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## **A Start**

### **On the Interrelationship of Market, State and Community. And the Responsibilities of Municipalities.**

When Ars Electronica 2008 prophesizes A New Cultural Economy—“a new economy of sharing and of open access”—then this means nothing less than juxtaposing alongside the two classical economic coordination mechanisms competition/market and hierarchy/state a third conceptual pair: cooperation/community.

Free of economic and governmental constraints, cooperation in a digital community is based on rules chosen by the members themselves, voluntary collaboration and ongoing open access to jointly-created works. So much for the ideal state of affairs. In contrast to a market in which the aim is to drive competitors out of business, the central idea of a community is a win-win situation in which sharing means more for everybody. Hierarchical, state-sanctioned control is replaced by multi-polar, mutual self-empowerment. At least in theory.

But the dichotomy between the market and the state has always been simply an analytical, artificial separation of two interrelated and interdependent realms, and the same applies to the strict segregation of community from the other two principles of coordination.

In the case of the market and the state, acknowledgment of their reciprocal dependence has come to be a matter of common sense. After all, just as a market—regardless of how “free” it is—ultimately depends on state legal guarantees culminating in the state’s monopoly on the legitimate use of physical force, a modern (welfare) state also needs zones of productive and innovative competition in markets in order to finance itself. In the case of communities, these interrelationships are even less widely acknowledged and less distinct.

## **The Iron Copyright Curtain**

The dependence of a “new economy of sharing and of open access” on the “old” realms of the state and the market becomes especially obvious when these “old” realms stand in the “new” economy’s way. The automatic operation of an “all rights reserved” copyright law in combination with a term of protection lasting up to 70 years after the author’s death impedes freedom of creativity just like the Iron Curtain once hampered freedom of travel. But an even greater danger threatening the exchange of existing ideas and syntheses based upon them is now posed by the market itself and the copyright exploitation industry that dominates it. These interests—disappointed by the protection afforded in the real world by copyright norms—are seeking their salvation in even more restrictive measures: digital rights management (DRM). Barriers to creativity are especially restrictive where market-based and (quasi-)governmental mechanisms mesh as in the case of copyright collecting agencies that exploit their de facto monopoly by using de facto rules to prohibit their members from making even individual works freely available (e.g. by means of a Creative Commons license). Either/or. In or out.

While excessive copyright time limits artificially inhibit the movement of the material necessary to construct the foundation of a new “sharing economy,” DRM and trusted computing are even threatening to raze the small but fertile global-village commons of fair use. Together, these two forces have the potential to relegate a new economy of community-based peer production to a tiny niche and to keep it there.

But inherited legal baggage and new marketing strategies aren’t all that’s standing in the way. Even where the Brave New World of Copyright is already a reality, amidst the sunny climes of Wikipedia, Creative Commons, Web 2.0 and the blogosphere, it stands on feet of clay in light of the fact that the functioning of the community is always dependent on the respective other. It needs stabilizing market-based or state-based structures upon which it can prosper. Implicit in this set of circumstances is free software guru Richard Stallman’s frequently quoted imperative that free software is a matter of “free as in speech, not as in beer.” And implicit in his clarification that the word “free” clearly means free of restrictions and not free of charge is also the acknowledgment of the necessity of a market for free software if this is to become the dominant model of software production and use. At least in this point, the Open Source and Free

Software camps are in complete agreement. Beyond the domain of software as well, the advocates of peer production and open content are constantly in search of viable business models—i.e. markets for and on the basis of communities—and it has been first and foremost the developers of commercial applications like Jamendo and Magnatune who have been celebrated as pioneers, and quite properly so.

Just about the same can be said—though with reference to governmental copyright regulation—about the core element of all new copyright economies: the copyleft principle. Here, Stallman is joined by Lawrence Lessig, the founder of Creative Commons, who never tires of emphasizing that copyleft is by no means the absence of a copyright; rather, it's an alternative—what might be termed an application of copyright turned against itself. For it to function (for example, within the framework of markets), any copyright license, no matter how free it is, is no less dependent on governmental contractual guarantees than its established all-rights-reserved counterparts in the so-called old economy.

