



ORIGITENT

**WHY ORIGINAL CONTENT
IS PROPERTY**

J. NEIL SCHULMAN

Debating Wendy McElroy,
Samuel Edward Konkin III
and Stephan Kinsella

Introduction
by Stephan Kinsella

Origitent

J. Neil Schulman

J. Neil Schulman's Books

Novels

Alongside Night

The Rainbow Cadenza

Escape From Heaven

The Fractal Man

The Metronome Misnomer (forthcoming)

Nonfiction

The Robert Heinlein Interview and Other Heinleiniana

The Frame of the Century?

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Self Control Not Gun Control

Book Publishing in the 21st Century

The Heartmost Desire

I Met God – God Without Religion, Scripture, or Faith

Unchaining the Human Heart – A Revolutionary Manifesto

J. Neil Schulman's The Book of Words

Origitent – Why Original Content is Property

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Profile in Silver and Other Screenwriting

Graphic Novel

Alongside Night

Audiobooks

Alongside Night (Audible)

I Met God (Podspell)

The Robert Heinlein Interview (Pulpless.Com)

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Wendy McElroy, “Contra Copyright, Again,” *Libertarian Papers* 3, 12 (2011).
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--J. Neil Schulman, June 15, 2018

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Dedication

**To Stephan Kinsella
Who's kept me on my toes**

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Publisher's Foreword by Steve Heller

What is origitent?

The title of this book, *Origentent*, is a new word coined to refer to what has previously been called by the misnomer "Intellectual Property." The reason that "Intellectual Property" is a misnomer is that *all* property is intellectual property. That is because it is created by sapient creatures via intellectual effort.

Thus, we need a new word to describe property whose primary use value is in its original information content, or "*origitent* ." Examples of origitent are books, movies, computer software, architectural drawings, and the like.

I have never liked the notion that origitent (under the misnomer "Intellectual Property") isn't property, and for many years I understood that it was.

My years in the wilderness

But a couple of years ago, I was convinced by seemingly logically airtight arguments for that position, in the book *A Spontaneous Order* by Christopher Chase Rachels, even though the conclusion ran against my personal behavior and intuitive feel for the value of intangible work.

During that period, what I generally said when someone asked me about "IP" was something like this:

I am the first inventor on a US patent. I am the author of dozens of books and about the same number of magazine articles. I have written hundreds of thousands of lines of computer code in dozens of languages. I don't make copies of IP without the consent of the author or license holder.

But I would be fine with the abolishment of copyright and patent laws anyway.

How did I justify that?

Patents vs. Copyrights

The case is different for copyright and patent, as they have different relationships to the libertarian Non-Aggression Principle (NAP).

Current US copyright law is NOT violative of the NAP because if person B can show that his writing is independent of any knowledge of person A's writing, his writing is his property.

Current US patent law, however, is violative of the NAP, because it allows person A to invoke the law to prevent person B from "practicing" an invention that person B came up with independently of person A, based on the time of filing of the patent. This is an invasion of person B's sovereignty, because he did not make use of person A's origitent without person A's consent; he invented it separately. However, this is a technical characteristic of US patent law that could be remedied by treating patents like copyrights.

But whether we are discussing patent or copyright law, if origintent isn't really a type of property, we shouldn't consider it as such.

But is origintent a type of property, or isn't it?

Now that the current legalities are disposed of, what about the contention that origintent isn't a valid type of property?

I was convinced by the arguments in *A Spontaneous Order* that origintent doesn't have the characteristics of property. Rachels claimed that the characteristics of property include:

1. It must be rivalrous, i.e., there must be a limit to the number of people who can use a single piece of property, so that there will be conflicts if more than that number of people try to use it at once. Since origintent can be used by essentially any number of people at once, it isn't rivalrous and therefore can't be property.
2. It must be scarce, i.e., it cannot be available in unlimited amounts. Of course, origintent can be duplicated fairly easily, so it isn't scarce... once created.

This is facially reasonable, because of course it is true that origintent isn't rivalrous or scarce *in the same sense* as objects whose direct use value is their gross physical existence, e.g., you don't generally use houses, roads and automobiles as a source of ideas or inspiration, but because they can provide physical services for you.

The argument falls apart

But wait a moment. As Neil has pointed out to me, this seemingly valid argument is in fact full of holes.

First, so what if property isn't rivalrous, in the sense that more than one person can use it during a particular time interval? As Neil points out, just because he uses his bed only 8 hours a day, does that mean that someone else can sleep in it when he isn't using it without his permission? Obviously not. This is the same silly argument used by anarcho-communists to say that unoccupied property can be taken by anyone who wants it because it isn't in use if the owner isn't present.

And as for the second point about scarcity, the weasel words about its not being scarce "once it exists" ignores the extremely important issue of exactly how origintent comes into existence in the first place. That requires a *lot* of effort, sometimes many man-years of highly skilled effort, as in the case of software engineering projects such as operating systems. Should those people not be compensated for their effort because it's easy to make a copy of Windows 10 once it exists?

So we need to examine the nature of property a bit more closely.

What is property?

Definition: Any identifiable existent, for which one sapient creature is willing to exchange value in the form of labor or another identifiable existent, including by taking it from a state of nature, is property.

Examples of identifiable existents are physical objects such as automobiles, as well as origintent such as computer programs or movies.

Does that mean that an existent isn't property until someone *offers* to exchange another value for it? No. The potential of such exchange means that the existent in question is at least potentially property. But the offer of such exchange means that it is *necessarily* property.

If you consider everything around you, you will find that everything you consider property meets this definition. You will also find that computer software, movies, books, and so on, meet this definition.

Of course, the actual value that someone will offer to exchange for a particular piece of property will differ, sometimes enormously, depending on circumstances. A canteen of water in the desert can be immensely valuable even though water covers most of the surface area of this planet. But anything that has any value to a single sapient is still property.

The value of origintent isn't reliant on its physical form

Can we separate the physical material on which origintent is carried from the value of the origintent itself? Certainly. The same origintent can be stored on different storage media and can be transferred from one medium to another without affecting the value of the origintent itself. The "same book" can be in digital form or printed on paper; in fact, I have a printed copy of *Have Space Suit—Will Travel* but purchased another copy as a Kindle book because the paper copy was falling apart. But they are two representations of the same book and provide the same reading pleasure.

On the other hand, two books that are physically identical in every way, other than the origintent they carry, are different books. If I bought a copy of a printed book that was labeled as *Have Space Suit—Will Travel* but it turned out to have the content of *Lucky Starr and the Moons of Jupiter*, would I be happy with my purchase? Even though both are science fiction juveniles written by authors from the Golden Age of science fiction, I would still be able to distinguish them very easily and would complain to the seller about his misrepresentation.

How significant a type of property is origintent?

Ok, so maybe this is a valid argument logically, but is it important? Who cares about origintent? Maybe it is just a sideline in the economy and society, so we shouldn't worry about it.

This is about as far from the truth as can be imagined. It should be obvious after a second's thought that origintent is a highly valuable type of property, for the irrefutable reason that *people are willing to pay a lot of money for it*. As one small example, I'm almost 70 years old but am still in demand as a computer programmer. I have been paid in excess of \$100,000/year for my services for a significant portion of my career.

That's a lot of money. What could I possibly do that would be worth that much?

What does any computer programmer do?

He creates origintent.

“Introduction” by Stephan Kinsella

“HEY, KINSELLA, WHY WOULD YOU write an introduction for a pro-intellectual property book?” my friends might ask me. I mean, did ask me.

Why Do This?

I could think of a few possible responses. First—I might say—it’s not an introduction. It’s really a foreword. Hence my scare quotes. (See Pat McNees, “What is the difference between a preface, a foreword, and an introduction?” <https://bit.ly/2JCcbCM>.) But the publisher insisted on calling my contribution an introduction. Much to my aplomb. Or chagrin. Whatever the word is. But let’s face it, this is a weaselly response. What does it matter whether it’s a foreword or introduction?

Second, Neil objects to the term “intellectual property” to describe his views, as you’ll find in the pages that follow. He argues for property rights in what he used to call logorights but now refers to as “media carried property” (MCP). He tends to say that he opposes modern IP law—patent and copyright. But though he says he’s not for IP law, he has sometimes gotten upset at my suggestion that patent and copyright law should be abolished. Hey, Neil, if you’re not in favor of IP law then why do you bristle at my call to abolish it? Confuses the hell out of me. I think he does that just to keep me off balance. But it’s cool, it’s cool, I do the same to him.

