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SOCIAL THOUGHT AND COMMENTARY

Culture's Open Sources: Software, Copyright, and Cultural Critique

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Over the last two decades, there has emerged a practice of software programming and distribution which, when combined with novel uses of intellectual property law, has come to be known as “free software” or “open source software.” It is distinguished from other forms and practices of software production for many reasons, but most interestingly because its practitioners discuss it not simply in technical terms, but as a philosophy, a politics, a critique, a social movement, a revolution, or even a “way of life.” For practitioners, observers, and advocates who have been drawn into this net of zeitgeisty claims, it seems to offer an answer to the 21st century question of how we should live—or at least, how we should promise, share, code, hack, license, lawyer, organize, buy, sell, own, sing, play, or write. More recently, such talk has broken free of its connection to software and become common amongst artists, writers, scientists, NGOs, and activists. It has provided them with not only a new rhetoric, but a new set of practices concerning authorship, ownership, expression, speech, law, politics, and technology.

These papers are short pieces that represent new anthropological research on these phenomena in widely disparate social spaces and global locations.¹ They are meant to provoke anthropologists (even those who might be utterly

indifferent to information technology) to pay attention to arcane technical and legal issues and see them as no more or less arcane, and indeed no more or less cultural than those of the Kwakiutl, the Yanomami, or the Trobrianders. Anthropologists' interest might be piqued, for instance, by the widespread talk of "gift economies" amongst computer geeks or the extensive debates about private ownership, public domains, and collectively managed commons, or the somewhat contorted versions of the classical anthropological concepts of land-tenure, collaborative stewardship, political representation, formal and informal norm systems, resistance and domination, partially digested economic and evolutionary theories, and a great deal of talk of *culture* itself.

Or, one might find compelling the portentous discussions of intellectual property, free speech, and its relationship to technology, music downloading and its discontents, the transparency of governments, the endlessly diverse forms of intellectual property, and more generally, the increasingly everyday experience of living in multiple technically-mediated worlds in which intellectual property and software are densely intertwined with basic activities like dating, creating, and political agitating. As these papers demonstrate, the people and practices analyzed here have significant relevance to many large and small theoretical issues long of interest in anthropology and social theory more generally.

Two broad concerns connect the projects of these papers: site and critique. First, the question of field-site has dominated discussions of late 20th century anthropology, both because of changed conditions in the world that render home and away grayer than ever before, and through a concern with methodological innovation in the very process of going, staying, participating and returning. Research into "cyber-culture," "online communities," or "virtual worlds" has promised much, but produced little that could fairly be called exemplary long-term, detailed, and careful qualitative research into the practices ostensibly denoted by these once alluring words, much less any single method for doing so. Most work in these areas tend to be either grand philosophical ruminations on "information society" or else detailed expositions of the subjectivity and computing practices of cyber-culture scholars. To be fair, such attempts may be necessary prolegomena to any careful delineation of the questions that might guide method in these areas—and given the speed and insanity with which the technologies and practices of cyber-culture have been trumpeted, marketed, distributed, embraced, upgraded, outdated, rejected, and denounced, it is certainly no surprise that scholarly deliberation on the precise nature of the conceptual problems specific to cultural and social analysis has been left in the lurch.

Speed and change notwithstanding, the papers collected here represent an avowed and perhaps incorrigible commitment to long-term, intensive, and technically detailed ethnographic fieldwork involving observation of and participation with specific practitioners (programmers, activists, lawyers, gamers, hackers, citizens, Peruvians, and Melanesians). Strategies for carrying this out include hanging out with hackers on and off-line, learning to hack, learning to write copyright licenses and reason legally, using fieldwork in Melanesia as a foil, participating in the creation and advocacy of a nonprofit, and working alongside political activists and software programmers in the streets of Peru and with Maori activists online. The provocations of “multi-locale” or “multi-site” research are answered here not by simply multiplying geographical sites, but by disentangling the notion of site as the locus of embodied observation from certain methodological questions that these authors consider just as relevant in the regions formerly known as the West (or any novel electronically mediated combination of East, North, West, and South) as anywhere else. All of the papers share something of Gabriella Coleman’s sense that “the nature of this research makes more clear that normative and ubiquitous regimes of values, such as those posed by liberalism, science, and capitalism, have a much more variegated expression when located in particular institutions, social groups, or an assemblage between them,” and they proceed by looking for and specifying differences within such regimes anywhere and at any scale. The differences explored here are great and small, but none of them map easily onto geographical location or any classic definitions of cultural difference. Instead they concern a host of human activities that are inherently technical and long-since global. Most prominently, this means practices concerning intellectual property and collective political activism.