### **In the “Community Preserve”**

This state of dependency on “the other,” on the way things have been done heretofore, goes even further, even deeper, swinging back and forth between subtle and obvious. The new applications of the so-called Web 2.0 can be cited as a perfect example of this. On one hand, many of them are utilizing wikis, folksonomies and newsfeeds to finally bring to fruition the potential for cooperation and sharing that has been inherent in the Web since its very inception; on the other hand, hardly any of these site actually contribute anything of their own—and even when they do, it's only by getting other people to do the work. Now, strictly speaking, public-service and political projects like Wikipedia and the blogosphere are also based on the principle of letting others do the work, but everybody—including the vast majority: those who are strictly consumers—profits from the work of the active Wikipedia or blogger community. The fact that everyone is (or can be) simultaneously a consumer and a contributor is part of the solution as well as of the problem here.

Nevertheless, this state of affairs doesn't constitute a problem today as long as enterprises are willing to go on operating and nurturing the “community preserve” with money earned in other

markets and the hope of a payoff somewhere down the road. Meanwhile, needless to say, “all rights” having to do with that real-life preserve remain “reserved.” And free projects will continue to survive and prosper only as long as they’re able to keep coming up with more and more (or at least enough) donors of money and time who are likewise satisfied to earn their living someplace else.

All the same, inherent in this situation is the endangerment of precisely those virtues and excellent qualities that are ascribed to a new economy of, by and in communities: its freedom, openness and egalitarian character. What’s to be expected in the way of more freedom and diversity of opinion as well as from what Yochai Benkler terms bottom-up media when the vast majority of all blogs and podcasts are hosted on commercial sites and are thus basically at the mercy of commercial interests? How free and open are peer production and communities when a price of admission—above all in terms of education, time and Internet access—is still collected at the door? What use is the free licensing of a video on YouTube when the video’s maker not only conveys all rights along with the upload but YouTube-proprietor Google also simultaneously retains the right to delete any and all material at any time without having to cite a reason for doing so? To say nothing of the choice of video formats.

Thus, the progress from “all rights reserved” by the copyright holder to “all rights reserved” by the webspace proprietor doesn’t amount to very much.

## **Neo-Feudalism of Web 2.0**

A new digital economy depends on a triad of digital freedoms<sup>1</sup>: a free Web—keyword: Internet neutrality; free universal machine computer—keyword: trusted computing; and free webspace—keyword: digital commons. And like every form of freedom, digital freedoms aren’t instituted on their own. Part of the paradoxical nature of freedom is that it has to be restricted in order to even come into being. As intimated by the keywords cited above, all of these freedoms are precarious. The neutrality of the Internet with respect to the data it transports is about to become a thing of the past if service providers get their way, and it’s already being partially evaded right now.<sup>2</sup> Surveillance chips (trusted platform modules) now increasingly installed in everything from PCs to cellphones divest users of control over how they employ their devices. And even the digital

commons' constantly growing preserves filled to the brim with free content are often mere subtenants in proprietary premises.<sup>3</sup>

Furthermore, these looming threats are accompanied by a curious impotence and inaction in the face of them on the part of numerous critical protagonists. Internet neutrality is being negotiated on a national or even a supra-national level. The surveillance of computers and restrictions placed on their usability by means of trusted computing and DRM is being pushed forward by shadowy international corporations and consortia. And as far as free webspace is concerned, Web 2.0 is based on neo-feudal structures whereby enterprises deign to grant space in return for proper comportment and ads.

### **What's To Be Done?**

What can we do to counter this, considering that we're up against powerful global players with virtually unlimited resources? Where should this showdown take place, considering that these confrontations are played out in transnational arenas beyond the realms of individual nation-states? Maybe it pays to do like the drunk who lost his car key and searches under the streetlight instead of where he lost it because "the light's better"! That is to say: on the local level, where self-empowerment is possible or even probable in discourse, confrontation and cooperation with tangible, assailable protagonists.

This point of contact also means taking seriously the bottom-up and multi-polarity imperatives of the community approach. And once again, it is the case that old and new become enmeshed and can reciprocally delimit as well as strengthen one another. Basic rights would still be just empty words were they not paired with corresponding (all too imperfect) existential social welfare provisions in the real world. After all, it's no accident that care for children, the sick, the aged and the needy as well as playgrounds and parks are matters for local communities to attend to. The formal freedoms of speech and assembly require not only toleration by the state as a whole but also active protection by local law enforcement agencies if they're not to degenerate into the right of the strongest to assert their interests. Basic rights always require provision of basic needs. It goes without saying that governmental actions are always simultaneously constitutive for and

threatening to all freedoms, and this shows that state-based solutions to the freedom dilemma are also always precarious and have always depended on checks and balances.

