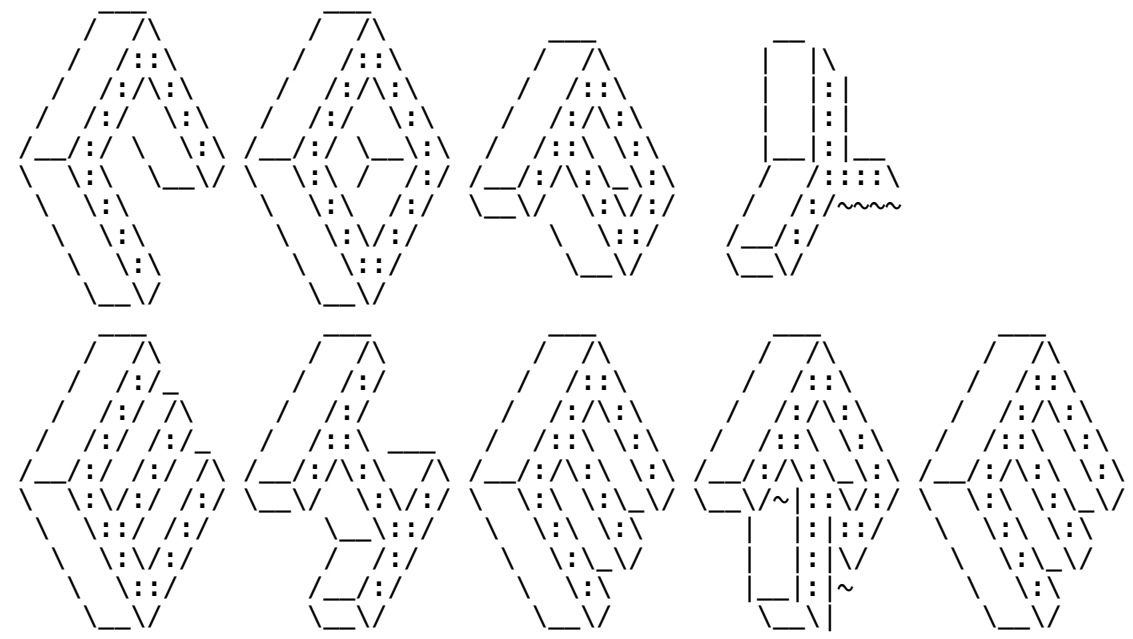

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// Copy-where? //

Reconsidering intellectual property in times of prevailing bio-cognitive capitalism

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hello world // or who is really in favour of copyright laws?
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> *I was sleeping once and saw a dream. There was a strange planet. Something magical happened there every time an artist created a new work. The very moment the artist took his work out of his house the work became as widely known as it was talented. There was a specific law working there also: nobody was required to pay the artist while using his work in any imaginable way.*
> *(Volynets 2017)*

With this paragraph the writer *Anatoly Volynets* begins his book *Culture vs Copyright* which he initiated when the Russian researcher Dmitry Sklyarov was arrested by the FBI in 2001 at the DEF CON convention in Las Vegas while giving a presentation. He became accused of having violated the Digital Millennium Copyright because he used a security breach in Adobe's e-book encryption as an example in his talk. The protests of the software development community that followed, in which also the son of Volynets took place, inspired him to compile

his thoughts on the topic of intellectual property. It is written from the position of a teacher, the *naive philosopher*, in conversation with five of his pupils. In the first chapter he is introducing the above idea to them and the conversation at some point develops like this:

> *Beta: Look, can you imagine that publishers and others, who want to use a work of art, are free to do so?…*
> *Delta: Like on the Magic Planet!*
> *Kappa: Delta, do not interrupt, please! You'll never hear the answer!*
> *Beta: OK, I'm continuing. Everybody is free to use it but is obliged to attribute the work to its author…*
> *Alpha: So?*
> *Delta: Ah… the author gets exposed with every single use of his work!*
> *Gamma: Hmm. Let me see… If artworks are not free to use, each publisher will have his own stack of books.*
> *Teacher: Oh yes, that's true on our planet; publishers feel safe with their portfolios.*
> *Gamma: Yeah, but if it's free to use by anyone, no publisher feels safe with his own "portfolio" and has to search continually for more good stuff…*
> *Alpha: So?*
> *Beta: So, any new work gets attention, no matter what!*
> *(Volynets 2017)*

