

The relevance of software rights - an anthology of the divergence of socio-political doctrines

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Abstract

The relevance of different concepts of computer software (henceforth referred to as SW) rights is analyzed from the viewpoint of divergent socio-political doctrines. These issues are considered from the ontological assumptions, on one extreme, to the relevance of practical applications of SW rights (e.g. copyright), on the other extreme. Like socio-political doctrines generally, this study encompasses feasible and desirable facets of a political theory.

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Introduction

Software rights (henceforth referred to as SW rights) is a concept inherited from liberal thought, a variant and/or sub-class of intellectual property rights (IPR for short), which include intellectual work such as books, articles, music, video, protected by a certain right for a certain control. Compared with rights that apply to tangible (or physical) entities, the concept of IPR is further complicated in many senses (to be described below) mainly due to the intangible nature of IPR, and SW rights as a subclass do not clarify it in this respect. SW rights differ from other IPR, and are therefore likely to arouse additional antithetical views (not previously encountered with other rights), starting out from the ontological foundation of such rights and continuing to the pragmatic interpretation of their relevance to everyday life¹. Before any ontological dimensions of SW can be constructed on which any practical reflection can be based, the realm of IPR and rights generally needs to be described.

First, the different ontological schemes for rights can be classified in a threefold manner into i) inherited rights that are already there (deemed to be set by God or by nature and regarded as absolutely and eternally valid); ii) agreed rights, i.e. rights that are based on agreements between people; and iii) no rights (whatsoever)². The last of these is

¹ I do not assume that the nature of rights concerned with tangible entities or of other IPRs is not debatable. Rather, I mean that the nature of SW further complicates the problem domain as compared with "normal rights" or other IPRs.

² Of course, there is no universally agreed view of rights. The term "agreed rights" is introduced to describe rights that

perhaps the less shared view, although its foundations can be argued in an interesting way. That is to say, if there are no rights whatsoever, it could be argued that there is no violation of rights as there are no rights to violate. Although, this can be further justified by stating that there is less violation of rights in the 'no rights' case than in other systems, it includes an absurdity if viewed pragmatically as a) ordered human life seems to need rights as they are a metaphysical basis for a moral life (Airaksinen, 1987) and b) if situation i or ii is valid, actions leading towards a 'no rights' situation are likely to yield a violation of rights. This objection to 'no rights', although it is not fatal, can be directed at both IPR and "normal" rights. The relevance of a 'no rights' situation depends on the type of rights. Most of the people would perhaps regard the right to life, for instance, as valid and intuitively unavoidable (there has to be right to life; so that a 'no rights' situation, if it were to deny the right to life, is likely to be considered invalid), whereas in the case of IPR, the iii type "no rights" situation is more commonly accepted, as the maxims "SW is/should be free", "information is/should be free", "electrons are/should be free" indicate e.g. Kallman & Grillo (1993). The difference between these arguments and their meanings will be considered later.

In the case of SW rights, i) "no rights - SW is totally free" is the first ontological view that needs to be considered. Other such schemes concerned with SW include the claims that ii) information entities (including software), entail intrinsic rights, i.e. an interpretation of the view of theory of Information Ethics (IE for short) put forward by Floridi, (1998 a, b), and iii) the author or a certain person or company, has certain rights over SW. The difference between these two is that the latter relates to a subject and often denies or ignores the intrinsic rights inherent in SW itself, while the former (ii) concentrates more on objects, as it values their intrinsic (moral) worth given that SW is an information entity, i.e. a concise packet of information according to IE. If the "no rights" view is adopted, i.e. SW does not entail any intrinsic rights (including the assumption that it has no degree of moral worth), nor can entities (individuals, companies, etc.) claim/hold rights over SW, we can logically infer that SW is entirely free, that everybody can copy modify, delete or use it as they wish. In the case of SW having intrinsic rights of entities having rights over SW, we need to consider what is the scope of such rights. For example, if a person X has rights over SW S, what do these rights include and what do they exclude? Or if SW S entails intrinsic rights, how should such rights be recognized and respected? Issues of this type are also of great practical significance in the area of legislation, for example.

