

# Sketching a Green response to copyright

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## Abstract

Greens have started to mobilise with the increasingly confident Free Culture and Free Software movements in the face of copyright maximalists. This short paper establishes a vision of cultural policy that asks how we can defend, create and enlarge spaces where cultural activities can unfold freely. It then walks the reader through a critique of copyright; first it argues that copyright is a civil rather than a natural property right, so it should be shaped to serve the aims of cultural policy rather than inalienable rights; and second that it conflicts with this paper's vision of cultural policy in various ways. Finally it suggests a few brief strategies for Greens to advance cultural policy through active politics.

## 1 Background

1. In the past year the Green Party of England and Wales has taken up the issue of 'intellectual property' with renewed vigour. Intellectual property is a confusing term lumping together different property rights that cover products of the intellect, principally including copyright and patents. We have attacked the hardware requirements, DRM technology and proprietary licensing of Microsoft Vista; we signed an open letter to the social activist community calling on them to plan a migration to free software; we have called on the BBC to fulfill its public service role by releasing its iPlayer as free software free of DRM; and we have raised the political profile of these subjects in the eyes of the media.
2. The history of 'intellectual property' is one of ever greater private enclosure, with private property owners gaining ever greater rights of exclusion both prospective and retrospective. The length of terms have increased, the legal mechanisms to protect those rights have strengthened, and the right and ability of the public to exercise their remaining rights has on the whole shrunk.

3. In the past half decade, however, those who would seek to maximise private rights at the expense of the public have met with vigorous opposition. Social movements, including the Free Software and Free Culture movements critiquing copyright, and the many environmental and social justice movements against bio and pharmaceutical patents, have gained strength. Governments, from left-wing Latin American firebrands to conservative institutions such as the British Civil Service, have started to recognise that maximising intellectual property rights isn't necessarily beneficial.
4. The debate in the UK may have shifted from 'maximum protection vs. public domain' to a more nuanced appraisal of the economics of different property regimes. But it lacks a strong political voice questioning some of the basic assumptions of the maximalists, those that would seek to maximise the rights of owners in the name of capital.
5. This paper sketches a possible point of departure for Greens, drawing on familiar theorists and practices to frame our overall approach. It also provides a rallying call for activists in those aforementioned social movements, showing them that the Green Party's involvement in these issues goes beyond electoral politics to a deeper integration of these issues in our political philosophy.

## 2 A vision of Green cultural policy

1. Before jumping in I want to carefully limit the scope of this 'Green cultural policy'. I don't intend to cover *everything* a Green Party or Green activist would seek to achieve under the extremely broad umbrella of 'culture'. My main focus is on property rights relating to cultural artefacts. It might be the case that this envisioning has relevance for other areas - indeed I hope it does - but attempting to explore a comprehensive theory of culture would need several books rather than this (hopefully short) article.
2. Let's put this into a contemporary context. Most centrist politicians today talk of 'supporting the creative industries' or 'making our city a capital of culture' or 'regenerating communities'. These are all admirable goals but they miss many of the day to day cultural experiences of the average person by focusing, to the point of reification, on professional auteurs, artistic elites and extraneous aims respectively. I am aiming at a democratic vision of culture, one that delivers benefits for the average person without necessarily harming those interest groups.

3. Everyone benefits from engaging in cultural activities, whether it's listening to the latest Go! Team CD, visiting a Raphael exhibition, sticking a home movie on YouTube or writing short stories for the New Yorker.
4. In the field of Subjective Well-Being (SWB), psychologists generally agree that people are happiest when they pursue and attain goals that are intrinsically valued and autonomously chosen, and that are facilitated in their daily life through available resources, convivial environments and healthy personality characteristics.
5. (Incidentally, where such facilitation is absent individuals tend to adapt, often by changing their expectations. Charges of rampant piracy could reflect a common coping mechanism in the face of suffocating environments, facilitated by new resources.)
6. The good life includes a certain level of cultural activity, and so well being in relation to cultural goals is the ultimate measure of success for cultural policy.
7. Policy can defend, create and expand convivial environments - spaces where cultural activity can unfold freely.
8. What is cultural activity? Any analytical distinctions put us at risk of reifying another interest group rather than advancing a democratic vision. This 'fourfold vision' integrates four aspects of cultural activity, offering the possibility of conceptual analysis to explore the nature of each in isolation in conjunction with synthesis to achieve a more holistic understanding of their actual nature. The four aspects are as follows: consuming, producing, sharing, learning.
9. We consume cultural artefacts all of the time - we look at pictures, hear music, read magazines and newspapers and books, watch television and films, run our hands over sculptures. There is enormous variety available, and much scope in aesthetics, ethics and other areas of theory to explore the relative 'consumption value' intrinsic to each activity. Generally speaking cultural consumption is to be celebrated and is, in contrast to the consumption of physical goods, non-destructive.
10. Production in mainstream discourse has tended to be confined to the realm of the professional auteur, able to compose a magnificent aria or to write a witty review. But we produce new thoughts when we admire a great Master's painting, or when we grimace at an obnoxious advertisement. We might even put these in a fixed form on a weblog or a satirical

cartoon. That cartoon might even make its way into a fanzine, be noticed by the editor of a respectable national magazine and become published. We might just think 'cool song' when listening to a CD, or we might grab the tabs from the web and attempt to play it on our guitar. Remixes, mash ups, appropriations, copies, inspirations, covers, originals, sources, muses, standing on the shoulders of giants. They are all activities with aspects of production. Again, there are many wide-ranging debates about the value of each.