Third, this is my chance to “come out”—to announce that I have finally changed my mind about IP and am now an ardent supporter of a certain form of legal protection for products of the mind. Because of the power and clarity of Neil’s revised arguments, I’ve finally seen the light! As many know, as a newly-minted libertarian I was initially in favor of IP (Ayn Rand ensnares a lot of us newbies), before developing some doubts about the notion. As a young patent attorney I diverted my libertarian efforts towards finding and developing a good argument for IP. I pored through the literature, reading and studying tons of articles and books by legal scholars, political philosophers, economists, and libertarians of various stripes, searching for a way to justify patent and copyright. Hey, I did the work, so you don’t have to. Anyway. I finally gave up and became an atheist. Sorry, I mean an opponent of IP. Despite my upbringing. I mean career. I became an anti-IP IP attorney. I became a self-hating patent lawyer. (But a *damn good one*.)

But keep in mind that I was always looking for proof of God. Sorry—I mean a good argument for IP. I *wanted* to find a justification for patent law, after all—it was my career. Just like I wanted to find an argument for God after being a lifelong Catholic and altar boy. But I failed in my quest (both of them, not that they are connected, exactly). I was unable to square the circle. So I finally became the IP version of atheist, because I just couldn’t find a good argument for IP.

But Neil never gave up. His original “logorights” argument (first published in 1983) didn’t persuade me. But then, after repeated sparring with me, he reformulated his argument. He adjusted it. He tweaked it. Now, it’s about “media carried property.” And *mirabile dictu!*, he has done it! He has finally found a solid footing for a type of IP, one that has persuaded even me, Kinsella, arch-enemy of IP! Finally, my whole career is actually justified! All I need do is recant my IP heresy here, in this *soi-disant* “Introduction.”

Coming Clean

Okay, time to come clean. I can't keep up pretenses anymore. As the punchline to the joke goes, "I'm just fucking with you—she's dead." [<https://bit.ly/2HM4qoe>] In other words—I was joking. I'm not "coming out." I'm still anti-IP. So everybody just relax. I still think Neil is wrong. And he thinks I'm wrong. And we're cool with that. That's how libertarian bros do.

One thing you can say: Neil's given this issue repeated valiant efforts. Maybe it just takes him longer than me to give up. I gave it up after a good ten-plus years of diligent study and effort. Neil's been steadfast in his support for his version of IP for maybe 35 years now. That takes a special kind of stupid. I mean dedication.

So scratch the third reason. And let's face it, my first two "points" were really not very good arguments at all.

So back to the first question: why would I write this introduction. What's my purpose? What's the purpose of this book? Okay. Let me try this angle. The historical angle. The setting. The context.

The Historical Setting of Intellectual Property

Look. Here's what happened. IP existed in scattered/proto forms hundreds of years ago, in the form of monopoly grants of privilege by the state. It goes back a long way, probably as far back as nascent forms of protectionism and proto-state-granted monopoly privilege. We see traces of it as far back as 2500 years ago: in about 500 B.C., in the Greek city of Sybaris, located in what is now southern Italy, there were annual culinary competitions. The victor was given the exclusive right to prepare his dish for one year. Sort of like a copyright. Or patent. Some kind of right to his origintent. And then, over the ensuing centuries, there were various forms of protectionism, and also attempts to promote or protect or "incentivize" innovation and creativity. These controls were intermixed with mercantilism and censorship.

Patents

Let's consider the origins of patents, property rights in inventions—techniques or machine designs that accomplish some practical purpose. A mousetrap, a method for threshing corn. But the original grant of patents did not usually involve some innovative machine or process. In England, the king would hand out monopoly privilege rights to cronies, maybe in exchange for helping the king out, by helping to collect taxes, and so on. These grants were called "letters patent"—patent meaning "open." "Only John Smythe may sell playing cards in ye olde town of Bluxsome-on-Thames" or whatever (and then government goons would raid his competitors on occasion to ensure they were not selling counterfeit or "pirated" cards... a bit ironic given that one of the early uses of Letters Patent by the British Crown was to entice pirates to become "privateers" (a fancy name for legitimized piracy), by giving them a monopoly over some of the spoils of their piracy for a given time.

Real Pirates

A notorious example is Francis Drake, who was given a Letter Patent on March 15, 1587 to authorize his piracy, such as attacking Spanish ships sailing back from South America laden with silver, handing it over to the Queen after taking his share. According to Wikipedia, "Maritime History of England," Drake

“made the first English slaving voyages, taking Africans to the New World. Drake attacked Spanish ships sailing back from South America laden with silver. He took their treasure for himself and his queen. He also raided Spanish and Portuguese ports. He undertook a circumnavigation of the world in 1572 and 1573. He discovered that Tierra del Fuego was not part of the Southern Continent and explored the west coast of South America. He plundered ports in Chile and Peru and captured treasure ships. He sailed up to California and then across the Pacific Ocean to the East Indies. He returned to England with his ship full of spices and treasure, so gaining great acclaim.” [See my post “The Real IP Pirates,” c4sif.org/resources.]

In other words, patents were originally used to *authorize* actual piracy, in addition to protecting favored court cronies from competition and thus restricting the free market. So it is a bit ironic that modern defenders of IP claim to be opposed to IP “pirates”—even though *real* pirates (like Francis Drake) kill people, break things, and take things from people (and delivered slaves into bondage), while “information pirates” do none of these things.

The Statute of Monopolies of 1624

In any case, “Letters Patent” began to be used widely by monarchs to grant monopoly privileges to favored cronies on a certain trade or industry or product in a certain region. When this protectionism and restraint on free trade became too noticeably abusive, Parliament stepped in and passed the Statute of Monopolies of 1624 (notice the name: “monopolies”; they were at least honest back then), which restricted the King’s power to issue letters patent, since they were basically trade restrictions, protectionism, privileges, *monopolies*. But the statute made an exception: monopoly privileges could still be granted for genuine “inventions”—i.e., for technical innovations.

Copyright

As for copyright—until the printing press, the Church and Crown held a nice monopoly over controlling published thought, by means of scribes and guilds like the Stationer’s Company, which held a monopoly over publishing from about 1557 until the Statute of Anne of 1710. During this time the printing press emerged and disrupted the state and church’s control over printed works, leading to the Statue of Anne 1710, which recognized authors’ copyrights in their works. But because as a practical matter authors still had to appeal to regulated presses to publish their works, the state and church were able to maintain their censorial control over what could be published, and the modern publishing system arose where publishing houses served as gatekeepers and the middlemen between authors and consumers. (See at Karl Fogel, “The Promise of a Post-Copyright World,” at c4sif.org/resources.)

IP in the Industrial Age

Fast-forward to the dawn of the Industrial Revolution. The United States of America managed to break free from England in 1776 and established its own Constitution in 1789, which drew, of course, upon English legal principles and practices. And so Article 1, Section 8, Clause 8 of the Constitution authorizes Congress “to promote the progress of science and the useful arts by securing for a limited time to authors and investors the exclusive right to their respective writings and discoveries.” Basically, this is the

authorization for modern patent and copyright law. And thus emerged the modern system of patent and copyright that dominate the world today. Modern patent law, anchored in protectionist grants of monopoly privilege; and copyright law, rooted in censorship, gatekeepers, and control of thought and freedom of the press.

And of course world GDP, flat for thousands of years, began to exponentially increase right around this time. Those who mistake correlation with causation argue that the wealth and might and prosperity of the West are linked to our adoption of European/English-style patent and copyright law, though studies backing up these claims are wanting (see my posts “Legal Scholars: Thumbs Down on Patent and Copyright” and “The Overwhelming Empirical Case Against Patent and Copyright,” both available at c4sif.org/aip).

And so the narrative was put in motion. The previous gatekeeper publishing industries seized on the new copyright system and quickly internationalized it apace with the progress of the Industrial Revolution (google “Berne Convention”). And new industries, captured by the monopoly profits possible by using institutionalized patents granted by an inept state bureaucracy, became entrenched and started defending patents.