The following research questions will be addressed here:

- Can SW be free of rights?
- If SW entails intrinsic rights, or entities have rights over SW, what should these rights generally include and exclude?
- What are the socio-political implications of non-commercial SW?

The perspective of this study is set at a general and society level, the objective being to explore the moral foundations of legislation (to provide a framework in which its relevance can be analyzed or debated) and to serve as a starting point for individual moral reflections with respect to SW questions (e.g. should we copy SW?). In addition to logical analyses, the different views on rights will be analyzed in the light of artificial case studies. Conceptual analysis in terms of Järvinen (1997) will be used as the primary research method, since objective empirical studies are almost impossible to carry out. We

cannot do experimental studies to measure the effects of different solutions and compare these with other similar experiments for instance.

This paper is organized as follows. The second section starts with by outlining the philosophical framework related to rights on a general level. Then the relevance of the "no rights" view and some problems related to the thesis that "SW is/should be free" are outlined. The concepts of patent and copyright, including criticism they have faced, are considered, and the feasible and desirable effects of non-commercial SW are considered at the end of this section. The third section outlines the key issues of the paper and finally a list of references is presented.

2. Software rights

2.1 The elements of right

The concept of rights, irrespective of the outlined ontological assumptions, involves the concepts of claims, freedom and responsibility. Rights give a certain freedom, e.g. to determine one's own business, at least in certain respects, and secondly, they are (justified) demands for something with regard to other people. Thirdly, if one presents justified demand of the above kind, e.g. concerning one's freedom to determine one's own business, this involves at least indirectly, the claim that other people have the responsibility to respect it, and not to violate it, for instance. In addition to these issues that form logical elements of the concept of rights, there are other conditions, including feasible and desirable aspects in terms of socio-political theories. To begin with, what can one claim as being a matter of one's rights? To take the simplest example, it is possible for everyone to claim everything, so how should we decide what one can or should claim and what one cannot claim. Attempts can be made by starting out to justify claims for right from the nature of rights, for example, as mentioned earlier.

To start with the scheme of natural rights, it is difficult to perceive natural rights that intuitively indicate the relevance of IPR or SW rights. However, it could be argued on these grounds that it is or is not natural for one to claim control over one's creations (or argue that SW entails intrinsic rights in a natural sense that must be respected). This viewpoint unites one category of liberalism (classical liberals, i.e. libertarians) with the generally communitarian school of thought. The former holds views of "rights as entitlements", stating that everyone has the right to get what s/he deserves, regardless of whether the assets are natural or obtained other ways, e.g. as personal property. The communitarian school sees that our background indicates how things should be, or how we should organize society e.g. (Sandel, 1982). In addition to these, there are other schools such as modern liberals and socialism, which could be separated from the libertarian³ and communitarian views by the fact that they try to find preferred, justified, equal and fair situations that are not dependent on earlier events or history (and are therefore contrary to the communitarian view) imply that we should re-organize things if necessary. Many may view the communitarian school is not being a persuasive stand, as it rejects the analysis of "what is preferred" and replaces it with a factual inspection of "what we are". In other words, it aims to answer questions 'what we should do' or 'how things should be' by carrying on a kind of historical review to explore empirically how

³ Whether principled or pragmatic libertarians.

things have been (and allowing this to determine 'how things should be'). This can be seen as problematic, as how can such a reference to human activity⁴ ensure that this is what we should ultimately do?

The advocates of socialism seem to be minority among computer ethical scholars, while ironically, many studies indicate that most people seem to favour socialism, at least when it comes to SW issues (presuming that they are rational), as indicated by the desire for abolish SW rights.

2.2 The universality thesis

One of the principles used to find desirable state-of-affairs and restrict excessively egoistic claims of rights is the universality of moral judgements. This simply means that if one judges that one's action in a particular situation is right, one must acknowledge that a similar act by anybody else in a similar situation would also be right. Variations on this are used by Rawls and Gewirth, for example (with regard to socio-political theory), along with many ethical principles and doctrines, including Kantian ethics, the Golden Rule, Hare's universal prescriptivism (Hare, 1981), etc.