The idea mentioned in the above paragraph that an abolition of copyrights would lead to a greater interest of publishers or even better payment for authors might sound quite absurd at first glance. But actually there is historical evidence that this concept is actually quite feasible:

> *The result is surprising, as it shows that copyright in the 18th and 19th centuries only had a detrimental effect on authors' income, number of titles, book prices, etc. It was only used by the interest group of leading publishers and a handful of best-selling authors. Reality had absolutely nothing to do with the practically indisputable theory of intellectual property. As a lawyer, you can read this theory regularly in the explanatory notes of the European Union's guidelines.*
> *(Höffner 2010)*

Business lawyer *Eckhard Höffner* compared the book market of the 19th century, especially of Great Britain, copyright from 1710, and Germany - nationwide protection from 1837 - in his study on "History and nature of copyright law". The results of his extensive empirical analysis of royalties, editions and number of new released titles contradicts prevailing views on the effects and benefits of copyright law. He even came to the conclusion that the transformation of Germany at the edge of the 18th century from an agricultural towards an industrial nation can be traced back to the later initialisation of intellectual property laws, since the vast amount of printed matter, especially of technological and scientific content fostered. And he arrived at the clear realisation that copyright serves primarily publishing companies and does consequently mean that also writers might be paid better. *(Spreckels 2011)*

> *Since the publishers were much more dependent on the authors, because they constantly needed supplies, the authors were able to take advantage of*

> *this. The authors fought a tough battle with the publishers over the amount of the fees, especially during the reprinting period. These rose within a short time - as I said during the high phase of the reprint - by about fivefold. However, since bestsellers could not make exorbitant profits, bestselling authors earned less than in Great Britain, while the average author earned a lot more. But what was created with a lot of work and could only be sold in small quantities, inevitably had to be more expensive if the work was to be remunerated. At that time, however, these higher profits per copy were more likely to be passed on to the authors. (Höffner 2010)*

But if the actual proprietors of intellectual property are not having any advantage of copyright laws, how come these were established in the first place. Maybe, to try to answer this question we should take a look back in its development. There should also be mentioned, that the idea that immaterial or intangible things as knowledge, works of art or ideas could be property is quite young. And especially today, in the midst of *bio-cognitive capitalism (Fumagalli 2018)*, the question how to handle our immaterial goods remains an difficult but important question.
(Dreier et al. 2006)

CMD+Z // A brief eurocentric history of intellectual property

For a long time during human history the concept did simply not play a very important role. Despite that the term plagiarism can be traced back to ancient Rome, when the poet *Martial* described his fellow colleague *Fidelius* as a *soul reaper*, for falsely distributing Martial's poems under his name, there was not actually a need to secure the source of inventions or ideas. Throughout the middle ages until modern times craftsmen and artists where usually rather valued because of their skill and not their originality. A small range of media made copying also quite difficult or simply impossible. Especially for the reproduction of books, for a long the only possibility was to rewrite it by hand.

A common way in the middle ages to protect literary work from being copied can be found in the introduction to one of the first German the law texts, the Sachsenspiegel. Its author *Eike Repgov*, a medieval German administrator, included into it the so called book curse, punishing falsifiers of his literary work to suffer of severe illness. (Dreier et al. 2006)

In the year 1710 the *Statute of Anne* was introduced as copyright act reformation in Great Britain, which could be seen as the first attempt towards handling intellectual property. Whereas one function was to untie the registration of literary publications from the total control of the British monarchy and the back then quite powerful stationary guild, it furthermore reduced the license for reprinting to 14 years. Returning the rights for another 14 years back to the author. It also determined that all afore published matter after 21 years would enter the public domain. Nonetheless it served rather as a regulation of the book market, than strengthening the position of writers towards the possession of their work. (Halbert, 2002)