And then the free market economists emerged in the 1800s and started to become alarmed at the proliferation of widespread, institutionalized grants of IP—which was obviously a restraint on trade, protectionism, censorship, and infringement of free market property rights. They basically emerged from their slumbers and said “what the hell? You people have got to stop this.” And they correctly referred to these state-initiated practices as “grants of monopoly privilege.” In response, the publishers, the gatekeepers, and industries now increasingly reliant on patent and copyright, intentionally, and deceitfully, bent the language of “natural property rights” to serve their purpose. Patent and copyright became “intellectual property rights” instead of monopoly privilege grants. Much like health care is thought of as a “right” today. And thus the ideological battle for IP was won by means of cheap semantics. Plus pressure groups (big Pharma, Hollywood, music, software), and some confusion spawned by Locke himself about the labor theory of property. (See “KOL 037 | Locke’s Big Mistake: How the Labor Theory of Property Ruined Political Theory,” at stephankinsella.com.)

Nowadays virtually everyone assumes that the innovation that accompanied the spectacular prosperity in the modern West was due, at least in part, to patent and copyright law. And that if you are in favor of innovation or artistic creativity, you must be in favor of property rights for “products of the mind,” or “the fruits of one’s labor,” or other metaphors that serve only to distort and deceive and lie and confuse thought.

Historical and Modern Arguments About IP

We can say that institutionalized IP rights began at the dawn of the Industrial Revolution, for example in the American and then European patent and copyright systems, which traced back to European institutions and practices such as the Statute of Monopolies of 1624 and the Statute of Anne of 1710. As these modern, institutionalized IP systems began to take hold in the 1800s, this provoked, first, a backlash from free market economists and then a defensive response from the entrenched IP interests. Among libertarians, and especially some anarchists, the chief thinkers were Lysander Spooner and Benjamin Tucker. Spooner proposed a radically pro-IP theory, rooted in the Lockean labor theory of property, while Tucker opposed IP, on grounds similar to his arguments against other forms of monopoly.

Amongst libertarians and proto-libertarians, the issue lay mostly dormant until the mid-1980s, when thinkers such as Sam Konkin, Wendy McElroy, and J. Neil Schulman entered the fray again. Konkin and especially McElroy provided the first systematic arguments against IP rooted in modern libertarian property rights principles, while Schulman was one of the first to attempt to provide a principled (as opposed to utilitarian or empirical) argument for a type of IP also rooted in libertarian propertarian principles. (See my posts “The Origins of Libertarian IP Abolitionism,” “The Four Historical Phases of IP Abolitionism,” and “Classical Liberals and Anarchists on Intellectual Property,” at c4sif.org/aip.)

With the dawning digital age and the Internet making copying and “piracy” far easier than ever before, copyright and related IP issues began to attract more attention from libertarians. Libertarians have long recognized that the main issues that confront us are war, taxation, state education, the drug war, and central banking. Many of us now believe that IP lies in the baleful company of these other horrible institutions and, in a sense, is worst of all: because war, taxation, etc., are seen, at least by some libertarians, as *necessary evils*; but patent and copyright are labeled “intellectual property” and thus fly under the banner of “property rights,” which are supposed to be good things, by libertarian lights. Thus, IP is far more insidious because, while you might want to minimize war and taxation as much as possible even if you think they are necessary evils—they are evils, after all—we all, as good libertarians, want there to be robust legal support for strong property rights. And if IP is a legitimate property right, it’s not a necessary evil at all; it’s a good thing.

With patent law threatening, impeding, and distorting innovation and technological growth and human prosperity, and with copyright distorting culture, censoring thought and speech and freedom of the press and indeed threatening Internet freedom, it is no wonder that IP has become an issue of interest and overwhelming importance amongst libertarians. (See my posts “Legal Scholars: Thumbs Down on Patent and Copyright,” “The Overwhelming Empirical Case Against Patent and Copyright,” “Death by Copyright-IP Fascist Police State Acronym,” “SOPA is the Symptom, Copyright is the Disease: The SOPA Wakeup Call to Abolish Copyright,” and others at c4sif.org/aip.)

This is why it is crucial for libertarians to understand modern IP and its relationship to property rights. To think about whether and how anything like patent or copyright can be justified. This issue is crucial. Innovation and creativity are essential for human survival, and so are property rights. And the state and its laws are dangerous. So it’s important that we get this right: whether there should be any form of intellectual property rights, or not, and, if so, what and why. Unprincipled, utilitarian, empirical thinking will not help us figure this out. You can’t just say that a 120 year copyright term is “too much” but we “need something greater than zero.” You need a principled approach. And though I disagree with Neil’s conclusions I respect the fact that he has for over three decades fought to figure out these issues with libertarian property rights principles in mind.

One final note. One argument we IP abolitionists use is that copyright is a form of censorship, and we oppose censorship. We applaud the communication and publication of ideas, arguments. Those of us interested in libertarian ideas about justice and property rights, and innovation and creativity, should applaud Neil for providing to the public, in accessible form, his sincere and interesting thoughts about these matters.

STEPHAN KINSELLA
HOUSTON, JUNE 2018

[I just got off the phone with Stephan, who's approved my making this bracketed comment about his Introduction: Stephan is aware that I do not take an historical approach to the question of logorights/MCP/origitent, but a theoretical approach based on natural law and natural rights. – J. Neil Schulman, June 15, 2018]

Human Property

The basic premise of libertarianism is well stated in the movie *The Fifth Element*: “*Seno Akta Gamat!*”

Property is a selfish idea.

This statement has two components.

Property is selfish.

Property is an idea.

You look around and nothing in a state of nature is made with a stamp on it saying that anybody owns it. There are mountains, valleys, plains, lakes, seas, ice masses, and oceans. There are creatures great and small. There are fields of grasses, dense forests, trees and vines bearing fruit, all sorts of edible plants and fungi.

Then come human beings who look around, put up fences, take stuff and turn it into other — sometimes brand new — stuff, and say to other human beings, “This which I messed around with is mine and not yours. Use it without my permission and there’s going to be big trouble.”

I’m called a defender of “intellectual” property. I’ve been denying this for as long as it’s been said for a simple reason: nothing but human intellect makes *anything* property.

Nothing in a state of nature is property.

**Ideas are not property. Ideas make things property.
–J. Neil Schulman, Tweet June 6, 2012**

It’s only the application of human intellect to things found in a state of nature that makes anything property.

There is no more of a distinction to be made between “intellectual” property and “stupid” property than there are distinctions between any other kinds of property.

Human action encompasses activities that are both obviously useful and activities the utility of which is intangible.

If I put food on a plate in front of you, the usefulness of the food is barely debatable: human beings are animals that survive by ingesting food used by the body to sustain life.

If I make a dwelling that keeps you dry during rains, warm during winter, unmolested by the sun’s lethal radiation, the utility of the dwelling is also obvious.

But if I tell you a joke, sing you a song, tell you a story that in the retelling helps you put your child to bed, make a book that by trying to explain your place in the universe makes it easier for you to put yourself to bed at night, the utility is subtler.

The utility of any thing is defined by what a user can do with it. The value of a thing is defined by what a user is willing to exchange for it — either one’s own investment in time and toil or by exchange with someone else to get it. All of modern economics is an attempt to analyze, understand, and better plan human activities based on the above fundamental truths.

Beginning a few decades beyond two centuries ago, a moral philosopher named Adam Smith wrote a book launching a new discussion on the right and wrong ways to make

nations richer. Since then others have called this book the beginnings of economics as a science, and subsequent writers from Karl Marx to Ludwig von Mises have written their own books to take up Adam Smith's discussion.

It's beyond my scope in this brief essay to discuss the overall history of ideas in the science of economics; but I do want to make it clear that what we debate in discussions about property are *ideas*.

Property does not exist in nature.

Property is an abstract intellectual concept.

When we discuss "property" we are discussing what human actions are rightful by general moral principles, by utility to the individual human being or some wider group of individual human beings — and these days there are human beings who demand that the discussion be widened to the general welfare of non-human animals, plants, and even the spiritual needs of our planet, which they address as "Gaia."

I'm a libertarian. My moral philosophy is that only beings that can communicate the thought "I am and this is what I demand" qualify for my consideration as actors — and that to qualify as a member of the class of moral actors one needs to be able to be put on trial by other moral actors for the consequences to others of one's acts. Anything other than responsible moral actors may be worthy of privileges, immunities, and protection — but how and what those are will be decided in councils of moral actors.