Second, and perhaps as result of the concern with field-site, the papers share a commitment to extending the notion of “anthropology as cultural critique”—though in ways that are not uniform across them. At least two of the papers (Coleman, Kelty) propose that the practices of free software and open source programming *should themselves be understood as a critique*—of specific legal and political institutions—and therefore pose a conundrum regarding the definition, goal, or desirability of a “cultural” critique on top of that. What, specifically, is left for anthropologists to offer? Coombe and Herman, on the other hand, are more confident that such a critique is necessary and point to the rhetorical strategies of the various movements represented here as one location for a more nuanced critique. In all of the cases, however, it seems safe to say that the relation of methodology to cultural critique remains open

and familiar: how should social scientists approach the demands for objective analysis without falling into the critical and practical traps of co-optation or misrecognition? How should “cultural critique” proceed if it is true that one’s informants are already busy de-familiarizing settled practices? This issue is especially poignant when one considers that, to date, it has been proponents and programmers of free software themselves who have been among the most vocal and successful in trying to explain or theorize it. When they aren’t programming, and sometimes even when they are, many hackers evince an affinity for proposing explanations—cultural, psychological and quasi-scientific—for their own behavior. And because the practice of creating such software (and the discourse about it) is itself conducted by email, on mailing lists, in Internet Relay Chat channels, and on web pages, this has meant that “emic” explanations of free software and open source are publicly available and have been widely discussed. Such a phenomena raises the stakes for those of us studying these practices, and demands that we not only develop a characterization of such practices, but somehow learn to communicate, collaborate, argue, and write with people we can only uneasily term “informants.”

The existing research ready to greet an observer of these new phenomena ranges from business and management theory to economics to legal scholarship to psychology.² For business and management scholars, free and open source software represents an alternative model of software development—one that seems to challenge the conventional wisdom of industrial organization by allowing geographically far-flung individuals to collaborate in real-time and with great success on large and complex software systems. For economists and economically-minded researchers, it has generated a veritable “infolanche” of speculation about the ostensible paradox of “motivation:” why anyone would spend so much unpaid time building software only to give it away for free online. It is here that the old anthropological standby of the “gift economy” has been given a new treble-mortgaged lease on life as a solution to the putative problem of motivation. For lawyers and legal theorists, free and open source software represent a new combination (a legal hack) of copyright and contract law—one that creates a “privatized public domain” or “commons” which has been the object of both opprobrium and advocacy.

In the end, only a handful of facts about the emergence of free software and its ilk can be fairly characterized as uncontroversial, and it is worth situating free software briefly, for the reader who might be unfamiliar with it. The broad definition of free software or open source is: software whose source code (the code humans read and write) is made freely available (generally on the inter-

net, without restriction) through the use of a special copyright license. The software is copyrighted by its creator and then distributed under one of several standard licenses that allow the licensee to use the software, to distribute it, to copy it, and even to modify it for his/her own purposes. Some licenses require that if the software is re-distributed, any changes need to be released under the same license used to offer it in the first place (this is variously referred to as reciprocal, recursive, or viral). The most famous of these licenses is the GNU General Public License created by the Free Software Foundation.

Three salient dates usefully situate the history of free software and open source. In 1984, Richard Stallman founded the Free Software Foundation and provided the first copyright license, some software components and an incomplete UNIX-derived operating system known as GNU (Gnu's Not Unix). Stallman's movement often emphasizes the political aspect of freedom with the slogan "Free as in Speech, not as in Beer." In 1992-93 there emerged widespread internet-based collaboration on an operating system using GNU software and a kernel written by Linus Torvalds called "Linux." Linux would go on to be the emblem of free software in the 1990s and, combined with a free web server called "Apache" (it was "a patchy web server"), would ultimately pose a significant challenge to the existing proprietary software makers such as Sun, Microsoft, IBM, and Apple (the latter two have since embraced open source software in their own businesses). Finally 1998 saw longtime hackers Eric Raymond and Bruce Perens propose to replace the term "free software" with that of "open source" in order to shed some of the "political baggage" and cash in on the manic internet economy of the late nineties. Since 1998 free software and open source have become serious topics of study across the disciplines and, as this collection evidences, have become flashpoints for discussions that extend far beyond the issues of software and copyright.

In brief, these papers address the following issues:

Gabriella Coleman's fieldwork amongst a signature and respected set of hackers—those working on the Debian distribution of Linux—is an excellent place to explore the issues of politics, political disavowal, free speech, and neutrality. Coleman's contribution raises one of the most interesting general questions about free software: what if writing software code is considered a kind of speech? The question has profound implications: how do we understand writing software code as something more than an economic or technical activity? If it is an expressive activity—one whose expressions are also literally tools—should some forms of intellectual property rights be seen as enabling corporate censorship? Coleman's paper relates how the "informal politics" of everyday

hacking (i.e., not just talking about hacking) actually serve to strategically disentangle some of the more sedimented distinctions between political rights (i.e., free speech) and forms of property (e.g., copyrighted source code).

