

## **Private property and public goods of information in view of copyright and copyleft,<sup>1</sup> by: Sabine Nuss<sup>2</sup> (GERMANY)**

### **Abstract**

This paper is intended to analyse some issues and phenomena related to the contemporary formation of the capitalist mode of production, now heavily dominated by information, or knowledge (and its new technologies). It challenges and rejects the simplistic and limited forms of analysis of the bourgeoisie to approach these phenomena where they call them: “globalization,” “Knowledge Society,” “Information Society,” “Information Age.” Instead, it intends to shed light on these phenomena based on concepts epistemologically more solid such as those based on Karl Marx’s theories to the critique of capitalism. It analyses the capitalist Private Property concept behind Intellectual Property Rights (e.g. copyright, patents, and so on) which are the bourgeois legislations enforced worldwide to commodify public information or knowledge goods. It also analyses the scholarly and political movements against commodification of information under the banners of Free Software, Open Source, Copyleft, Commons, Information Commons, Free Information Movements, etc. And although it praises some of their positions intending on fostering liberty and cooperation among its members, it challenges their limited theoretical approaches towards becoming alternatives to capitalism, and it criticises their intrinsic capitalist nature which fosters a lack of stable employment for workers of information/knowledge industries in the long run. Finally, it calls attention to the need to deepen the analysis of these new phenomena by understanding the internal logic of capitalist Private Property in order to draw more epistemologically adequate strategies to challenge it, or understand it better.

### **Keywords**

Capitalism; private property; commodification of information and knowledge; public goods; Intellectual Property Rights; copyright; copyleft; marxism; open source software—economic aspects.

### **Resumen**

Este trabajo (“Propiedad privada y bienes públicos de información vistos desde el derecho de copia de los autores y el copyleft”), intenta analizar algunos asuntos y fenómenos relacionados con la formación contemporánea del modo capitalista de producción, ahora muy dominado por la información, o el conocimiento (y sus nuevas tecnologías). Desafía y rechaza las formas simplistas y limitadas de análisis de la burguesía para aproximarse a estos fenómenos donde les llaman: “globalización,” “sociedad del conocimiento,” “sociedad de la información,” “era de la información.” En cambio, pretende ilustrar estos fenómenos basado en conceptos epistemológicos más sólidos como los de las teorías de la crítica al capitalismo de Karl Marx. Analiza el concepto capitalista de la Propiedad Privada detrás de los Derechos de Propiedad Intelectual (e.g. derechos de copia de los autores, patentes, etc.) que son las legislaciones burguesas impuestas mundialmente para la mercantilización de los bienes públicos de información y conocimiento. También analiza los movimientos académicos y políticos contra dicha mercantilización bajo los lemas de Software Libre, Fuente Abierta, Copia Izquierda, Procomún, Movimientos de Información Libre, etc. Y aunque aprecia sus posiciones para fomentar la libertad y cooperación entre sus

---

<sup>1</sup>This is an edited version of a paper presented at the Conference on “*Value, Property, Public Goods, and Labour in Digitalized Capitalism*” Saturday, 30 September and Sunday 1 October 2006, Thessaloniki, Greece.

<sup>2</sup> Dr. Sabine Nuss, PhD in Political Science, Free University Berlin, Germany. Working at Rosa-Luxemburg-Foundation, Berlin. Contact: Mail: [nuss@prokla.de](mailto:nuss@prokla.de). Postal address: Sabine Nuss, Rosa-Luxemburg-Foundation, Franz-Mehring-Platz 1, 10243 Berlin, Germany. For more information about the author see her bio at the end of this article.

miembros, desafía sus limitados enfoques teóricos de pretender en convertirse en alternativas al capitalismo, y critica su naturaleza capitalista intrínseca que fomenta la falta de empleos estables para los trabajadores de las industrias de la información/conocimiento en el largo plazo. Finalmente llama la atención para profundizar en el análisis de estos nuevos fenómenos mediante el entendimiento de la lógica interna de la Propiedad Privada capitalista para extraer estrategias epistemológicamente más adecuadas para desafiarla, o entenderla mejor.