Those acts that moral actors may take without prior permission of another moral actor is the beginning of the abstract concept of a "right." Those rights — the collection of actions that may be taken without another's permission — those right-sanctioned actions when taken as a whole — is called "liberty."

Making the use of a thing exclusive to the decisions of a particular moral actor is the foundation of what we call property rights. A property right is an action with respect to a non-sapient thing that a morally responsible actor may take without permission from another.

Now.

There are current writers who argue that there is a distinction to be made between things that are scarce and common — the use of which is "rivalrous" or "non-rivalrous" — and these distinctions define what may and may not rightfully be considered property.

But absolute non-scarcity of a thing is not a distinction that universally disqualifies a thing as ineligible for a claim that a particular human being has a rightful moral claim to its exclusive use.

Water is ubiquitous on planet Earth — three quarters of the surface of this planet is covered with it, sometimes to great depth — yet a canteen of potable water to a man trekking through a desert can be private property that is the difference between life and death.

Nor is the "rivalrous" or "non-rivalrous" use of a particular thing a distinction that disqualifies a thing from being the exclusive property of a specific human owner.

A bed that I use only eight hours a night does not become open to "non-rivalrous" use during the other 16 hours in a day merely because my body is not lying on it. If I own the bed — if it is my private property — my moral rights to exclusive determination of how and when that bed is used are the definition of ownership.

Declaring me selfish by my disallowing others to use the bed in my absence is an attack on the concept of private property, and the negation of individual human rights as the moral basis for organizing human utilization of the things we dedicate to our uses.

This is an abstract discussion of moral premises.

So far this is not a discussion of what things are but what moral actions we may take with respect to them.

But there is now a discussion that things which human beings make that exist only as replicable art may not be private property. The argument is made that a thing which is replicable can be used by more than one person at a time because another's use of a copy does not deprive the original owner of anything. He still has exclusive use of the original.

But that's simply not true.

Art is not knowledge.

–Brad Linaweaver, in a discussion with the author

A novel is a longish written-down story, the function of which is to be communicated from its author to someone else, who is its audience. Writers do not write novels for their own individual use. It is written as a trade good for the use of others.

When I write the novel it exists first as a thing separate and distinguishable from anything which carries it — paper, computer-readable memory, or even the brain of a human being with eidetic memory.

If the composition of words is rendered into digital form, the file has a unique file size and each line of text has a unique checksum; but the novel itself is a uniquely identifiable sequence of alphanumeric characters. A computer can identify this novel in comparison to other digital files as a unique thing as easily as it can compare the digital images of two fingerprints and determine one of them to be a unique identifier of a single human being among billions.

Ever notice thieves and communists scream like Gollum “My precious! Mine! Mine! Mine!” the second you enforce the original property right?

–J. Neil Schulman, Tweet June 6, 2012

A thing which can be identified as a unique object qualifies as a thing that can be claimed as private property. The number of media carriers upon which this unique thing can be stored and displayed is a variable; yet there is a singular and unique thing that exists no matter whether the number of displays or carriers is the single manuscript upon which it was first imprinted or the millions of carriers upon which it is communicated to its intended audience.

To deny this property right is to deny that the thing exists, or that it is a commercial trade good. Without this recognition there is no thing that the audience may enjoy and no thing that its author has made for their use.

The distinction between these media-carried properties and other kinds of property is not a question of economics or morality.

The primary question is not who does or does not own this thing. That moral and economic question is answered when we have acknowledged that a thing exists. At that

point, those who believe in individual, selfish property rights grant the right of ownership to the human being who brought it forth from nothingness in an act of *ex nihilo* creation.

Or at least it is as close to nothingness that can be observed on a blank piece of paper, or gazing at a blank monitor screen, when I fill it in with avalanches of words.

**The persistent fallacy of the anti-IP crowd: all private property is an expression of human intellect. Private property is itself an idea.
–J. Neil Schulman, Tweet June 6, 2012**

Atheists these day debate with the religious about whether the universe is the product of dumb nature or intelligent design.

Atheists these days debate with the religious about whether God created the Heavens and the Earth.

Surely atheists do not need to debate with the religious about whether J. Neil Schulman created this essay you just read?

I've been cornered into writing about "intellectual" property for over three decades. It's been a distraction from the fundamental core arguments about the nature of property I've intended to make.

It's not an accident I titled this article "Human Property." I intended that title to have the impact of titles like *Capital* and *Human Action*.

It's not a complicated idea I'm trying to get across so I was able to be terse about it. Unlike Marx and Mises, I did not need to expound at some length.

But if shorter essays by Thoreau can inspire a Gandhi or Martin Luther King, I don't see any reason why my little essay on the nature of human property can't be as inspirational for a new generation of libertarians who have been lied to by moral idiots.

–J. Neil Schulman, from an email about this article written to Brad Linaweaver

My Unfinished 30-Year-Old Debate with Wendy McElroy

Three decades ago, at a libertarian meeting in Los Angeles, the program paired me with Wendy McElroy to debate the question, “Is Copyright a Natural Right?” Wendy argued against. Instead of arguing “for” as I’d agreed to I cheated by abandoning defense of copyright and instead offered my own brand-new theory of *all* property rights, including property rights in the products of authorship and invention.

In the thirty years since Wendy and I have both published on this topic, but in my view she has never gone beyond the original debate question by addressing my actual presentation.

A few days ago Wendy updated her first publication of her side of the debate and published it as “Contra Copyright, Again.”

Reprinted under a creative commons license, here is Wendy’s new article and my new reply.

–J. Neil Schulman



Author Wendy McElroy

Contra Copyright, Again By Wendy McElroy

Retrospective

Ernest Hemingway once wrote, “If you are lucky enough to have lived in Paris as a young man, then wherever you go for the rest of your life, it stays with you, for Paris is a moveable feast.” Los Angeles in the early ’80s was like that for libertarians. It brimmed over with supper clubs, student groups, small magazines, debates and conferences. Given the concentration of high-quality scholars and activists in the area, the explosion of activity was inevitable. Although the new-born Libertarian Party was extremely active, the circles in which I ran were generally anti-political or apathetic about electoral politics. They included the cadre gathered around Robert LeFevre, a sprinkling of Objectivists (mostly admirers of Nathaniel Branden), a few Galambosians, and as many Rothbardians as I could meet. And, then, Carl Watner, George H. Smith and I established our own unique circle by creating *The Voluntaryist* newsletter and re-introducing the term Voluntaryist back into the libertarian mainstream. A libertarian used book store named Lysander’s Books that I co-owned became the center of Voluntaryism.

One intellectual circle in particular exerted a profound influence on the development of my thinking on intellectual property: the anarcho-capitalists who banded around Samuel Konkin III (or, as he preferred, SEK3), many of whom lived in the same apartment complex as SEK3; the complex became known as the anarcho-village. (In truth, it was SEK3 and Victor Koman rather than the entire circle that exerted the influence.)

My first exposure to the theories that constitute intellectual property came from reading Ayn Rand,[1] but I gave the matter little thought. It was not until reading Lysander Spooner that I began to analyze the issue critically. Spooner advocated a rather extreme form of ownership in ideas. He once wrote, “So absolute is an author’s right of dominion over his ideas that he may forbid their being communicated even by human voice if he so pleases.”[2] I had adopted many of Spooner’s ideas wholesale but I balked at his view of intellectual property. Although I did not then question the claim that ideas could be property, I was disturbed by how closely so much of Spooner’s advocacy came to the Galambosian view at which so many of my companions laughed derisively. Galambos famously had a nickle jar into which he would deposit a coin every time he used a word that had been “invented” by someone else and to whom (in his opinion) he owed money for its use. I thought then (and now) that such ownership claims went against the free flow of knowledge required by a thriving society ... or a thriving individual, for that matter. In short, Spooner’s approach to intellectual property felt wrong.

