather than substantial realities like a ham and swiss sandwich. It would only be a small step to remove the physical aspect of

those products entirely; consumers would pay for the privilege of owning the

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MP3s of an album, or of running certain software on their computer, of owning

the Acrobat files of their favorite novels, of having a painting by their

favorite artist in their Windows background. But such a reality will push even

further the insecurity of intellectual ownership; currency is already so largely

electronic that perhaps one day the distinction between electronic currency and

electronic property will become so blurred that the two merge. One piece of art,

music, or software would be paid for with another – instant electronic barter.

And then, who will be able to claim ownership of anything?