

How the Free Software and the IP Wars of the 1990s and 2000s Presaged Today's Toxic, Concentrated Internet

By *Roy Schestowitz*

Created 28/01/2022 - 10:06pm

Submitted by Roy Schestowitz on Friday 28th of January 2022 10:06:48 PM Filed under [GNU](#) [1] [Web](#) [2] [Legal](#) [3]

The history of free software and the IP Wars of the 1990s and 2000s provides a good illustration of these path-dependencies around the meaning of liberty, law, and power throughout the period. In response to the rise in prominence of Unix, a proprietary system developed by Bell Labs, in the 1980s, free software advocate Richard Stallman and others began a crusade to liberate software from its proprietary ties. They created the GPL (GNU Public License) a free open license that requires anyone reusing, buying or redistributing the software to comply with the freedoms granted by the original license.. The free software movement later inspired a parallel movement to liberate content and creativity from copyright strictures.

In an article titled "Anarchism Triumphant," Columbia Law Professor Eben Moglen argued that free software represented the beginning of a shift towards a free-er anarchic digital political economy which would do away with most forms of private ownership. In a 1994 essay, Electronic Frontier Foundation co-founder John Perry Barlow argued that copyright law, which protects the material expression of ideas, had become obsolete on the internet, the "Home of the Mind." Many of these ideas grew in opposition to the powerful interests of the time: against firms like Bell Labs producing proprietary software, against firms like AT&T controlling telecommunications and broadband, against Hollywood studios and music labels who sought to enclose and profit from creative digital assets. Yet many of these views also unconsciously built the intellectual, legal, and economic case for new forms of enclosure, those that were already being adopted by open platforms such as Google which would soon thrive on the distributed sharing of content by opaquely acquiring control over and monetizing attention and data. In disputes on who should win between Hollywood and YouTube, users were the ones ultimately left behind.

As Tel Aviv University Law Professor Niva Elkin-Koren put it, "[w]hat began as a controversy over the appropriateness of copyright law to accommodate technological changes, became a political battle over the distribution of the potential gains that cyberspace offers."

These so-called "IP Wars" embodied institutional controversies on the stakes of the internet's ecology and saliently illustrate confusions that are still with us today. For example, as Duke University Law Professor James Boyle put it, it was as if early cyberlibertarians "couldn't agree on whether [their] motto was to be "Taxation is theft" or "Property is theft." Their aversion for IP often hid faith in new forms of digital capitalism. Further, the rhetoric of freedom and anarchy underlying the IP Wars helped strengthen commercial interests and monopoly rents on the Internet. Visions of the internet as an apolitical laboratory of innovation, a frictionless space governed by individual choices took the center stage, ultimately facilitating the accumulation of digital control in the hands of a few internet gatekeepers. The move towards private and code-based governance opened the door to widespread and poorly regulated surveillance practices that remained disguised under the facial neutrality of code and cyber-economists' efficiency-based arguments.

[4]

[GNU Web Legal](#)

Source URL: <http://www.tuxmachines.org/node/160836>

Links:

[1] <http://www.tuxmachines.org/taxonomy/term/144>

[2] <http://www.tuxmachines.org/taxonomy/term/103>

[3] <http://www.tuxmachines.org/taxonomy/term/106>

[4] <https://promarket.org/2022/01/28/digital-platforms-regulation-free-software-ip-wars-concentration-internet/>