In addition, Gewirth (1978) has tried to argue for the need for rights and their relevance with help of universality. In his view, an action requires that one appreciates the features of this action. If one does so, equally, one has no relevant reasons to deny others that action. According to Gewirth, this implies the relevance, rationality and justness of using rights. Also (as Gewirth's thesis indicates), in the eyes of the full-blooded egoist, the thesis of universality can be seen as rational. Adam Smith even suggested that economic welfare can be maximized by pursuing everyone's self-interest; this seems, however, to call for a moral understanding with respect to property, honesty etc (Laudon, 1995). For example, if we do not know our situation (i.e. status, sex, age, etc) while choosing the principles of the structure of society, as in the case of the "veil of ignorance" invoked by Rawls (1971), a universality standpoint can be argued to ensure equality - the situation is held to be impartial. For instance, even the most egoistic person (who likes to use others' SW, violating the copyright) may think, on the grounds of universality that if there are no SW rights, that it is possible for someone can copy his/her SW or the advantage of his/her work, too. This kind of deliberation that relies on universality, albeit rational and equal in the sense that it removes egoistic behaviour, may not indicate that the chosen state of affairs is the right one or the best possible, as it merely reflects the preferences of certain people. However, the universality thesis could be reasoned rather persuasively, if the chosen situation were what people prefer as being right and just (this idea is very similar to Rawls' justification of the 'justice as fairness' doctrine), what else would we need? If we presume that a certain situation is favoured by all the participants involved, although that is not often likely to be the case, we may still ask whether this is the right one, or more precisely the best one, as our actions, what we do or choose, do not necessary indicate that the situation is right. They indicate only what we actually do, and not necessarily what we objectively should do. Consider Hume's Law "no ought from an is", for example.

⁴ Humans make mistakes, for example and thus merely the reference to human activities as such seems to be a questionable qualifier for justifying our actions.

2.3 "No rights" claims concerning SW

The difference between the "no software rights" and "free software" claims should be clarified, although they are often used as synonyms in a sense that fully amoralizes software. This amoral nature of SW is a counter-intuitive viewpoint if it argues that SW is devoid of any rights⁵, or if it maintains that moral reflections should not be extended to issues involving an occurrence of SW. This kind of amoralization would lead to a situation where every action with respect to SW is acceptable simply because SW is amoral, i.e. there are no rights attached to it. In other words, irrespective of the situation in question, SW has no degree of moral worth. This is difficult to perceive, as there is SW in which modification or deleting seems to be inherently wrong, for instance. Consider, for example, 1) deletion of aircraft SW system which would lead directly to an air crash. Or (example 2) how about the modification of a nuclear weapons system or nuclear power plant, resulting in the death of innocent people? These two examples should indicate (as *prima facie* -proof) that software can not be totally free from the realm of rights or an amoral area, extending the scope of amorality to cover the context as well. Note that prohibition of deletion or modification (in case 1, for example) seems to imply either i) attached rights or moral worth that (after deliberation) forbids such deletions or modifications; or ii) that SW *per se* is value-neutral, but that the context is not amoral; thus, the actions of the agent who is in contact with the SW can and should be analyzed from a moral point of view.

The maxims "free software", "software wants to be free" or "software should be free" are used in an unspecified manner which is most likely to argue that SW rights (explicitly, the right of ownership) should not be recognized in a financial manner (via a license payment), or according to another view, that SW should be free of rights that one can modify, copy or distribute it without violation of rights. Stallman, (1997), for example, seems to be in favour of these views. Such an interpretation of the "free SW" -thesis is also problematic, however, as examples 1 and 2 indicates. To be more precise, what is the scope of free SW, and what is the scope of the modifications. "The SW should be free" -manifestation does not indicate as such whether SW should be free of all (attached) rights, copyrights, patents, etc. Although the explicit scope of "free" is unspecified, it is often justified by "no harm" or feasible and desirable types of arguments in terms of political theory (an example of such an approach is used by Stallman (1995)). "No harm" types of argument are difficult to analyze, however, if the scope of "free" is not expressed (again as examples 1 and 2 show). The problems related to this unspecified nature may be overcome, for instance, by stating that "free" signifies the abolishment of financial licences (whether related to copyrights or patents), i.e. SW should be free in terms of finance (as well excluding other meanings). This claim can be seen in the light of the division presented in the first section above. The first category encompasses issues such as whether SW rights should be established in terms of financial acknowledgement or whether one has a right to claim a financial reward for one's SW. As mentioned, legislation is - ideally - one of the main instances applying this information in practice. The second category is more of an individual level, relating to issues as whether we should copy SW in such a 'free' manner. This lies outside the scope of the present paper, while the former issue needs to be considered.