### **Palabras clave**

Capitalismo; propiedad privada; mercantilización de la información y el conocimiento; bienes públicos; Derechos de Propiedad Intelectual; derechos de copia de autores (copyright); copia izquierda (copyleft); marxismo; software de fuente abierta–aspectos económicos.

### **Introduction**

People often call the contemporary formation of capitalism (apart from the overused term "globalization") "Knowledge-Society," or "Information-Society," or even "Information Age," which helps just as little to understand the change and the state of today's society as the term "steam engine-society" would have illuminated the era of industrialization (Marcuse, 2002: 327). Nonetheless this terminology indicates that "information", or rather, "knowledge," plays a more important role than it used to.

This choice of terminology implies that the development of new technologies is a key factor in contemporary society: Digitization and the networking of Personal Computers and Host Systems –the so-called "Internet"– change the mode of production as well as some characteristics of capitalist commodity circulation. In the circulation sphere, digitization and networking create a particular problem with Intellectual Property Rights –which is just another word for commodified information or knowledge.

### **Artificial shortage of public goods (even information or knowledge) is the precondition of capitalist commodification**

To put it simply: the intangible nature of digitized information makes the creation of an artificial shortage of these goods a difficult proposition. But shortage is the precondition of commodification; if goods are freely available, nobody would pay for them. The copyright industry is racing to develop technical measures such as copyright protection schemes for digitized information to cope with this problem. But those technical measures are still not really successful, on the contrary: hackers and the industry are neck on neck in a race in which one side tries to enforce its copyright, while the other aims to demonstrate that this attempt is futile, that every copyright protection scheme can be overcome. Because of the inability to enforce copyright sustainably by technology alone, the copyright industry has sought to back it up by legislation. First examples are the Digital Millennium Copyright Act (DMCA) in the USA and the European Union's Directive on Copyright (which is already adopted into national law), which both make it a criminal offense to circumvent copyright enforcement technologies.

It is this characteristic of the contradiction between the need of open knowledge for innovation and the need of closed knowledge for commodification that those who are concerned with intellectual property rights have been contending with since they were introduced –even by bourgeois economists. Its critics hold that patents erect barriers to the access of knowledge and stifle innovation and growth by restricting imitation. The proponents of patents emphasize that the capitalist needs to enclose knowledge, because otherwise s/he would be imitated by other market participants (with low input, but the same possibilities to profit) and would never be able to refinance the capital spent to create the knowledge.

With the new technologies this tension seems to come to a climax (and this is new), because digitization allows the creation of perfect copies of information and the overwhelmingly broad distribution of knowledge at almost zero cost. One of the most important digitized information products that has emerged in the last five decades is software, which itself is the raw material (together with hardware) of the whole internet infrastructure. Programmers were the first to realize what it means when electronic data is subsumed under the exclusion principle as a means of the realization of a profit. In the beginnings of the computer industry business was restricted to the sale of hardware and technical support. Software was a by-product, and then it was no problem to exchange software to jointly work on it. This got more difficult following the introduction of restrictive licenses on software. Proprietary software emerged where the source code –a program’s human-readable language– was held back, in a way like a company secret.

The consequence was that programmers could not improve on and develop proprietary software. Richard Stallman, programmer at MIT and today’s guru of the free software movement, was understandably annoyed and lamented the end of the glorious days of freedom and open cooperation in software development. He founded the Free Software Foundation, launched the General Public License (GPL) and coined the term “copyleft” as opposed to “copyright.” The rejection of private property over source code is for Stallman not only a more efficient mode of production but also a step towards a society with more liberty.

