Creative Work in an Ownership Society

A Westmont Faculty Exchange

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Introduction to the Exchange

I first started thinking about the interaction between my Christianity and Intellectual Rights at a faculty forum where the suggestion was made that we should restrict peer-to-peer technology in order to prevent violation of music copyrights. Since then, I have been reading, thinking and talking about a number of issues that have, for me, come together in this exchange. In my reading and talking, apart from realizing that I wasn't going to figure this out on my own, I discovered that Cheri has written about women's property in Victorian England, that Marilyn has written about giving away writings anonymously, that Telford has a history in the software industry where huge stakes fuel the drive to own programs, and Scott, who was part of the original forum panel, is strongly committed to maintaining and strengthening existing copy protection over works of art. I asked these colleagues to join me in exploring broadly three questions: what is the nature of creativity, what is the nature of ownership, and what is the appropriate application of ownership principles to the products of creativity?

For the first, I'm wondering what is creativity? What are the raw materials that go into creativity? Where do those raw materials come from? How does creativity relate to the nature of God and God's image on us? On the question of ownership, I'm wondering about the role of property in the Christian life. More basically, what does it mean to own something? What sorts of things can be property or not and why? And finally, I'm wondering about the prospect of owning creative products, particularly the idea components of such products. Can or should such products be owned and does a Christian faith influence the answer to that question?

I hope that our reflections on these questions stimulate your thinking and that you will help us see these issues more clearly.

Calvin's Duplicator

I believe we are standing at a cross-roads. Changes in society's policies on the ownership of ideas could well prove to have a chilling effect on future creativity and innovation, as well as on privacy and personal freedom. My hope is that you will be willing to set aside the familiar present, just enough to consider the future consequences of our current trajectory.

Addressing the three main questions, I'll present a model of creativity and ownership that makes the owning of ideas inappropriate.

Creativity

I want to mention two models of creativity. The first views creativity and the creative product as a gift. Marilyn and Cheri will say more about this model so I'll just say that in this view creativity is essentially something that happens to you. You hear accounts from artists of various types that “the song or story wrote itself.” Perhaps it is not too far-out to describe creativity as a phenomenon where the artist serves as a conduit.

But the second model, on which I will focus, views creativity as the transformation of raw material inputs into an output. For example, sculptors, carpenters and writers, transform inputs such as stone, lumber, and ink, into a sculpture, building, or story, respectively. However, the
process also requires mental inputs, where ideas serve as additional raw material inputs. But consider the source of such ideas; they are either (a) acquired through observation, or (b) the product of some previous creative process.

The output of the creative process also has an idea component; the product is a physical carrier of transformed ideas. But note, whether derived via (a) or (b), ideas used as inputs to the creative process can be used again and again. Similarly, the idea component in the output can be used as inputs to multiple subsequent creative processes.

In other words, the idea components of creative work are non-depletable resources. They are used but not consumed. Whatever they are made of, there is just as much after they are used as before. I will use information to model ideas and will use the terms interchangeably.

Ownership

The concept of ownership is a tricky business. We'll find disagreements over what actually is “ownership”, and different theories justifying different forms of ownership. I am going to argue that at the end of the day, control is the essence of ownership. That is, we own only what we control. The different theories are merely different ways of justifying the imposition and limitation of control. Locke's theory of labor serves as the primary basis of natural rights claims on property and has been extended to ideas; I hope to plant doubts in your minds about the validity of those extensions.

In his second treatise of government, Locke presents a theory for the origins of property rights having to do with the mixing of labor with raw materials owned in common. One of his examples involves the gathering of acorns, which being commonly owned initially, become the property of the gatherer when mixed with the gatherer's labor. [We should note that Locke's theory is not without problems even in the physical world. For example, one can argue that the investment of labor doesn't create ownership but rather simply dissipates the labor.] The extension of the labor-theory to ideas has strong intuitive appeal. But when it comes to ideas, Locke's own discussion prevents it from applying. Locke included a proviso in acquiring ownership rights such that “there is enough, and as good left in common for others.” That is, you can acquire ownership of acorns by gathering as long as there is enough for the others who want to gather. But when applied to the idea component of creative works, this proviso is not satisfied. If an idea in my creative product is exclusively owned by me, then clearly there is no longer “enough and as good left” -- indeed, there is none left.

Ownership of creative products

So what are we to do about granting ownership to products of creativity? Let's review my claims to this point. First, creativity is fundamentally a transformation on physical and informational raw materials and that creative products contain ideas. Second, ideas are non-depletable. Third, the essence of ownership is control. So what are we to conclude about owning information? I already raised one problem with the classical natural rights argument supporting ownership of ideas. But the larger problem as I see it is the problem of control.

To illustrate, recall the Duplicator from Calvin and Hobbes. In case you're not familiar with it, Calvin creates a duplicator from a large cardboard box, and with Hobbes's help, he clones himself and unleashes bedlam in the process. (Think of it as a Xerox for objects rather than images.) I'd like you to imagine a world with Calvin's duplicator, a world where anything can be copied. Money is obsolete, hunger a thing of the past, peace reigns at last. Or does it? If I duplicate “your” sandwich, is the copy “mine”? Since we no longer live in a world of scarcity,
what becomes of ownership? Ownership is obsolete since I don't need to control my possessions any longer. No one would need to “steal” something in the first place, and if it should become lost or broken I can restore it from backup. But if I wanted to control my sandwich, could I?

We have such a world today on the Internet. Everything you experience through the Internet is the result of the duplication, transmission and reception of information. The ideas expressed by someone authoring a website are dispersed to the computers of everyone who views it.

Since everything boils down to information in Calvin's duplicator world and in the Internet, the question becomes can I control information? To quote Thomas Jefferson,

“If nature has made any one thing less susceptible than all others of exclusive property, it is ... an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it.”

So if you want to control an idea, you cannot express it; and if you want to express an idea, you cannot control it. Well, you can try but the consequence of the attempt is a police state. With it, you end up with reduced or eliminated privacy and autonomy. Even without the nasty side-effects of a police state, attempts to control ideas will stifle subsequent creativity, as a result of reducing the raw material available for the creative process.

In conclusion, I claim we have an insufficient theoretical basis for justifying ownership of ideas, that if we try to press ownership anyway we have negative consequences in terms of future creativity and social peace, and finally, I claim that as Christians we shouldn't be preoccupied with possessions. We live in a world of exchange but Paul recommends that “those that buy, [act] as if they possessed not” or as if the possessed item were not theirs to keep (1 Cor 7:30). We are just passing through this world and attachment to property distracts us from our true purpose. The picture of a steward suggests a concern for the Master's property, not one's own. We have transitioned to an information society, where the economic value of information is magnified because it is now so much more easily gathered, analyzed and distributed. Thus, we find ourselves in the midst of an intellectual land-grab. As the patent case before the US Supreme Court tomorrow (LabCorp v. Metabolite, March 21, 2006) underscores, we need to apply our best thinking to our current policies and search for responses consistent with God's kingdom.

References