Another mayor step marked the *Berne Convention for the Protection of Literary and Artistic Works* in 1896. Prompted partially by the writer Victor Hugo, on September 9th Belgium, France, Germany Great Britain, Italy, Spain, Switzerland and Tunisia signed the first international act for the protection of literary works. One innovation was, that instead of a necessary registration of a piece of literature or art, copyright with this agreement was now granted from the point of its fixation, e.g. being written down on paper. Furthermore it was the first attempt to secure copyrights over national borders. The law act is still valid today and practically grants a publisher the righteous possession of a purchased work for at least 50 years after the decease of the author.

It was followed by the foundation of the *World Intellectual Property Organization* in 1967. Its selfproclaimed *mission is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all. (WIPO, n.d.)*

Strolling across the Bazaar// all wrongs presented

Within the last half century there has been done a lot of consideration about exclusive copyrights and the idea of intellectual property rights. Also the wide distribution of ICT and the arrival at the information age led to a paradigm shift, with an extended private use of computers, internet access and the introduction of filesharing software.

Thus it is not surprising, that a critical discourse began, especially within the computer community. In the next lines I will roughly try to portrait and present a chronological selection of certain actors and key figures that were shaping the conversation versus copyright and exclusifying intellectual property.

Let us begin with *Li-Cheng Wang*, early member of the famous *Homebrew Computer Club*. Into the description of a modification he developed to narrow down BASIC, a programming language ran on microcomputers, he used the term *copyleft, all wrongs reserved*. In this time, 1974, Random-access memory in computers were still very expensive leading to the use of memory sizes of usually four or eight kilobytes. The minimal version of the interpreting software developed by Microsoft, Bill Gates' first enterprise in the realm of software, took up 3290 Bytes. This left very little space on a 4KB Memory to run any programmes.

> *However, since Mr. Bill Gates claims that he did not get payed enough and is in the mood of calling people thieves. (See HBCC newsletter '12-1.) I decided to code one myself. What comes out is a bootstrap of sixteen bytes long. This is still too long, maybe our professional experts can make it shorter. For the time being you are welcome to copy mine and I will not call you a thief (t h i s includes Mr. Gates).*
> *(Reiling 1976)*

In this comment from the second newsletter of the *HBCC, Wang* presents a mayor argument for the abolition of copyrights: Open publishing supports progress, especially in software development, through its mere availability to others to improve and build onto it. And it sketches how thin the line between inspiration and plagiarism can be.

And of course when we stroll over the bazaar of ILP critical voices, we have no chance of ignoring the a bit controversial one of *Richard Stallman*. Recently being quite present in media coverage for returning as a board member of the Free Software Foundation, which he founded in 1984, his name and work is closely connected to alternatives to mainstream copyright law and licensing. His Gnu Manifesto, published first in March, 1985, issue of Dr. Dobb's Journal of Software Tools, can be considered another mayor step in IPR criticism.

> *GNU is not in the public domain. Everyone will be permitted to modify and redistribute GNU, but no distributor will be allowed to restrict its further redistribution. That is to say, proprietary modifications will not be allowed. I want to make sure that all versions of GNU remain free. (GNU 1985)*

What distinguishes the *GNU General Public License* from *Wangs* approach towards free software is that Stallman adds onto it the idea of preventing the software or modifications of it to be used in any proprietary way.

Ironically the motivation for this license focused on computer software can be traced back to problems with a printer: During his time working at the MIT AI Lab he was confronted by a paper jam of a brand new sponsored prototype Xerox laser printer. To workaround this problem of arriving at the room where the printer was located he wanted to make use of an already approved fix that was applied to the prior printing machine. This fix consisted in a modification of the machines source code to make it automatically notify all users with print documents in its waiting line if a problem occurs. According to Sam Williams, after not finding the source code available somewhere he even visited the developer to get hold of it:

> *In true engineer-to-engineer fashion, the conversation was cordial but blunt. After briefly introducing himself as a visitor from MIT, Stallman requested a copy of the laser-printer source code so that he could port it to the PDP-11. To his surprise, the professor refused to grant his request.*
> *"He told me that he had promised not to give me a copy," Stallman says (Williams 2002)*

A similar, but different, but actually quite similar approach, except leaving out the not to be turned into proprietary software part, is given by *Eric Steven Raymond*, writer of the book with the catchy title *The Cathedral and the Bazaar*. His name is closely connected to the *Open Source Movement*, which formalised in the formation of the *Open Source Initiative* in 1996 together with i. The organisation shares its objective largely with the *Free Software Foundation*, but from a rather utilitarian perspective. *Linus' Law*, one of the core concept of the aforementioned book illustrates this quite well: *Given enough eyeballs, all bugs are shallow.*

The name-giver of this law, *Linus Torvalds*, should also not be left out. It would also count as a classical neoliberal success story. He developed the *Linux-kernel*, you might probably be familiar with the sitting penguin logo, which is for example also the basis for the *Android* operating system. It was licensed under the *GNU Public License* in 1992 and soon after its ignition was implemented as the kernel for the *GNU operating system*. Yet, *Linux*, maybe inspired by *GNU*, is a totally independent project.

Eventually all these the activities and discussions held within *FLOSS*-communities, standing for *free/libre open source software,* lead to the foundation of the *Creative Commons* organisation in 2001, by *Lawrence Lessing*.

> *Nothing which I support is about abolition of copyright. It is instead about tuning copyright to the technology of today,* Lessing states in an Interview at a conference of German *Federal Agency for Civic Education.*
> ...
> *I summit it is impossible for any particular individual to think of their day to day life without realising that they are constantly sampling. Their whole connection to their neighbours and their friends is about connections through common points of reference. The point is we made these points of reference historically by just retelling a story...*
> *(Lessing 2005)*

The *creative common license* is temporary probably the most famous alternative of copyright. It can be seen as an attempt to transform and renovate copyright restrictions towards better fitting into the information age and tries to provide a modular and simple approach towards the complicated field of legal intellectual property protection.

> *Copyright has historically been modified in light of existing technologies, to make it make sense of existing technologies and I just think we should do this today. What we are doing instead is trying to force the technology to mimic the architecture of the law from the last century*
> *(Lessing 2005)*

Copy Vadis? // a future outlook on copyright with respect to some present incidents

To possibly answer where the debate around intellectual property will go we should take a step back first and try to recapitulate what this is actually all about.

> *Intellectual works, regardless of whether they are literature, images or music, are characterized by the fact that they cannot become scarce. When I read a book or watch a movie, they have not disappeared afterwards. It's different with bread: it's gone after I've eaten it. Since the usual*

> *utilization models are based on scarcity, this scarcity is created by the legal system in the case of intellectual works.*
> *(Djordjevic 2019)*

Whereas most material things are at least conceptually scarce, immaterial things usually have the advantage of remaining. Unlike e.g. fossil fuels, work of art or science can never run out. Consequently an ecology of intellectual property seems quite easy. Yet it seems to be not. Especially when taken in consideration its attachment to economic profit. An good example for the connection of copyright and economic interest can again be found in the interview with *Eckhard Höffner* about his research:

> *The result is surprising, as it shows that copyright in the 18th and 19th centuries only had a detrimental effect on authors, the number of titles, book prices, etc. It was only used by the interest group of the executing publishers and a handful of bestselling authors. Reality had absolutely nothing to do with the practically undisputed theory of intellectual property. As a lawyer, you can read this theory regularly in the explanatory notes of the European Union's guidelines.*
> *(Höffner 2010)*

Talking of European Union guidelines, there should be stated that these recently provide actually a lot *opportunities for improvements in access to knowledge and culture, or for the fair payment of authors. (GFF 2021)*

Still, alarming remain actual events on national level. An example gives a recent copyright reform of the German government in regard to the hazard of upload filters and website blocking.