Software under GPL has to be “free”, although free in this context does not necessarily mean “free of charge,” so that the source code remains openly visible and accessible to all. Moreover Copyleft is a general method for making a program or other work free, and this is a special requirement that all modified and extended versions of the program be free as well. A great amount of software was developed in this spirit, and one of the best-known products is the operating system Linux. In the late 1990s, a sort of countermovement was formed, the Open Source Movement, that also advocated open source codes but rejected Stallman’s political ideological attitude. Open Source’s motivation lies rather in the greater efficiency of open, compared to proprietary, source code. Commercialization of software is here explicitly welcomed.

In the meantime, a couple of organizations have emerged that use the label "free" to shield the internet from private commercial interests, but also from governmental regulation. The term "free" is now not only applied to free software but also to text, music and pictures, although these are different forms of digital goods. "Free" is more a label than a strict legal term. Today the free software movement is part of a comprehensive social movement, which is fighting for free access to digitalized information. E.g. in September of 2006 there was a big conference in Berlin (it was the forth occurrence of the very popular "Wizards of Oz"-open source conferences) and it had the title "Information Freedom Rules." And within a few weeks we have the phenomenon of a Europe-wide emergence of a new political party, called the "Pirate Party," a "one-topic" party which fights for the legality of file sharing systems in the internet. The Pirate Party wants to fundamentally reform copyright law and get rid of the patent system.

The proponents of free software or free information in general often put forward the argument that knowledge should be a common good or a public good. They point out the fact that digital goods are not scarce, but that they duplicate when passed on. They complain about the restrictive copyright regime, which in their opinion creates artificial scarcity, where actually there is no scarcity at all. They regard the traditional property rights system as unfit and outdated for the digital age. Against that background new sale models for digital content emerge. "Copycan" for example is a quite new model, just to mention one. The artist uploads his/her work in digital form (e.g. music files), and a preview of it to copycan.org. The artist announces the amount of money he would like to have for releasing his work to the commons under a free license like Creative Commons. People transfer money to the trusted party's account with reference to the particular artist. If the announced amount is reached, the artist gets paid; the content gets released and is from then on freely available. The files can be copied and distributed through file-sharing networks. The slogan on the webpage of Copycan says:

"Culture is flowing freely, artist and consumers are happy."

In that discourse everything is about "the commons." The term "commons" stems originally from social ecology and is likewise related to nature, like water, air, sun, forest, lakes, and so on. It is nowadays applied to information. Yochai Benkler developed the thesis in order to invent an information protection movement like the environmental protection movement. What free access to air means to breathing, is comparable with what free access to information means to creativity and therefore to the development of human beings. That is basically the argument.

The mainstream of the free information movement is just fighting for a less restrictive access to knowledge. The more radical proponents of Free Software argue that Free Software could be the germ of a future communist society. They argue that Free Software and the movement of free information as a whole seem to have the potential to disrupt the capitalist system. This issue will be addressed later on.

First of all one can state that the pure material character, the constitution of a thing (if it is knowledge or water or whatever), does not lead automatically to a certain determination of a good. Whether a good is a private one or a public/common one is not a question of nature, it is a question of the constitution of a society. That also holds for information and digital goods.

Furthermore, in capitalism surely the more easily is to exclude people from the usage of things, the more likely it is that these things can be transformed into a private good. Special social techniques are necessary to transform goods into the social form of private goods –above all the use of public force (e.g. police, army).

It is part of Karl Marx's theory that one has to distinguish the social form of a thing from its material character. The social form of a good in the capitalist society is the commodity-form; it is the carrier of the exchange value. In addition, a commodity has a use value – which refers to its material consistence. As Marx pointed out: “As use values, commodities are, above all, of different qualities, but as exchange values they are merely different quantities, and consequently do not contain an atom of use value” (Marx, [1867], 1989: 52). Hence, according to Marx, the commodity form is ignorant toward its content. That means that given the appropriate technological and legal means, every content could be commodified.