There is also another approach with respect to the claim that "SW is/should/wants

⁵ This does not mean that SW *per se* is amoral, nor is it a statement arguing that SW entails intrinsic rights. It states that the occurrence of SW amoralizes the issues in question.

to be free" which, in theory, can be advocated with the help of a theory of Information Ethics (IE) by Floridi (1998 a), although no such a strategy has been presented as of yet. In this case, one could maintain that SW has intrinsic moral worth that should be respected and that as 'SW wants to be free', we should respect this, too. It is, of course, rather debatable whether the 'SW wants to be free', or to put it in another way, even though the view of SW as an object of moral respect per se (as it is a being of infosphere) is accepted, it may not follow as the only logical possibility available that the expression of the moral respect of SW is to "let it be free" e.g. in the manner put forth by Stallman.

2.4 On the moral background of patents and copyrights

The key issue with respect to the morality status of matters concerning software is the relevance of rights that would give adequate reason for one to claim a certain authority over one's assets, in this case SW. Computer ethicists have often justified this claim, as in the case of 'free SW' the owner of the SW will lose certain control over his/her assets. This has been further justified by stating that the production of SW requires a lot of effort and time, so that it seems wrong to take the fruit of this labour and pay nothing for it, as Langford (1995) and others have argued. Consequently, the mainstream of computer ethicists have postulated the validity of SW rights in a subjective⁶ sense⁷. In other words, they have not appreciated 'free software' as, 1) it constitutes a violation of someone else's rights, and 2) because they, as rightful owners of the software, are denied a certain control over their assets, often a financial reward. Case 1 already presumes that there are rights such as IPR, and therefore easily leads to circuit inference.

Another possible approach, suggested by some of my students in the computer ethics examination and also mentioned by Jakonen (1999), is the claim on the grounds of IE theory that software is one's "private" information which is a part of 'one'-hood and it should therefore be a matter of one's own control. This idea is possible to pursue further, at least provided that IE do not limit the type of 'private' information (i.e. SW can be 'private information', a part of 'one'-hood), and the manipulation of such information is a performative treatment. Hence, so far as my (self-produced) SW is regarded as a part of me-hood it may be wrong, at least in the account of IE, to use it (in any sense) without my knowledge, as this action would violate my integrity and neglect that kind of moral respect of which I should be worth. This view may not be entirely self-evident, however. For example, information related to SW that one has developed may not be one's own, rather, for instance, borrowed and learned from different quarters (as it outlined by Kuhn, although in a different context and will be considered later in this paper). This debate of whether IE can be safely used to pursue this kind of claim, will be left out for further investigations, as it is currently rather premature to apply IE.

As mentioned in the case of rights, equality is seen as a key issue. This means in practice that our rights should be equal in a certain sense that comes close to the universality thesis, i.e. if a person X has a right R, it is reasonable that everybody else (in a similar situation) should also have the right R (at least in a general sense) or conversely, if person X is denied right R, everyone else should be denied it, too. Other situations are difficult to justify, namely why person X should be in a different position from person Y or vice-versa, for instance. This has to be taken into account in two respects. The first is

⁶ In moral discourse, this stands for a view holding that it is the preference of subjects (authors of SW) that matters.