At that same time, I was also engaged in indexing Benjamin Tucker’s 19th century periodical *Liberty* (1881–1908) and, eventually, I progressed into Tucker’s discussion of intellectual property in which he fundamentally disagreed with the views of his mentor, Spooner. The pre-Stirnerite Tucker considered the issue to be his only deviation from Spooner. As I read the very active debate within *Liberty*, I began to reduce my commitment to intellectual property, to narrow it. For example, I abandoned altogether the belief that inventions could properly be patented. My belief in copyright, however, was more persistent despite the fact that Murray Rothbard—my idol and my friend—was anti-copyright. Frankly, Murray and I never discussed that subject.

But SEK3 and I did. Many people found SEK3 to be a bit annoying in how he argued ideas. There was a persistence and casual assurance about him that irritated some but which I found charming. SEK3 was always available and “up” for gab-sessions that lasted for hours. He had an uncanny ability to find the strand of thought in your argument which could be reduced to absurdity. Some people bitterly resented this ability because they thought he was making them look foolish but it fascinated me and I found it compelling. Indeed, it had been a similar technique of arguing that had made me relinquish my belief in God at the age of sixteen. SEK3 now used the technique on me and, so, chipped away at my acceptance of copyright.[3] The last blow was dealt by the science-fiction writer and SEK3 cadre Victor Koman who asked me a pointed question at an otherwise forgettable party. Vic asked, “Do you really think you own what is in my mind?” As an anarchist who was then reading both Tucker and 19th century abolitionist tracts, one answer alone was possible: “No.” And, yet, if I claimed ownership over an arrangement of words he had read, then I was answering “yes” because that arrangement now resided in Victor’s mind. If I could compel him (as Spooner suggested) not to speak the words aloud, then I was making an ownership claim over another person’s body.

At that moment—and, granted, it took several months of consideration to reach that moment—I abandoned all belief in intellectual property.

One of SEK3’s cadre who never made the same leap was/is the science-fiction writer J. Neil Schulman. Shortly after my conversion experience, I was asked to debate J. Neil on the topic of copyright at a Westwood supper club that scrapped the dinner part of the evening in order to accommodate a longer program of debate, rebuttal, Q&A. (SEK3 may well have been the more logical choice but, as I said, he irritated some people.) The event was a rousing success in several ways. First, the large room was filled beyond capacity, with people choosing to stand for hours rather than leave. Brad (now my husband of over 20 years) attended as the representative of the Society for Libertarian Life. SLL offered 2 buttons: one pro- and one anti-copyright; as I remember, they sold out.

It was a long evening, mostly due to the fact that J. Neil went over his 20-minute time limit by about 30 minutes. Nevertheless, not a single person left and the Q&A was unusually lively. At first, I was disappointed because the questions were overwhelmingly directed toward J. Neil. But, then, I realized no one was arguing with me. Everyone was taking exception to his presentation on what he called “logorights.” At that point, I relaxed until, finally, the moderator had to cut off questions because the gathering was going beyond the time for which the room had been rented. A group of us adjourned to a Great Earth restaurant and continued the discussion.

J. Neil immediately began to write up his side of the debate and later published it.[4] I followed suit. Since I always write out my presentations, this merely required some polishing to produce “Contra Copyright” which appeared in an early issue of *The Voluntaryist* newsletter. A still more polished revision appears below.

Contra Copyright by Wendy McElroy

Copyright—the legal claim of ownership over a particular arrangement of symbols—is a complicated issue because the property being claimed is intangible. It has no mass, no shape, no color. For the property claimed is not the specific instance of an idea, not a specific book or pamphlet, but the idea itself and all present or possible instances of its expression.

The title of a recent book on intellectual property, *Who Owns What Is In Your Mind?*, concretizes a commonsense objection to all intellectual property: most people would loudly proclaim that NO ONE owns what is in their minds, that this realm is sacrosanct. And, yet, if the set of ideas in your mind begins “Howard Roark laughed” do you have the right to transfer it onto paper and publish a book entitled *The Fountainhead* under your own name? If not, why not? To say you own what is in your mind means you have the right to use and dispose of it as you see fit. If you cannot use and dispose of it, if Ayn Rand (assuming a still-living Rand) is the only one who can use and dispose of this specific arrangement of the alphabet, then she owns that sentence within your mind. And if she owns what is in your mind, you have violated her rights in writing or speaking it because you do not have permission to use her property.

I advocate a form of copyright—free market copyright. I view copyright as a useful social convention to be maintained and enforced through contract and other market (voluntary) mechanisms. This is in contradistinction to those who believe copyright can be derived from natural rights; in other words, ideas or patterns are property and their exclusive ownership does not require a contract anymore than preventing a man from stealing your wallet requires a prior contract.

Basically, the debate over copyright—or, more generally, intellectual property—comes down to two questions: What is property? What are the essential characteristics which make something ownable?: and, What is an idea?

Before going on to a discussion of theory, however. I want to address two implications that often lurk beneath criticism of free market copyright.

First: It is said that the marketplace cannot handle intellectual property issues. Those who contend that ten different people would publish *Hamlet* under their own names and, so, create cut-throated chaos, are using a form of the “market failure” argument which has been applied to everything from medical care to defense. Similarly, it is claimed, the market cannot regulate the publishing industry. The opposite is true. When I co-owned a used book store—a business which is virtually unregulated—I was astonished at how effectively the free market spontaneously set standards. It was not uncommon for stores in L.A. to know the specifics of a stolen book or a forged autograph the day after it had been spotted in New York.

Second, it is said that free market copyright would strip authors of valid protection or credit for their own work. When Benjamin Tucker—a 19th century libertarian opponent of copyright—was accused of stripping authors of protection, he replied: “It must not be inferred that I wish to deprive the authors of reasonable rewards for their labor. On the contrary, I wish to help them secure such, and I believe that there are Anarchistic methods of doing so.”[5] Equally, those who oppose state-enforced copyright are not seeking to victim authors but to use free market mechanisms to offer whatever protection is just.

Returning to theory ... The issue of copyright hinges on the question: can ideas be property? Which leads to another question: what are the characteristics of property?

Tucker addressed this issue in fundamental terms. He asked why the concept of property had originated in the first place. If ideas are viewed as problem-solving devices, as answers to questions, then what about the nature of reality and the nature of man gave rise to the idea of property? In a brilliant analysis, Tucker concluded that property arose as a means of solving conflicts caused by scarcity. Since all goods are scarce, there is competition for their use. Since the same chair cannot be used in the same manner at the

same time by two individuals, it was necessary to determine who should use the chair. Property resolved this problem. The owner of the chair determined its use. “If it were possible,” wrote Tucker,

and if it had always been possible, for an unlimited number of individuals to use to an unlimited extent and in an unlimited number of places the same concrete things at the same time, there would never have been any such thing as the institution of property.[6]

Yet ideas defy scarcity. Since the same idea or pattern can be used by an unlimited number to an unlimited extent in unlimited locations, Tucker concluded that copyright ran counter to the very purpose of property itself, which was to ascertain the correct allocation of a scarce good.

Copyright contradicts not merely the purpose of property but also the essential characteristics of property, one such characteristic being transferability. Property has to be alienable: you must be able to dispossess yourself of it. The individualist anarchist, James L. Walker, commented, “The giver or seller parts with it [meaning property] in conveying it. This characteristic distinguishes property from skill and information.”[7] When you buy the skill and information of a doctor who gives you a check up, for example, you don’t acquire a form of title, as you would acquire title to a car from a car dealer, because the doctor is unable to alienate the information from himself. He cannot transfer it to you: he can only share it.

It was this point, transferability, that lead Thomas Jefferson to reject ideas as property. Jefferson drew an analogy between ideas and candles. Just as a man could light his taper from a candle without diminishing the original flame, so too could he acquire an idea without diminishing the original one. Jefferson wrote:

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.[8]

When a poet reads or sells poetry without a contract, when he throws his ideas and patterns into the public realm, the listeners receive information, not property. For the publicized poems to be property they must be transferable, alienable. Yet, as the egoist J.B. Robinson said, “What is an idea? Is it made of wood, or iron, or stone? The idea is nothing objective, that is to say, the idea is not part of the product: it is part of the producer.”[9]

In other words, if the poet claims ownership to the pattern of words in his listener’s head, this reduces to a form of slavery since the ownership claim is over an aspect of the listener’s body: namely, his mind, his knowledge. Such a claim is comparable to saying you own the blood in someone else’s arm. Certainly, you could buy the blood—perhaps for a transfusion—but such a purchase would be contractual and not based on natural right.