Why goods are public goods has, according to Karl Marx and even to Adam Smith, not a highly normative, but a functional reason. Marx states that the commons are general conditions of production, and that they are only funded by the government as long as it is not profitable for the capital to supply these goods (Marx, [1857/58], 1953: 432). If an individual capitalist does not invest in general conditions of production like railroads, or telecommunications, and so on, then the government has to pay for it, and by doing so it acts like the "ideal collective capitalist" as said by Frederick Engels.

However, when the investments are already made then it is possible for the government to privatize public goods with the aim that the private companies now provide these goods in order to make profit. Recent examples for this strategy are the privatizations of telecommunication, or utilities companies in Europe. As Marx noted, there is a tendency inherent in capitalism to transform all of the labour of which capitalists can reap surplus –meaning to privatize companies and make them accessible for capital accumulation. The recent development of privatization of the common or public goods worldwide indicates therefore that capitalism is in a new state of its historical development.

A lot of scholars and activists do not question the social form of the private good –in contrast they praise the market and the form of the private good as efficient and well installed– for certain goods. Accordingly, most of the advocates of the commons concept defend it only for certain goods and they justify that with a diffuse mixture of material consistence and normative claims. They ignore that under capitalist circumstances



public goods are functional for the capital itself and that they are a pure social construction, so that they will be transformed in a private good as soon as it is profitable for capital and as long it is not in the interest of the nation state to keep control over these goods –as it is the case in the national defence.

If one wishes to withdraw goods from commodification then it is better not to justify that with any material character, like e.g. “information duplicates when passed on,” but rather with a clear political statement against the social form of private goods. That requires rethinking and questioning this form –obviously the prevailing and seldom challenged form– where everything is transformed subject to technological, legal and ideological means, and dependent on the state of the art of capitalism: It is called Private Property.

### **Free Software and the Free Information Movement are not an alternative to capitalism**

A few words to the assumption that Free Software and the Free Information Movement could be a germ, sort of a beginning, for an alternative society (alternative to capitalism).

Here it is not the intention of the author to express a negative point-of-view about the Free Software and the idea of sharing knowledge. On the contrary, the author sees Free Software as a great example for the possibility of cooperative production beyond the money and value form. And moreover, it shows a great advantage compared with the capitalist mode of production which is based on private property. The fast development of Internet technology would have never happened without the mode of production of Free Software. Without this way of production we probably would still work with electronic typewriters and maybe with simple error-prone computer networks.

However, that does not mean that Free Software could disrupt or challenge capitalism. Beside the many companies, institutions, and individuals using Free Software, in the meantime there are also companies whose business model is based on Free Software or Open Source. They not only support Open Source, but they are also making it work inside of companies or between companies and their partners.

The conflict of freely available code with the necessity to hold private property as precondition for commodification could be solved in different ways: One can use open source software and sell only support “around” it, like Zope or Suse do, for example. The other possibility lies in doing a mixture. All companies try to benefit from the global and collaborative knowledge; additionally they create new communities with the aim to develop –in the open source philosophy– special software, which itself improves their commercial product.

The different licenses are the instruments which provide on the one hand that the necessary knowledge –the raw material– keeps its open access for the companies. On

the other hand there are open source licenses that allow future releases to be closed, although they are based on open source. It is not the place here to carry out a detail analysis of the different licenses, and their business models that can be derived from them respectively. However, what it is necessary to be addressed is that the licenses play an important role in keeping a balance between open and closed code, and this is nothing else than the expression of the fairly old tension between open and closed knowledge within the capitalist economy.

All the well-meant and pathetic speech about freedom, sharing with friends, and so on, in the beginning of the free software movement, produced a feeling of an alternative or even revolutionary way of production. Moreover, within the capitalist economy it was even for capital a quite liberating and effective moment, and capital now benefits from the more innovative and progressive mode of production open source development has and provides. GPL (General Public License) was and is still based on capitalist copyright laws. It explicitly uses the copyright to reverse it into copyleft, but it is only a question of modifying licenses to suit open source software for commodification purposes. The GPL helped in a way to liberate from its cage the closed software out of its isolated “captivity,” and it maintains, or even enhances the production of knowledge.