⁷ On the very opposite side, Stallman suggests that reward should be measured in terms of social contributions and if people deserve to be rewarded, "by the same token they deserve to be punished if they restrict the use of these programs" (Stallman, 1997 p. 234).

related to the problem of monopoly. Namely, it is rather different to claim full control over SW than to claim full control over the idea behind of it. The view emphasizing full control over SW is likely to be a more persuasive one, as full control over the idea behind it can cause a monopoly, with undesirable results. In that light, it seems reasonable that the author (of SW) should not properly be able to claim full control over the idea behind it - otherwise our freedom of thought and speech would be threatened.

This seems to be taken into account by the majority of (Western) legislation systems, as in case of SW, the owners have a right to their practical application (Kuflik 1995, p. 171) and traditionally everybody has the right to build their own application in their own way. However, in addition to preventing others from making, selling and using (verbatim) copies of the SW (as ensured under a copyright), many companies also want to prevent utilization of the functionality of the SW (as guaranteed under a patent)⁸ (Kirsch 1998, p. 324), which raises the following controversies. On the one hand, the inventor of innovation X should be acknowledged in some manner. On the other hand, to grant the inventor almost full control for a certain time over something that he has discovered during an earlier period of time (and perhaps put into some form of product) would not be fair (Kuflik 1995, p. 174) at least i) to those persons who would have discovered X a second later, ii) in the case of some important development that has a significant effect on our well-being; iii) because no invention is fully one's own⁹, or iv) since it may lead to monopoly. Note that the copyright practices that currently apply to normal off-the-shelf software are unlikely to cause the problems mentioned above, which are common in the case of patents (since everyone can make their own product and be acknowledged for it). Patents, as least in the forms recognized in Western society, are not likely to violate freedom of thoughts. In the case of SW, for example, if a certain algorithm is recognized in terms of a patent, this patent legally protects only the use of the same (kind of) algorithm in computers. In other words, we can still write the algorithm on paper and consider it in our minds without having violated the patent.

Thus far, the issue of control over the idea behind SW has been dealt with, but the situation of, whether the author should have full or limited control over the practical application of the idea, i.e. the software itself, has been left open. In other words, in legal terms, what is the scope of the copyright? Can the author hold full control over SW (in practice, be rewarded for every instance of its use) or should we limit such claims? One attempt to limit these claims (and even remove the ground from beneath all claims for control over SW) is put forward by Stallman (1997), who sees that copyright enforcement also harms society materially and intellectually, as the simplest way of obtaining SW is copying it from neighbour (this is an important point, for if such claims cause only harm, we do not have much reason to maintain such a system). However, it can equally be asked whether the use or utilization of an other's creations (SW) without permission harms society in the way described by Stallman.

The situation is rather similar to my surreptitiously using my neighbour's car in the middle of the night as s/he has a hire service and this is the easiest way to obtain (say) a cigarette. Assuming that I refill the tank to the same level and cause no other depreciation to the car, is it right? It is the easiest way of achieving of what I want and my neighbour does not lose anything more than the financial reward that s/he wishes to gain

⁸ In juridical terms a trademark is also used in the case of SW, e.g. to ensure recognition or to maintain the image of the creator. Trademark issues are not covered in this study.

⁹ According to Kuflik (1995 s. 175), the invention of something does not entirely originate in one's own mental resources. Helpful information may have been gathered from different sources, possibly with assistance from someone else.

from his car hire service.

2.5 Economic and social effects of non-commercial SW

It may be possible to organize a society without certain personal rights such as copyright. Stallman (1995, p. 191), for instance, argues persuasively that it is a common fallacy to see only two outcomes: proprietary software (i.e. a liberal society based on software practice), or no software available. There are intermediate forms, however the examination concerning the relevance of such systems cannot be explored fully here. It will be partly examined in due course, however, for those interested in changing the current system, perhaps towards a socio-political state of affairs in which the government owns the means of production. According to Stallman (ibid), it also is a commonly viewed fallacy that if software were free (i.e. there were no copyright on it), hardly anyone would want to argue it, the end result being that no-one would develop it or offer it for the public. Even though many companies and people do profit from licence fees, the work is done for free in some quarters (e.g. for fun, for the challenge, or for the reputation), or is based on an obligatory payment by the clients. To approach this question as a point of view on the relevance of rights with respect to feasible and desirable facets, we have to ask what would happen if no-one needed to buy SW, as everybody was be able to copy it for free. Would we prefer this as being feasible and more desirable than the opposite state of affairs?