> *Today an association of Internet access providers (Deutsche Telekom, Vodafone, Telefónica, Mobilcom-Debitel and 1 & 1) and numerous associations of the rights industry announced the signing of a joint code of conduct "Clearing House Copyright on the Internet" (CUII). In it, they outline a way of how they want to block without juristical surveillance so-called "structurally copyright-infringing websites" in the future.*
> *(Beckedahl 2021)*

The German internet activist *Julia Reda*, interviewed at the *re:publica 2021* convention by *netzpolilitik.org* founder *Markus Beckedahl*, informs presents why this topic is highly controversial.

> *Ultimately, this is a weighing that absolutely must be made by a court, namely how much an interference with a fundamental right is justified. And this decision is now being made by private companies.*
> *(Reda 2021)*

Private telecommunication providers will be allowed to make websites unavailable, or at least more difficult to be reached, if they consider these to violate copyright issues.
Without any concrete security mechanism from government side so far, neither from public, user or consumer side because there is not really an alternative to

the mayor providers starring the CUII, explicit interest conflicts are preprogrammed from sides of the providers, since they are becoming more involved in offering for example own streaming platforms just to name one point.

Within the interview the conversation also extents on science publication. One problematic member of the CUII mentioned by *Reda* is also the publisher *STM, International Association of Scientific, Technical and Medical Publishers*. An interest group, which most likely is going to lobby for blocking a databases like Sci-Hub, that help users to circumvent paywalls for scientific papers.

> *Elbakyan had been following the Open Access movement and was an ardent fan of MIT's OpenCourseWare — an initiative through which the university makes virtually all of its coursework available — since 2008. She'd also always been fascinated with neuroscience, especially the articles by the neurologist-turned-writer (and longtime head of The Guardian's Neurophilosophy blog) Mo Costandi. Elbakyan became convinced that untapped potential was hidden in the human brain. She particularly liked the idea of the "global brain," a neuroscience-inspired idea by futurists that an intelligent network could facilitate information storage and transfer — driving communication between people in real time, the way that neurons that fire together wire together.*
> *(Graber-Stiehl 2018)*

The idea for Sci-Hub came to *Alexandra Elbakyan* in 2011 when she was unable to reach a website blocked by the Kazakh government and had to use a proxy server to reach it, she thought this could also be useful to access research articles. *(https://engineuring.wordpress.com/2019/03/31/sci-hub-and-alexandra-basic-information/#more-566)*

> *Elbakyan's scientific communism mirrors the Western association between democracy and information openness. (Take the commonly used American expression "the democratization of… ") Her intellectual convictions informed the growing vehemence with which Elbakyan insisted that absolutely unfettered access was the only acceptable level of access the public should have to discoveries. Ultimately, she concluded that in an age where scientists can publish their research "directly on the internet," or through paywall-free Open Access journals, traditional publishers will inevitably fade into obsolescence.*
> *(Elbakyan 2019)*

Sci Hub definitely crosses the border of illegality, but does this out of idealistic motifs. So why is it illegal? I would like to leave this question open to reader, but hope this text delivered some interesting input regarding this matter. How the debate around intellectual property and copyright will go is difficult to foresee and only time will tell. I myself can not present a really valuable speculation. For anyone interested in this very issue I recommend to read Debora Halberts, perhaps gotten a bit long in the tooth hence published 2001, on the other hand name-wise quite actual article *Intellectual Property in the year 2025 (Halbert 2001)*, where she outlines three plausible scenarios towards copyright. Or even its sequel *Intellectual Property in the year 2055 (Halbert 2018)*

I would like to end conclude this text with another excerpt from Volynets' book, cited in the beginning:

> *We MUST remember and take it seriously that art is not determined or driven by rewards or punishments, profits and losses. On the other hand, we know that regular business is possible and does go on around arts. That tells us we probably can put art on the same scale as business. But we should do it seriously, shouldn't we? Talking about business we must take into account and apply to the subject laws, which are natural for business. Thus we have to determine what in an artwork, where and when may be traded and what, where and when must be shared, must go freely. (Volynets, 2017)*

Written by Tom Semmelroth, 2021

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