

A Hacker Manifesto

by McKenzie Wark

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As countless odd and interesting property decisions demonstrate, significant resources have been dedicated over the years to the clarification of lines on a map, notes in a song, or words in a sentence. Occasionally, a case or movement appears that extends the bounds of property ownership in a direction not yet seen or understood.¹ At present, a movement of such significance is underway.

In *A Hacker Manifesto*, McKenzie Wark discusses the impact of information technology on the law, politics, and society. Employing a critical theory-inspired vocabulary, Wark's *Manifesto* elucidates a contemporary political movement in a quasi-Marxist framework. In the end, however, the appeal of Wark's *Manifesto* may well depend on how the reader feels about Open Source theory and the Free Software movement discussed below.²

Practically speaking, Wark's discussion of the interplay between social theory and information technology is likely to intimidate. Wark's vocabulary is conceptual and

¹ In the realm of property law, few disputes outshine the protracted legal contest to determine the ownership of an unfortunate red fox. Although the red fox was not a party in *Pierson v. Post*, the carcass of the "noxious beast" was the subject of a case that eventually led to the annunciation of the contemporary Rule of Capture. *See generally* *Pierson v. Post*, 3 Cai. R. 175, 2 Am.Dec. 264 (N.Y. Sup. Ct. 1805).

² According to Wark, Open Source is a development methodology rather than a social movement.

potentially incoherent to the uninitiated reader. On the other hand, a reader familiar with recent copyright, or *copyleft*, disputes is likely to grasp and appreciate the depth of Wark's hacker philosophy. In any event, a brief primer on both Open Source and Free Software is likely to be beneficial for our discussion of Wark's *Manifesto*.

The Free Software movement, founded by former software engineer Richard Stallman, questions whether there is a natural right to copyrights and other intellectual property concepts. As a means of circumventing the copyright mechanism, Stallman conceived of the General Public License (GPL), which allows for the free distribution of software covered by the license.³ At the heart of the Free Software movement is the ethic that software, and thus information, should be freely accessible.⁴

Open Source, meanwhile, is distinguished from the Free Software movement in that it relates to the development and modification of software.⁵ Proprietary software packages, like Microsoft Windows, do not allow end users to modify or customize code to meet the needs of a particular operating system. In contrast, Open Source is nonproprietary and allows the owner to modify code and customize the operating system to their particular needs. Most recently, litigation over the putative donation of copyrighted code to an operating system known as Linux resulted in a highly publicized

³ See <http://www.fsf.org/copyleft/gpl.html> (last visited October 2, 2004).

⁴ According to Stallman, free software is "about liberty, not price." See <http://www.gnu.org/philosophy/free-sw.html> (last visited October 2, 2004).

⁵ Stallman further distinguishes Open Source from Free Software by noting that free access to software for the Open Source community is merely a practical question to aid in the advancement of software development, while to the Free Software community free software is an ethical necessity. See <http://www.gnu.org/philosophy/free-software-for-freedom.html> (last visited October 2, 2004).

lawsuit between software manufacturer SCO Group, Inc. and International Business Machines.⁶

Although Wark only references Open Source and Free Software in passing, the underlying current in his *Manifesto* is that the contemporary equivalent of a massive land-grab is in progress throughout the United States and around the world. At issue, however, is not land for farming or grazing, nor is it a property interest in one's own labor. Rather, Wark has focused on the emergence of intellectual property as a means of oppression.

According to Wark, a new ruling class has emerged with the goal of controlling the use and ownership interests associated with intellectual property. Wark alleges that the “vectoral” class is employing intellectual property constructs like patents, copyrights, and trademarks to monopolize information.⁷ By controlling how information is accessed and utilized, the vectoral class has artificially created a new scarce resource – information.⁸ One need look no further than the Open Source litigation referenced above for an example of the vectoral classes' legal maneuvering.

Building on the vocabulary employed by Karl Marx and Frederick Engels, Wark likens the vectoral class to the capitalist factory owners and land rich real property

⁶ See generally *SCO Group, Inc. v. International Business Machines Corp.*, No. 03-CV-0294, Plaintiff's Amended Complaint (D. Utah Mar. 25, 2003). The litigation arose after valuable copyrighted computer code from the UNIX operating system allegedly owned by SCO Group, Inc. (SCO) appeared in the Linux operating system. According to SCO, an I.B.M. employee pilfered the code while the two corporations worked together on a development project. A ruling in favor of SCO threatens to extinguish the viability of Linux, the GPL, and the practice of Open Source software development.

⁷ Membership of the vectoral class is primarily dependant on how an individual or group positions itself between hackers and intellectual property. For example, Wark considers writers to be hackers and publishers to be members of the vectoral class.

owners of Marx-era property conflicts. The copyright and patent, meanwhile, are the contemporary equivalent of farmland and factories. For Wark, hackers are in some ways the equivalent of peasant farmers and factory workers because the vectoral class controls access to the means of production, namely information.

Please note that Wark's concept of a hacker is distinguishable from the juvenile delinquent stereotype. Rather, Wark perceives hackers as individuals with the "desire to open the virtuality of information," and an ethic of "freedom and cooperation." Unlike farmers and factory workers, hackers are a unique class with a productive potential independent of either other workers or the vectoral class.

What makes hackers unique? Information, the medium in which hackers operate, is a "non-rivalrous" resource that "knows no natural scarcity." According to Wark, hackers have the ability to produce independently of tangible resources like land or a factory, which should allow hackers to operate "free from any constraint that is not self imposed." Although implausible to the cynic, the success of the free operating system Linux testifies to the incredible capacity of the unfettered hacker.

In the end, Wark's *Manifesto* will resound with those familiar with the subject matter. Intellectual property litigators may not welcome Wark's perspective, but they may well begin to understand a movement that threatens to undermine the enforcement of valuable patents and copyrights. Hackers, on the other hand, in their own independent way, may embrace a new vocabulary and principles that will empower their own developing class to change the bounds of property.