Alex Golub takes seriously the challenge to compare a “traditional” anthropological subject with those of hackers, gamers, or online communities. Though he presents it only obliquely, Golub’s primary field-site is Papua New Guinea (The Porgera Valley of Enga). He uses his subtle sense of how identity, corporeality, and taboo are connected in Papua New Guinea to shed light—through similarity, not contrast—on the practices of people enmeshed in complex life-worlds of software and intellectual property. So while taboo might be understood as a system of norms governing the circulation and expressive use of corporeal bits and pieces—hair, flesh, nails, etc.—in the case of the Porgera, such a description equally makes sense of the activities of the circulation of the creative bits of information, software code, writings created in online worlds (Golub uses the example of a new generation of online multiplayer games). What makes the example of online worlds significant here is that they come, more and more, to involve the use of real money and the granting of real intellectual property rights. Intellectual property law and norms have invaded everyday life to such an extent that they now seem easily comparable to the complex swine-centric taboos of the Porgerans. Golub’s paper suggests that if the Porgerans can teach us how to investigate online gamers, then perhaps the reverse is not simply an imposition of “our” world and values on “them,” but a methodological challenge to be faced by Melanesianists and hacker anthropologists alike.

Anita Chan’s paper takes the investigation of free software outside of the Aeron chairs of Silicon Valley to the streets of Lima, Peru. She explores the emergence of legislation in Peru that would require the use of free software in government activities, unpacking the actions of the politicians, corporate actors, local activists, and international supporters that brought the bill to life and gave it expressive power. She analyses how Peruvian free software advocates actively engaged with conventional political channels and struggled to assert local politics as an entity that—like free software—is manipulable, recodable, and necessarily transparent to the publics that interact with it. Chan’s essay highlights the tensions that emerge in different national settings when free software is treated one way online or in the US and quite differently when discussed on the streets of Lima and amongst locally committed activists.

Christopher Kelty’s paper relates his participation with Creative Commons, one of many “commons” projects based on free and open source software, but aimed at covering materials other than software. He explains how—within

the detailed minutiae of the copyright license— notions of “culture” and “cultural norms” are used strategically to help define the limits of legality. His claim is that the strategic use of “culture” draws on, but is not strictly beholden to, anthropological and sociological theories of culture and cultural difference. In particular, he explores how a new generation of legal and economic thinkers—people directly involved in the creation of Creative Commons—have made strategic use of a “culture concept” in order to find legal and technical ways to change or influence people’s behavior.

Rosemary Coombe and Andrew Herman recount recent events concerning the Lego Bionicle toy line, which made use of Maori imagery and myths, and the reaction by both Maoris and acolytes of the world of Bionicle. They use this practical struggle, which is suffused with issues of intellectual property, cultural autonomy, and the circulation of signs in the digital environment to develop a critique of the global capitalist hegemony of which it is part. They introduce the notion of the “ecumeme,” as a particular “moral space” in which the rhetoric of intellectual property comes to reinforce itself with ever greater success. Coombe and Herman suggest that the practices of alternative intellectual property creation and circulation represented by free software or Creative Commons are less alternative than the practitioners would like to think. By exploring some of the ways in which ‘propriety’ and ‘property’ are linked in narratives of capital and moral virtue, they suggest that the understanding of identity and the modes of governance implied by free software or Creative Commons would also exclude certain “forms of communication and sociality” such as that represented by the Bionicle example. Rather than opening up any true space for alternative cultural practices, they suggest that this alternative simply re-inscribes the same “limited liability, responsibility, and accountability that its corporate nemesis has traditionally assumed.”

Finally, Glenn Otis Brown, Executive Director of Creative Commons, agreed to write a brief commentary explaining the relationships between the practices of Creative Commons and the interests that anthropologists hold. In particular, he points to the gulf between current mainstream legal understandings of the purpose of copyright and the emerging norms of everyday culture visible to “norm entrepreneurs” who understand and even help shape the attitudes and norms of a culture. Creative Commons as an endeavor sees itself as intervening in between these two systems of laws and norms, and Brown articulates in detail how they see their role.

In the end, this special section aims not to circumscribe a particular sub-field of anthropology or draw more scholars into its complicated weave, but

to challenge cultural anthropology at large to confront the implications of these movements and their transformations—whether it concerns intellectual property (and the familiar concerns of heritage and cultural property), the globalization of forms of information and organization into areas classically studied in anthropology, or the nature of sovereignty and state power. While it is easy (and increasingly risky) to constitute a field of research as “the anthropology of...” it remains much more challenging to translate the detailed and deliberate work of the increasingly wide range of possible specializations (especially technical ones) into a set of conceptional questions that get at broader, shared problems. The connections here to taboo, norms, issues of propriety, exchange, or sovereignty do more than pay lip service to anthropology’s past concerns. They challenge not only anthropologists but our colleagues in law, political science, economics, and sociology to see anew the contingency and historicity of contemporary practices and to respond from unexpected places and surprising perspectives.

Christopher Kelty

July 14, 2004

ENDNOTES

¹These papers were first presented at the 2003 AAA meetings at Chicago on a Panel entitled “Culture’s Open Sources” organized by Christopher Kelty and Gabriella Coleman. Thanks to the panelists for their patience and participation and to Richard Grinker for his assistance and encouragement.

²A representative collection of this material is available at the MIT Free/Open Source Research Community <http://opensource.mit.edu/> run by Karim Lakhani.