11. We are taught to share sweets as children but admonished for sharing CDs as adults. Without sharing cultural artefacts our lives would involve the most impoverished social dimension. Whether sharing interpretations of poetry in reading groups, expanding our iPod collections by swapping with friends, or at the more grandiose scale of regenerating communities through a shared exploration of identity, sharing is fundamental to humanity and well being.
12. Good learning environments enable us to pursue new goals, more broadly to pursue self-realisation. As with the other aspects, we can learn in the most modest of situations and the most dedicated, from listening to a CD to receiving instruction in a prestigious conservatoire.
13. These four aspects require synthesis, for any particular activity is likely to engage more than one - in fact probably all - of the aspects. It would be a strange feat indeed to visit a gallery without reflecting on the paintings, and a lonely existence if one never discussed them with anyone.
14. Our real freedom to pursue cultural goals depends upon our ability to engage each of these aspects of cultural activity. If we are unable to listen to a CD, to review a film, to share a poetry collection with a colleague, or to study the techniques of a painter, then our well being will be directly diminished.
15. My vision of a Green cultural policy in relation to cultural artefacts, then, is one that creates spaces in which cultural activity can unfold freely; namely one in which our real freedom to consume, produce, share and learn from cultural artefacts is maximised.

### **3 A critique of copyright**

1. Private, collective or common property assigns a range of rights either to individual owners, collectives or to all in common. These include the right

to use, share, re-use and profit from the artefact, to determine how it is used, and to transfer these rights to others.

2. Copyright is a private property right. It reserves all the aforementioned rights for the owner, so that I can determine when this paper is published and precisely what others may do with it once I have done so. However, the copyright on this paper will expire seventy years after my death, and in the meantime society at large will enjoy a wide range of fair use rights with this paper – you may quote it, develop ideas from it, in certain educational institutions enjoy limited copying rights, and so on. The more you study copyright, the more confusing it may seem; it must be the most complicated and arcane legal system that the average person is subjected to in their daily life.
3. Natural rights are those that the state cannot abrogate, that we have by virtue of ‘natural law’; freedom of speech is a classic example of a natural right. Civil rights are those granted by the state for instrumental reasons, i.e. as an instrument to achieve certain aims; the right to walk down a particular public footpath is a civil right.
4. Copyright is not a natural right. It isn’t *necessary* for us to further our vision of cultural freedom, there can be no doubt that culture prospered before the Statute of Anne in 1710. Creators may reasonably demand credit and some stake in their work as a ‘moral right’, but it would be outrageous to demand the full range of rights over society once they had voluntarily released their work to the public solely because *they were the creator*. Furthermore, copyright has a limited term and many exceptions under the doctrines variously called ‘fair use’ or ‘fair dealing’. These abrogations granted to the public by the state for instrumental reasons are *incompatible* with a natural right to private property. If copyright were a form of just or fair reward it would provide equitable compensation for all creators, but the distribution of earnings from copyright resembles the income distribution of Tsarist Russia, with a tiny minority earning the vast majority.
5. As a civil property right, we must ask whether it makes sense for the state to reserve some or all of the range of rights for one individual - the creator or owner - over cultural artefacts. Could any private property system advance cultural freedom better than a common or collectivist system?
6. Copyright seems like an elegant policy instrument. Reward creators with a property right that can make them money, whilst leaving everyone else

with a range of rights over those creators' artefacts so that they can enjoy the rich cultural patchwork that creators have left us.