Everyone owns the ideas within their own minds. If there is only one instance of a specific idea or arrangement of ideas—e.g. a writer who locks his novel in a desk drawer—then the idea is protected by natural right, by the author’s to self-ownership. He has right to live in peace and silence and maintain a locked desk; no one can properly break into his desk and steal his property. When an author chooses to publicize his ideas without securing protection based on a listener’s or reader’s consent, however, he loses the protection afforded by his self-ownership. He loses what Tucker called “the right of inviolability of person.”

To restate this: I own my ideas because they are in my mind and you can get at them only through my consent or through using force. My ideas are like stacks of money locked inside a vault which you cannot acquire without breaking in and stealing. But, if I throw the vault open and scatter my money on the wind, the people who pick it up off the street are no more thieves than the people who pick up and use the words I throw into the public realm. And, yet, the poet might respond, no one is forced to absorb the poetry floating through the culture. They do so of their own free will. Therefore, says the poet, there is an implied contract or obligation on the part of the listener not to use it without permission.

Victor Yarros, Tucker's main opponent on copyright in the 19th Century movement argued along these lines. He claimed, "All Mr. Tucker has the right to demand is that these things shall not be brought to his own private house and placed before his eyes." [10]

Tucker responded,

Some man comes along and parades in the streets and we are told that, in consequence of this act on his part, we must either give up our liberty to walk the streets or else our liberty to ideas ... Not so fast my dear sir! ... Were you compelled to parade on the streets? And why do you ask us to protect you from the consequences? [11]

Moreover, the introduction of an implied contract between the poet and listener is a two-edged sword. To fall back on some sort of implied agreement implicitly admits that copyright is a matter of contract, not of natural law for one does not need to fall back on contract to protect natural rights. If a man steals your money, there is no need to appeal to an agreement—implied or otherwise—to justify a demand for restitution. Restitution occurs because it was your money. Only when you are dealing with those things to which you have no natural right must you appeal to contract.

Historically, copyright has been handled differently than patents. Many people accept copyrights while rejecting patents. The distinction is usually based on two points: (1) literature is considered pure, personal creation as opposed to inventions which rely on the discovery of relationships that already exist within nature: and (2) independent creation of literature is considered to be impossible. Copyright is said to protect style or the pattern of expression rather than the ideas expressed. By contrast, most people agree that ideas themselves can be independently and even simultaneously created—for example, Walras, Jevons and Menger all separately originated the theory of marginal utility—but they do not agree that style can be independently or honestly duplicated.

The issue of duplication of style raises interesting questions. For one thing, it is not unknown for poetry, especially short poems, to closely resemble each other. Do these chance similarities constitute duplication? Do they violate copyright laws? If they don't, what prevents me from taking *Atlas Shrugged* and publishing it under my name after changing one word in each sentence? This would produce a similar pattern but not a duplicate one. If copyright would prevent me from doing this, then it is aimed not only at prohibiting exact duplications but at prohibiting similarities as well. And similarities are quite within the realm of honest possibility, especially when the guidelines of what constitute similarity are vague.

Many advocates of copyright would argue that honest similarities in nature are impossible or highly improbable. But laws should be based on principle, not upon probability. Tucker wrote:

To discuss the degrees of probability is to shoot wide of the mark. Such questions as this are not to be decided by rule of thumb or by the law of chances, but in accordance with

some general principle ... among the things not logically impossible. I know of few nearer the limit of possibility than that I should ever desire to publish in the middle of the desert of Sahara: nevertheless, this would scarcely justify any great political power in giving someone a right to stake out a claim comprising that entire region and forbid me to set up a printing press.[12]

In short, a question of right must be determined by a general theory of rights, not the likelihood of circumstances.

In regard to the ownership of a form of expression—of what is called “style”—Tucker believed that a particular combination of words belonged to no one; the method of expressing an idea was an idea in and itself and, therefore, “not appropriable.” As long as you are not claiming ownership of a specific instance of a book, but of the abstracted style of every instance of this book, you are claiming ownership of an idea.

Examples of styles or patterns surround us everywhere. In chairs, shoes, hairstyles, gardens, clothes, wallpaper, the arrangement of furniture ... patterns are everywhere. And if it is out of respect for style that arrangements of words cannot be duplicated, then for that same reason, a shoemaker cannot duplicate shoes. Women cannot duplicate hairstyles or clothes for, after all, these items express style as much as a sonnet does. Yet it is only with the sonnet, with literature that the originators clamor for special, legal protection. If copyright were not the norm, if all of us had not grown up with it, we might consider it as absurd as a house owner claiming special, legal protection of the pattern of colors with which he had painted his home or the arrangement of rocks in his garden.

Indeed, to be consistent, the copyright advocate has to reduce his position to similar absurdity. For example, not merely writing but all of speech is a personal form of expression; speech is an arrangement of the alphabet in much the same manner as writing is. Therefore, by the advocate’s own standards, a man should be entitled to legal protection for every sentence he utters so that no one thereafter can utter it without his consent. Lysander Spooner, a defender of copyright much quoted by libertarians, seemed to consider this possibility when he wrote, “So absolute is an author’s right of dominion over his ideas that he may forbid their being communicated even by human voice if he so pleases.”[13]

Think about that statement; it is frightening in its implications for the free flow of ideas and knowledge upon which human progress depends. I do not believe state-enforced copyright protects the just profits of an author. I agree with George Bernard Shaw who contended “copyright is the cry of men who are not satisfied with being paid for their work once but insist upon being paid twice, thrice and a dozen times over.”[14] I believe free market copyright would temper the immense profits that can be made from writing, and that they should be tempered because such profits do not reflect just rewards so much as they do a state monopoly.

Moreover, I do not believe that the absence of state enforcement would destroy literature. Most of the world’s great authors—Shakespeare for example—wrote without copyright. As for the possible destruction of the publishing industry, Tucker—a publisher—explained:

Why did two competing editions of the Kreutzer Sonata [a book he issued —WM] appear on the market before mine had had the field two months? Simply because money was pouring into my pockets with a rapidity that nearly took my breath away. And after my rivals took the field if poured in faster than ever.[15]

As a writer I am eager to maximize my profits. I am not so eager, however, that I would claim ownership to what is in your mind. My attitude toward writers and lecturers who throw their products into the streets and, yet, claim legal protection as they do so is the same as that once uttered by Tucker: “You want your invention to yourself? Then keep it to yourself.”[16]

The energy being expended in debating intellectual property would be better used in exploring methods by which the free market could protect the just rewards of intellectual products.

*Wendy McElroy (wendy@wendymcelroy.com) is author of several books and maintains two active websites: wendymcelroy.com and ifeminists.com. This article contains a new introduction and a revised version of McElroy’s “Contra Copyright,” *The Voluntaryist* 3, no. 4 (June 1985), <http://www.voluntaryist.com/toc.html>.

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[1]See Ayn Rand, “Patents and Copyrights,” in *Capitalism: The Unknown Ideal* (1970).

[2]Lysander Spooner, *The Law of Intellectual Property; Or an Essay on the Right of Authors and Inventors to a Perpetual Property in their Ideas* (1855), p. 125, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=2243&Itemid=27.

[3]SEK3’s views on IP are expressed in Samuel Edward Konkin III, “Copywrongs,” *The Voluntaryist* (July 1986), <http://www.lewrockwell.com/orig11/konkin1.1.1.html>.

[4]See J. Neil Schulman, “Informational Property—Logorights,” *Journal of Social and Biological Structures*, 13 no. 2 (1990), pp. 93–117, <http://jneilschulman.agorist.com/2009/12/classic-j-neil-informational-property-logorights/>.

[5]For further discussion of Tucker’s views on property and IP, see my article “Copyright and Patent in Benjamin Tucker’s Periodical,” *Mises Daily* (July 28, 2010), originally published in Wendy McElroy, ed., *The Debates of Liberty: An Overview of Individualist Anarchism, 1881–1908* (Lexington, 2003).

[6]“More on Copyright,” *Liberty* 7 (December 27, 1890): 5.

[7]“Copyright.—IV,” *Liberty* 8 (May 30, 1891): 3.

[8]Thomas Jefferson to Isaac McPherson (Aug. 13, 1813), http://press-pubs.uchicago.edu/founders/documents/a1_8_8s12.html.