### **Free Software flexible working conditions affect workers’ stable employments**

The mode of production of free software or open source has thus arrived in the business world. Rooted in the non-commercial sphere, it needed to be formalized in the sense that the according institutional framework, namely the set of private property rights, had to be applied to the open code. In the age of global networking it became old-fashioned and less efficient to develop software in a local and closed way. To adapt the mode of production of knowledge to the new information technology it was necessary to open the code, to open the knowledge, in order now to further exploit knowledge globally, not just locally anymore, to absorb and concentrate the widespread talents and to invent licenses which nevertheless secured the commodification of knowledge.

On the level of production the open source business model seems to be a perfect fit for new intermittent working conditions, which are often labelled with the term “Precarization”. One interesting point is the *integration of independent and voluntary developers*, people who are not hired by a company, but work with each other connected across the world through an online portal. The blurring *frontiers between business and non-business* are a further characteristic of open source production. All the programmers we talked to were not able to draw a line between their working time and their leisure time. Due to the voluntary kind of private and often unpaid work from which parts move into mechanisms of extracting value, the frontier seems to disappear.

Cultivating developer loyalty to work on certain open source projects could be seen as a method to motivate employees, whereas the incentive lies not in monetary rewards, but in a reward which lies in the *usefulness of the product itself*. Then there is the

“ideological reward,” which seems to play an important role: identification with a certain *community philosophy*, which seems to lie somehow outside of the usually selfish considered commercial spheres.

Furthermore programmers could prove themselves in developing open source visible for all. Thus the probation period before regular hiring is dislocated from the companies into the open and private sphere. Thereby the companies save money by having no need any more for adjustments into new jobs. Work on Free Software or Open Source is project-related work; it seems to be the more flexible way to hire work, instead of hiring the worker.

## **Conclusions**

At least one of the lessons will be that collaborative work between people driven not by monetary reward but by the usefulness of a product seems to yield a high motivation to work. And that definitely casts doubt on the prevailing property rights theory according to which only private property could generate incentive to work. On the other side, the incorporation of open source and the motivation of work generated by such "free" conditions in the capitalist process of valorisation also show that capitalism is not dependent on incentives set up and put forward by classical property structures.

**Bio: Dr. Sabine Nuss, PhD (GERMANY). Education.** PhD in Political Science, Free University Berlin, Germany. Working at Rosa-Luxemburg-Foundation, Berlin. Member of editorial board of *PROKLA, Zeitschrift für kritische Sozialwissenschaft (Journal for critical social science)*. **Publications:** Book: Nuss, Sabine: Copyright & Copyriot. Aneignungskonflikte um geistiges Eigentum im informationellen Kapitalismus, Verlag Westfälisches Dampfboot, Münster, 2006. Recent article: Nuss, Sabine: Der Gebrauchsanleitungs-Kapitalismus. In: LUXEMBURG, Gesellschaftsanalyse und linke Praxis. Nr. 2/2010, S. 28-33. Mail: [nuss@prokla.de](mailto:nuss@prokla.de), Website: [www.nuss.in-berlin.de](http://www.nuss.in-berlin.de). Postal address: Sabine Nuss, Rosa-Luxemburg-Foundation, Franz-Mehring-Platz 1, 10243 Berlin, Germany.

## **References**

Marcuse, Peter (2002): Entpolitisierte Globalisierungsdiskussion: Informationszeitalter und Netzwerkgesellschaft bei Manuel Castells, in: Prokla, Zeitschrift für kritische Sozialwissenschaft, 32. Jg. Nr. Heft Nr. 127.

Marx, Karl (1867, 1989): Das Kapital. Kritik der politischen Ökonomie. Erster Band, MEW 23, Berlin.

Marx, Karl (1857/58, 1953): Grundrisse der Kritik der Politischen Ökonomie. Rohentwurf, Berlin. **CB.**