7. As the length of the copyright term has increased, as the rights left over for the general public have shrunk away, as technology has exceeded the law in restricting us further, so it looks less and less attractive. As technologies such as cassette recorders and the internet have opened new opportunities for cultural activities, and as they have made violations of copyright more exposed, so the public has been less and less enamoured with copyright.
8. Copyright curtails our real freedom to consume. The combination of technology and copyright enables book authors and publishers to prevent you from copying and printing their e-books, and blind individuals from having them read aloud by assistance software. Even works in the public domain can have these restrictions imposed by tying the un-owned work in with copyrighted software, so that copying, printing and other kinds of use will affect the text and software equally. Even though the limited term on copyrights limits the waste caused by exclusivity, many intellectual products may in a sense be useless by the time the copyright expires, for example catapult designs and unfashionable music.
9. Ask any mash up musician, appropriation artist or beat poet; the law hugely restricts our real freedom to produce any work that builds upon another under copyright. Whilst the fair use doctrine reportedly earns the US economy more than copyright precisely by allowing people to circumvent copyright, the uncertainty and financially undemocratic bias of the legal system do a great disservice to the public. Even political speech has been censored by Crown Copyright in the UK, used to silence Civil Service Mandarins, whistleblowers and refuseniks.
10. Most famously, copyright prevents sharing. CD inlays dissuade us from giving the discs to friends to copy, or from making mix tapes. In the public eye - that is, the consumer's eye - the purpose of copyright is to prevent unlicensed copying. But everyone does it anyway.
11. Good learning environments provide us with access to resources such as text books, co-learners with whom one can progress faster and gain additional critical perspectives, experts from whom we can receive tuition, and much more besides. Copyright might facilitate the production of some resources, but by restricting our ability to share it cuts out resources and co-learners. Educational exceptions create walled gardens for students and academics, rather than encouraging lifelong learning. By restricting

our ability to ‘look under the hood’, whether at the source code of software or by only providing the final fully mixed cut of a song, copyright and working traditions reduce opportunities to learn.

12. Without a thorough exploration of the alternatives, it would be premature to condemn copyright to the bin. But the strength of certain alternatives such as Free Software and Free Culture point to the possibility that copyright is unnecessary or best subverted. The history of the arts points to the clear assertion that copyright today is definitely too strong, and that artists need broader rights to practice and realise their artistic vision, whether through conformity or transgression.
13. Socialisation influences the goals that people select. The discourse of copyright exceeds the immediate legal effects and, if successful, changes society’s perception of important goals to focus on professional success and individual property rights at the expense of more democratic goals such as sharing between friends and exploring artistic potential. Moreover copyright is so complicated that, even when opportunities exist to engage in valuable cultural activities, people are liable to miss them through ignorance. Quiz the lady on the street, or even fine art students, about the intricacies of fair dealing in the UK.
14. Private property can alienate us from our creations, as they are transferred from our control to another; moral rights, a right to attribution, these can mitigate this. Private property can alienate us from our labour, as we enter into it as a means to an end rather than for its intrinsic value; spaces where we can engage in cultural activities freely, develop our skills, pursue self-realisation, can mitigate this. Private property can alienate us from our peers by shaping relationships around abstract financial exchanges and preventing opportunities for genuine social exchange; sharing in cultural activities and artefacts, fostering communities of cooperation and collaboration, these can mitigate social alienation. Alternatives to copyright are as much a matter of free labour and free social relations as they are about free relations to artefacts.

## **4 The Green response**

1. The first question must be: how can Greens defend, create anew and expand existing spaces where cultural activities can unfold freely?
2. Copyright, patents, associated laws and technologies; these currently create unnecessary and harmful barriers to the resolution of this question.

Greens should oppose further expansion of these laws and technologies, both through the entrenched political systems and through more novel means of political action dear to us.

3. More than in most other spheres of action, we are able to foster spaces of resistance to the maximalists. Social movements such as free software and free culture have for the most part done this successfully by remaining compatible with the rigours of the neo-liberal markets and prevailing states, whilst retaining their subversive character. So we should engage with these movements, critically but energetically. We can contribute to their success through policy statements, following their example in our own practices, identifying and removing barriers and facilitating their expansion.
4. Real freedom depends on resources and convivial environments as much as legal rights. The dominant philosophical discourse of the Free Culture and Free Software movements predominantly concerns itself with rights, despite the overwhelming need to furnish financially and culturally impoverished communities with better resourced spaces, and to advance a positive discourse of cultural self-realisation. The provision of an unconditional basic income would enable all citizens to create without *need* of private property rights to cover the rent, to finance community groups without pandering to the latest grand body fad, and so on. Greens can advance this discourse and, through integration with our wider political philosophy, assuage the doubts of those who see the alternatives as being led by reactionary dilettantes.
5. There is considerable scope for political action in this area. Supporting local arts centres, and those excluded from these spaces for whatever reason; creating free software, free maps and releasing our own work under copyleft licenses (that return the work to a cultural common); pushing for local authorities and government nationally to follow suit, for example by releasing all of its published data into the public domain as many other governments do; encouraging the private and third sector to migrate to alternatives; and simply raising the issue in the public mind to promote understanding. Happily much of this can be fun too!

## 5 Credits

This is not an academic paper, so there are no references. But I owe a great intellectual debt to the following thinkers in having formulated those theses, in

no particular order: Andre Gorz, William Blake, Derek Wall, John Locke, Karl Marx, various Taoist writers, Jeremy Waldron, H.L.A. Hart, Ivan Illich, Philippe Van Parijs and Murray Boochkin. I also owe a great deal to my principal sounding boards, Rob Myers and Ed Griffith-Jones, without whom I would surely have retired to an armchair.