Horizontal separations of power (the legislative, executive and judicial branches of government) as well as vertical ones (subsidiarity and federalism) already balance out the otherwise all-too-ominous depth of intervention inherent in the state's monopoly on the legitimate use of physical force. Moreover, there's an additional lateral division of tasks; after all, many "public" responsibilities—that is, tasks of the polity as a whole—have long since been assumed by communities and, indeed, those far removed from cyberspace: families, associations and other self-help groups and networks. The extent to which the state should provide a safety net for those who have been excluded for whatever reason, or, conversely, the extent to which communities should step in and fill the gap left by governmental dysfunction is a normative-empirical question.

### **Standard Repertoire and Shining Beacons**

One thing is clear: there already exists considerable latitude on the local level to create spaces that provide refuge from purported legislative or economic constraints. Here are two examples of such local autonomy that illustrate both its potential as well as its dangers. The process of dismantling the welfare state by cutting back on social services is often counteracted on the local level by such measures as reducing kindergarten fees and public transit fares for low-income users. This isn't a solution to the problem but at least it's a (necessary!) step to assuage the symptoms. On the other hand, the implementation of a compromise policy permitting abortions during the first trimester of a pregnancy is thwarted in real life in some communities by municipal hospital administrators and their normative power. For the women who are affected, this means a restriction of their individual freedom of choice.

As access to and use of digital technologies increasingly become ironclad prerequisites for participation in public affairs and social life, the more the task of providing for basic needs in this area becomes a public—and thus a local governmental—responsibility. And, in fact, things are already happening in this connection. For instance, in 2008, a local branch library that doesn't offer computer terminals featuring Internet access and free WLAN is simply not up to snuff. Now,

instruction in using a computer and the Internet are part of the standard curriculum of elementary schools and other (adult continuing) educational institutions.

But that's pretty much as far as it goes on the municipal policymaking agenda. Aside from a few glowing exceptions like the German cities of Schwäbisch Hall and Munich, most localities shy away from taking a strong stance in favor of using free/open source software in their administrative offices and schools. Nor have municipalities been playing a pioneering role either in fostering or using free licenses for digital content. And in the infrastructure area, when it comes to creating digital public spaces or providing free blanket Internet access, successful examples are few and far between. Here, one thing is clear: to the extent that opinion formation processes extend into virtual spaces or even take place solely within these domains, there is a corresponding increase in the scrutiny focused on digital public spaces and the barriers hindering access to them; there is a greater demand for virtual public spaces where users aren't under constant pressure to buy stuff, where censorship either before or after the fact has been abolished, and there's no direct-reciprocal obligation to provide consideration in return.

### **Drilling through Hardwood**

Consideration of the case of Linz, the home turf of Ars Electronica, leads to two conclusions in this connection. First off, cognizance of and commitment to new tasks and responsibilities as upshots of the Digital Revolution are not automatically extant even in Ars Electronica's immediate political milieu. Every step of the way is a struggle involving propagandizing and coalition building—political activities that Max Weber called “strong and slow boring of hard boards.” And most of these initiatives are tentative attempts. There are simply few examples of good practice in this area.

Secondly, Linz as a typical small city is living proof of the municipal latitude that does indeed exist. New cultural subsidy guidelines will go into effect here on January 1, 2009 which reward opting for free licenses for subsidized works with a bonus subsidy. Works produced under the aegis of the City of Linz are already being published under a free license when possible. The number of hotspots that permit free surfing in libraries, local cultural centers and other public place currently exceeds 100. According to a feasibility study commissioned by the Linz City

Council, providing all citizens with freely-usable webspace is possible and affordable. Implementation is set for 2009.

This by no means covers all basic needs, as would be necessary to achieve emancipatory use of the digital triad of network, PC and webspace, and hardly any of this is a completely new and pioneering effort; quite the contrary: there have been models and sources of inspiration elsewhere for all of it. Nor does any of this significantly reverse our perceived and actual powerlessness in the face of transnational dynamics that threaten to destroy the fragile freedoms in the Internet before “a new economy of sharing and of open access” has even been given a chance. But it’s a start.

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<sup>1</sup> From an interview with Volker Grassmuck in Dobusch/Forsterleitner (2007): Freie Netze. Freies Wissen., pp. 299 ff.

<sup>2</sup> See, for instance, [http://www.focus.de/digital/internet/kabel-deutschland\\_aid\\_264070.html](http://www.focus.de/digital/internet/kabel-deutschland_aid_264070.html) [30.06.2008]

<sup>3</sup> The most prominent example of this is probably Yahoo’s photo hosting site Flickr, which currently contains millions of freely licensed images.