[9]“A New Argument Against Copyright,” *Liberty* 8 (May 16, 1891): 5.

[10]“The Right to Authorship,” *Liberty* 7 (February 21, 1891): 4.

[11]Commentary on “The Right to Authorship,” *Liberty* 7 (February 21, 1891): 5.

[12]Commentary on Yarros, “More About Copyright,” *Liberty* 7 (Dec 27, 1890): 4, at 5.

[13] Spooner, *The Law of Intellectual Property*, p. 125.

[14]Quoted in Clarence Lee Swartz, *What is Mutualism?* (1927), <http://www.panarchy.org/swartz/mutualism.5.html>.

[15]Commentary on “The Reward of Authors,” *Liberty* 7 (January 10, 1891): 6.

[16]“The Knot-Hole in the Fence,” *Liberty* 7 (April 18, 1891): 6.

J. Neil Schulman Reply to Wendy McElroy

I could not blame Wendy McElroy for not being prepared to debate the new theory of property rights I first presented in debate with her, but she's now had thirty years to debate my theory and she has still never done it. For in that presentation I undercut all the assumptions she was prepared to debate and in effect left her to debate the straw man she brought into the room with her. She is still debating that straw man. She has never debated me.

Wendy was prepared to debate statist copyrights and patents. Wendy was prepared to refute the ownership of ideas. Wendy was prepared to argue that the intangible could not be owned. Wendy was prepared to argue that no one could own what existed only inside someone else's head.

I rejected all of those assumptions in the first five minutes of my presentation. I rejected both the terms "copyright" and "intellectual property" in the first fifteen minutes.

Maybe Wendy should have taken some notes and actually tried to answer my presentation. Instead, she went on with her pre-prepared speech and left it to the audience to listen and debate with me.

One of the audience members — Robert LeFevre — lent his endorsement to my presentation when I soon published it as a pamphlet. Unfortunately after thirty years LeFevre's actual words are in a storage locker in a box somewhere, and it will be a while before I can recover them.

What Wendy has never in thirty years addressed is that my logorights theory is not a theory of intellectual property but a new natural-rights theory of property deriving from the concept of "material identity." Previous theories of property made a distinction between real property — and Locke wrote about ownership arising from a man mixing his labor with land to homestead it — and everything else, which was regarded as ephemeral if not completely intangible. Nineteenth century libertarians divided along a false dichotomy because what property actually was and how it came into being had never been rigorously defined.

That's the task I took on in my debate with Wendy and in the articles that soon followed.

My argument should not be hard to understand for someone like Wendy who has a familiarity with Ayn Rand's Aristotelian-based epistemology and ontology.

If an author writes an original work that work is not the materials upon which the work is printed. This might have been a hard concept to understand in the age before computers — although I think Morse and Tesla could easily have grasped it — but an author created something which is objectively real and can be apprehended, as can any real thing, by observing its component properties.

When I completed writing my first novel *Alongside Night* it was not something intangible existing only in my mind. The process of writing was making something that was objectively real and capable of being seen by others than myself. The whole nature and purpose of authorship is other-directed.

The first medium that carried the novel was typing paper; but over the years this real and new thing I made has existed not just as typescript but also in bound books, on computer disks, as information objects transmitted over media both wired and wireless;

and soon to be both an audio dramatization from Sound of Liberty/ARTC and a movie produced and directed by me, from my own screenplay adaptation.

None of these things are ideas. None of these things owe their existence to what is in someone else's head. All of these things are reflections and usages of a thing I made and the component properties and uses that can be extracted from the whole.

I have used several different terms to explain this over the past thirty years since my first presentation. I have called these things a “logos” and the property rights in them *logorights*. I have used the terms “informational property” and referred to the “material identity” which makes anything ownable as property.

I specifically addressed the necessity of property, to be an economic good, to be scarce, and explained how a property, to be ownable, does not need to be limited in all dimensions (land ownership, for example, does not own the unlimited sky above it), but only in some dimensions.

I've explained how the limits of what a specific logos or information is by the Law of Identity makes it a scarce item of commerce, no matter that there be a single copy or a trillion. The copies being identical to the original, the number of existents vary but the entity — thing — itself remains unique and therefore scarce because copying does not change its defining identity.

As I recently posted elsewhere:

How many copies of *Atlas Shrugged* exist? Millions. How many *Atlas Shrugged*s are there? One. *Atlas Shrugged* is just as scarce a commodity as the day Ayn Rand finished the manuscript. It was one *Atlas Shrugged* then and one *Atlas Shrugged* now. *Atlas Shrugged* is a unique thing. Only the number of carriers of that singular and scarce object varies.

I've also explained how separating out rights for different uses of that property — and licensing them — is no different than leasing a house or apartment, or dividing use of a space by time (as in a timeshare), or selling a ride in a car as opposed to the car itself — and that the assumption that, in allowing others to observe and make use of a created work of distinct material identity the owner abandons his ownership of the thing, necessarily must annihilate the concept of private property entirely.

Most recently, in an attempt to leave in my rearview mirror the straw-man debates about owning ideas, intangibles, and what is in other people's minds, I have devised the term Media Carried Property (MCP) as a replacement for the misleading term IP — even when by that abbreviation I meant not Intellectual Property but Informational Property.

MCP says what I mean better and without as much baggage.

Wendy has never addressed any of this. Perhaps she believes one has to be long dead before one's ideas should be addressed.

Or maybe Victor Koman was just more dashing than I was.

The Libertarian Case for IP

Summary:

“Ideas” can’t be property.

“Information objects” may be property but information as such can’t be property.

Only things can be owned.

If a thing can be copied then it’s a thing.

Property rights aren’t the property itself. You can’t point to a right.

The debate about IP is a moral debate about human action, the same for any other property right. If you think a novel isn’t scarce, write one people beg to read.

Informational Property: Logorights

“Preface”

This article was originally my half of a November, 1983 debate, at a supper club meeting of Los Angeles-area libertarians, on the question “Is Copyright A Natural Right?” I revised my debate presentation for publication as a booklet published on December 2, 1983 under the title *Toward A Natural Rights Theory Of Logoright* and, on March 16, 1989, for on-line publication through the Connected Education Library, but it is still helpful to understand that these arguments are largely directed to libertarians who already agree with the fundamental concepts of natural rights, or at the very least presume a sympathy with libertarian and natural rights philosophy and philosophers.

It is generally thought that discussion of rights is a political or ethical issue. In fact, the argument must begin at the level of basic epistemological and metaphysical premises and proceed from there.

Antebellum debates on slavery hinged on the question of whether Blacks were People, thereby having rights, or whether Blacks were only animals, and therefore could be the property of People. Political analyses were being made by Southerners in which they attempted to demonstrate that, economically, slavery was good because it benefited the Southern economy. And even moral debates hinged on the metaphysical question: if slaves weren’t people, but were animals, then what could be morally wrong in owning them?

It did no good to discuss the morality or economics of slavery until one had arrived at the simple metaphysical fact that skin color does not definitively answer the question: What is a Human Being?

Moral and political questions often hinge on such differing perceptions of reality. This is one reason such discussions are often so heated: differing premises at these levels will make one question the sanity and logical faculties of someone who disagrees with one’s own obvious conclusions. The feeling for someone who has a divergent vision of reality is: “He must be blind or crazy if he can’t see something as clear as daylight!”

So it is that on an issue involving “rights,” one feels an opponent is not merely wrong, but unbelievably wrong. Even among professed advocates (and practitioners, one hopes) of reason, it makes it hard to understand how one who disagrees can be so obstinate on so easy a question.

That there are disagreements about natural rights even among strict advocates of them proves that the question is harder than we might have originally thought.

Therefore, let advocates of human rights not trade insults, but get down to the business at hand, which is establishing the premises from which we’re arguing. Then one can either see whether our views are fundamentally incommunicable to another, or find basic agreements and proceed from there.

“Introduction”

I’d like to start off with an image to have in your minds during the course of this article—and this image is a mnemonic— a memory aid—for a point I want you to remember.

You’re in the Land of Oz, and you come across Dorothy, Tin Man, and Scarecrow at a fork in the Yellow Brick Road leading to the Emerald City.

Dorothy is arguing to go down one fork of the road, and Scarecrow is arguing that they go the other way.