This would lead to a situation where A) there were no IP rights, so that the software industry would be based on voluntary activity for which payment by the client was optional; B) the government or a third party would directly or indirectly cover the cost of software and distribute it to members of society. It is clear that as a result of this arrangement the whole software industry would come tumbling down, unless it were able change its operating principles, or unless there were socio-political changes. Such changes will be considered next.

It is argued by Weckert (1997) that the kind of public domain of SW similar to case A) may work well, since academics, artists and scholars have been creative without material rewards throughout history. This statement raises certain weaknesses. First, it violates Humen's Law "no ought from an is" as it relies on factual matters or uses "is" matter as premises for inference (without value premises). In other words, our main interest in terms of socio-political approaches do not lie in "this has been done", or in finding "work well" situations, but rather is it targeted to exploring what is the most desirable and feasible situation. Also, if copyright as a right to material rewards were suddenly abolished (as in case A), it may would cause everyday practices to move towards a situation in which "the laws of the jungle" prevailed. The abolition of rights which have existed so far would cause a situation in which anyone could benefit from work already done by others, resulting in inequality.

Secondly, many artists make a living from their artistic work. Do you personally like the music of performers who don't do it for living? Furthermore, at least in the field of computing, the academic world is most likely to receive some of the money generated by the SW industry¹⁰. Also, if people don't do it for financial reasons, does it mean that they don't want to do so (or they should not do so)? Don't most of the talented ice hockey or football players want to be paid more than is necessary for a reasonable living? Is it

¹⁰ Of course, this is situation depends on countries. However, it is not out of the question that the (SW) companies fund academic scholars.

really the case that the best musicians and computer programmers do not want to receive financial rewards? Indeed, one reason why the whole computer industry arose is because people wanted financial rewards for their creations. Whether this is the best possible situation or not is debatable, but it seems to be the way people want it - be get rewarded for their work (this argument also violates Humen's Law, however, and is therefore not ultimate criticism). Moreover, there has been a movement among scholars, at least in Finland, to change the academic system in a sense that scholars can hold copyrights over his/her work. Also, there are many public domain (PD) products around (that are free) made without any intention of gaining material rewards. Does the average person use these more than he uses commercial software? Stallman (who seems to hold a similar view to Weckert in this matter) seems to recognize the problem, as he states that "if given a change to make a lot of money as well, they will come to expect and demand it" and his postulated cure can be found in the following lines: "low-paying organizations do poorly in competition with high-paying ones, but they do not have to do badly if the high-paying ones are banned." (Stallman, 1997 p. 236) This banning of high-paying action may not be a commonly accepted approach, however, e.g. using the Kantian universality rule or the Golden rule, principles favored by Stallman elsewhere.

Alternative B, a society where the cost of SW is covered by the government (note that governmental ownership of the SW industry, where SW would have to be bought from the government would not change the situation) we would raise the following possibilities, that SW is I) paid for by the government while being produced by private enterprises, or II) produced solely by the government, so that non-governmental production is not allowed, as in communist systems (IIa) or allowed, but with no copyright cannot be granted, which would mean that only optional payments could be made to private persons (IIb). Situation (IIb) is favoured by Stallman (1997 p. 237), as in his view SW development could be funded by a SW tax levied from everyone buying computer as a percentage of the purchase price.

Since both situations referred to in case II might cause a decrease in software quality and annual production, it is often argued, based on practical experience, that these arrangements would reduce work motivation and responsibility. This argument can be avoided by stating that motivation is a matter of organization, i.e. it depends on rewards and other impulses. A pragmatic argument would reject this, however, stating that it has not yet seen to work in practice. In any case, how can the government meet the needs of everybody? This is likely to create a situation where people's preferences concerning SW cannot be fully fulfilled¹¹ and if SW is not provided by the government (in the case of IIa), users will not be allowed to own any.

