Chapter II

Intellectual Property Rights in Software — Justifiable from a Liberalist Position?

Free Software Foundation’s Position in Comparison to John Locke’s Concept of Property

Kai Kimppa
University of Turku, Finland

ABSTRACT

This chapter offers a new view on how justifiable the current liberalist view on intellectual property rights (IPRs) in software actually is if based on Locke’s Second Treatise and especially on Chapter V, “Of Property” (2002), which has traditionally been seen as the starting point of liberalist argument for property — be it immaterial or material. This chapter will show how in Locke, the possibility of property in the immaterial is denounced and how that, in fact, fits the position of the Free Software Foundation for both patents and copyright in software, GNU General Public License (GPL) being the main example of this.
INTRODUCTION

Locke (2002) bases his arguments for property in freedom of a person to do as he or she pleases with his body and thus his possessions, which are extensions of his ownership of his body through labor. The reason ownership is needed is that material resources are scarce, and thus everyone cannot necessarily own everything they would want to. This does not hold true for the immaterial. The immaterial is unlimited, and everyone can own as much as they want to at the same time. No one is deprived of ownership in what he or she has if someone else owns the same immaterial as well. Locke implicitly argues for this view in his writing by never assuming that the method used to gain access to something material would be owned. Quite the contrary, Locke assumes that the method of picking acorns or apples or drawing water from a fountain is anyone’s right to use. The reason for this is that no one is worse off if someone else uses the same method as the other has used. Even though Locke proposes that the material commons should be divided between owned and not owned, he or she never seems to intend this for the immaterial commons. From the immaterial commons, anyone may draw what he or she needs for personal purposes. Anything in the immaterial commons can be shared by as many people as happen to have a need for it. Again, we return to the first argument, i.e., that Locke needed the material to be divided amongst people because it can not be owned by many at once, but that the immaterial need not be owned as it can be used by as many as have a need for it.

Richard Stallman is an avid proponent of individual freedom — the freedom to learn, share, copy, sell, or trade what one has to another, for the benefit of any and all people. The Free Software Foundation seems to agree with the view of the immaterial not needing ownership. If something is given, traded, or sold to another, the other has as much ownership in it as the first. Thus, no one needs ownership in the immaterial, but only the instances he or she happens to hold. The method for software, namely the source, and, as pointed out by Richard Stallman, for other digitally deliverable material (be it pictures, text, or anything else immaterial) should be free to be redistributed by anyone having it. The immaterial commons would be available to all via the World Wide Web or even digital media such as floppy disks, CDs or DVDs. The distinction from material items is that there is a clear difference in the duplication of the material and the immaterial. Again, one cannot own the same car another owns at the same time, but one can own the user’s manual, especially in digital form, of the car with another.
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