Arrangement B may also reduce free innovation and lead to abuses. Would the government reclaim all the software products in case I, whatever they might be? It is difficult to imagine that all of them could be reclaimed. How can we measure what should be reclaimed? Namely, if copying were free, how could the use of SW be objectively measured? The issuing of free copies of SW from a certain distribution point cannot be guaranteed to work, as people currently seem to copy programs from the Internet, for example. Another alternative, that the government, or an organization on a mandate from the government, would decide what SW people needed, is unlikely to be a

¹¹ Stallman suggests in his scheme that instead of paying direct taxes, people can alternatively invest the same money in development of the product that they prefer. But if there is no project for producing SW that satisfies one's preferences, it may be that such preferences cannot reasonably be met. It would be too costly for a minority of people or one person to pay all the costs of SW development, and private development, if it were allowed, can be very risky or limited by the fact that copyright or more precisely financial acknowledgements, cannot be ensured.

viable approach. Secondly, do people want to pay for all software indirectly in the form of taxes? (or is it fair to claim so). How about special SW used by companies for simulation purposes, for example, or the space shuttle. Does the average user need to pay the price of these in the forms of taxes? Moreover, in the era of the information society, it is rather easy to pay for a computer through the WWW, thus perhaps avoiding the taxes suggested by Stallman. It is not clear how this problem could be taken care of?.

Thirdly, in case B, how would we deal with software developed in different countries? It would be wrong to use the efforts of others for free, and it might imply economic sanctions. Banning certain products could give rise to unauthorized copying or a black market in SW. It is questionable whether a country could redeem software developed in another country that was needed by its citizens and recover the cost in the form of taxes.

It can also be argued that the SW developed in case B would be available to all, independent of their financial situation. In liberal system, however, there is PD or shareware software (that should not be expensive) for almost every purpose (for ordinary users). Also, on the positive side, non-copyright software could be modified and further developed by end users and its quality might improve as the code would be reviewed by the public. There are many examples to indicate that products (or principles behind them) made available for public review are more serviceable than "secret" developments. This may not necessary require a state of affairs where SW is free from copyright, however. That is to say, nothing would prevent companies from publishing their principles, protocols, etc. while in scientific forums or sending beta versions of the product around and still holding a copyright on the final product. Also, some products that are necessary or useful may not be developed in a liberal system if they do not have enough market intake (they might be developed in case B). However, partial or full governmental backing with respect to some software is not out of the question in a liberal system. For example, it is common practice in the Nordic social systems, which that have liberal foundations.

Those thinkers who favour alternative B may reject the practical argument stating that the practical implementation of a good system has miscarried so far. Marx (1844, p. 136), regarded the abolition of personal rights as an entirely positive thing. Although Marx & Engels' thesis on the bourgeois society (1848): "...for those of its members who work, acquire nothing, and those who acquire anything, don't work" is rather embellished with rhetoric, it is true that someone will always suffer in a liberal system - a state of affairs that even Marxism has not been able to eliminate.

However, even if we presume that the above problems with regard to case B were somehow to be overcome, this raises the question of whether people who are in favour of free software in terms of finance are willing to change the current political system towards a system where government owns the means of production.

3. Summary

This paper analyses the relevance of different concepts SW rights from theoretical foundations to practical applications such as (the latter in terms of) legislation. The "no right" view was found to be difficult to share, as it amoralizes SW and could have detrimental effects on our well-being. The universality thesis, including its variants, is critically considered. The relevance of the current concept in terms of the western system of legislation with respect to SW rights, such as copyrights and patents, is analyzed and

the concept of copyright seems to be fairly just, as it is likely to provide equal opportunities. The granting of patents need to be carefully restricted (as is often done in Western legislation), as slapdash application can result many undesirable effects, including violation of the freedom of thought. Certain economic and social effects of free SW (i.e. abolition of financial acknowledgements) are also discussed with the conclusions being that non-commercial software would give rise to socio-political changes toward systems that are something other than liberal based (e.g. socialism).

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