After the debate between Dorothy and Scarecrow has gone on pointlessly for what seems an eternity, Tin Man turns to Dorothy and says, “We’re never going to settle anything this way, Dorothy. Don’t you realize that you’re arguing against a Straw Man?”

Now, I didn’t say that just to make an atrocious pun—I want you to keep that image firmly in mind, and I think this will help.

The reason I started out with this mnemonic—this memory aid—is that I don’t want to have to answer or defend all the theories of “intellectual property,” “copyright,” and “patent law” that I will not be advocating herein.

So let me start out by stating what I am not talking about, when I advocate what I will eventually be defining as “logorights.”

I am not talking about a grant of privilege from the State. If it can be demonstrated to me (but I don’t think it can be) that the only way the concept I am advocating can exist is through the State granting it as a privilege, then I will concede outright that it has no place in natural rights theory or practice, and the concept should be abandoned.

I am also not going to be talking about a defense of ideas as property, or defending what historically has been called intellectual property. Whatever the merits of these concepts, they are not part of the concept I am going to be putting forward here. Therefore, any attack on “logorights” which involves disproving the validity of ideas as property or intellectual property will be arguing against a Straw Man.

What I am going to be doing is to put forward what I believe to be a new and original concept of copyright—a word which I’ll be replacing in a few hundred words as inadequately defined for the concept I’m really advocating.

“Defining A New Concept”

There are two kinds of definitions that can be given.

The first way to define a concept is with a lexical definition—that is, with a definition by other words, such as you’d find in a dictionary.

The second way to define a concept is with an ostensive definition—that is, with a definition abstracted by pointing out with several examples just what it is you’re trying to

define, and demonstrating what is common to each example and can therefore be induced from the examples as an isolated concept.

With a new concept, it's always better to give the ostensive definition before the lexical, so you can get an idea of some of the contexts in which the new concept appears.

So before I give you a dictionary definition of this new concept, I'm going to define it by example several times. I think the best first example is to be found in the following question:

Is computer hardware the only thing that can be property, or can computer software be property also?

And I'd better define those terms for those of you who aren't familiar with computer jargon.

In computer terminology, hardware is the computer itself and all the machinery used with it—the microprocessors, the disk drives, the monitor, the printer—and software is all the recorded orderings of bits—recorded information signals—that you feed into the machinery to make it operate.

And let me be exact in my meaning: because a computer diskette—a round piece of plastic with a magnetic coating—is what software is usually stored on, it is common use to refer to computer diskettes as “software”—but really, the diskette is hardware, too—and the information on it is actually the software.

If you don't believe me on this last point, then listen to the language that comes out the mouth of a computer user who plunks down several hundred bucks for a package of diskettes labelled “Wordstar” that the salesman said contains information telling the computer to do word processing, if, when the user gets it home, she discovers that she's just purchased two diskettes with random, meaningless characters.

Is it the diskettes themselves that the user has just paid three hundred bucks for? If so, she just got overcharged by several hundred dollars—she can buy a package of blank diskettes for around ten bucks.

Okay, here's my second example: the same concept in a different context.

You go into a Waldenbooks and plunk down cash for a book that says on the cover “*Atlas Shrugged* by Ayn Rand.” You get it home ... and the first sentence is, “It was the best of times, it was the worst of times.”

Now, what you bought is a book and this book has got everything that makes a book a book: a binding, hundreds of sheets of paper with printed ink impressions on it, and a cover. Let's even pretend that the book you took home has the same number of pages, the same dimensions and weight, the same binding and style of printing as the book with the composition called *Atlas Shrugged*. Do you have any just cause of complaint if the composition of words inside the book turns out to be something other than what the cover says? If you answer no, then you got everything you paid for. But if you answer yes, then you are saying that the composition of words makes this book a different commodity from the book you thought you were buying, and therefore you are rightfully entitled to a copy of the composition of words labeled *Atlas Shrugged*.

Next definition by example:

A college student figures out a way to put together a few commonly available hardware items into a cheap device that moistens stamps without having to lick them. Nobody ever has put together these commonly available items in this configuration before. Has she

invented anything? Is there anything new that didn't exist before? Has she, in effect, performed an act of creation?

Last example:

An artist does a design logo for a company's product—let's call the product a stamp moistener called Stamplix. Stamplix stamp moisteners are put on the market with that design logo on it ... and two weeks later the company's competitor puts that same Stamplix logo on a different type of stamp moistener they're marketing in competition.

Is that second company violating anybody's property rights?

Now you might have already abstracted the concept from the examples—but I have to assume you haven't for the sake of completeness. In the first case—software—what I was discussing was orderings of bits; in the second case, the composition of words in a book; in the third case, a new configuration of materials; in the fourth case, an identifying mark.

And, what is common to each of these is "logos."

"Logos" was a word used by the ancient Greeks. In fact, logos was the word the Greeks themselves used for "word." But they meant a good deal more than that: logos meant not only "word" but also "thought," "speech," "science," "study," "reason" and "rational principle." Logos meant the pattern of creation manifest in the universe—what we libertarians might refer to as the principle behind natural laws and natural rights.

Later on, the Christians adopted Logos to mean the Second Person of the Christian Holy Trinity—identified by them as Christ when according to them he visited Earth—and the Gospel of St. John accordingly starts out, "In the beginning was the Word, and the Word was with God, and the Word was God."

Logos meant "knowledge." It's the root behind the suffix "-ology" found at the end of biology, psychology, technology, ornithology, herpetology, and radiology.

Logos is the root word behind "logic."

Logos is also preserved in the modern words "logistics," "logarithm," and "logo"—short for a commercial logogram.

In using the word "logos," I'll be going back to what is meant by all those usages, all of which refer to an observable order, array, pattern, form, or identity to be found in the Universe.

By logos I mean exactly: an order, array, pattern, or form of information which can be imposed upon or observed in a material substance: specifically, a thing's material identity.

It is the logos of bits imposed onto a blank computer disk that makes it software. It is the logos of words in a book that makes it a novel. It is the logos of an object to make it perform a particular task that makes it an invention. It is the logos of a mark that gives it the ability to identify a particular product.

And it is property rights in logos that I'll be advocating in this article.

Earlier I mentioned that the word copyright is inadequate to define the new concept being advocated: property rights in logos.

The new word I'm going to use for property rights in logos is, as promised before, "logoright."

Now, for me to defend a particular kind of property right as being a "natural" right relating to the concept of identity, we need to understand, first, what do we mean by "identity"; second, what natural rights and property rights are in general; third, what property is in general and how it comes to exist; and fourth, how property rights are established and what they mean in practice.

Only after that ground is cleared is it possible for me to get to the case for logorights in particular; but by that point, the logoright case will be seen as only one instance of a general theory arguing that ALL property rights derive from Identity.

“Things and Their Observers”

Metaphysics as a study questions as one of its subjects what constitutes an entity and what constitutes its identity, or to phrase it more colloquially, what a thing is and what is its “thingness.” Epistemology asks how we can know whether and what a thing is. Where one begins and the other leaves off is the main event in the history of philosophical debate.

Let’s start with several divergent views.

In the Platonist view, identity is not an attribute of a material entity but, merely or not, an attribute of a Soul, or Ego, or Mind viewing and manipulating this universe in which we exist but not itself being a part of it. Existence does exist but it is only the faculty of Reason that breaks existence down into “identifiable” parts. If a soul/ego/mind perceives a pattern on a thing, the perceived identity fundamentally remains an attribute of the soul/ego/mind, rather than the thing itself which is merely a poor copy of the Original. Identity in this view resides not primarily in those Things that Exist, but to the Consciousness which is apart from Existence.

The Nominalist view would be the same view of Identity as the Platonists, except that the Consciousness in question is part of Existence. But in any case, “identity” still refers to the observation rather than that which is observed: existents still have no identity of their own, apart from identifications made by souls, or egos, or minds.

The view to which I subscribe, which I would classify in this respect as Randian, neo-Aristotelian, or “Objectivist,” is that Identity is a fundamental attribute not of Consciousness as such, but of an Existing Entity, whether or not a soul/ego/mind chooses to perform an act of identification of that Entity. This is my understanding of what Identity means: that the thingness of a thing is not only that it exists independent of our senses, but that each entity has a specific nature, with specific attributes and features, that makes it what it is independent of our senses. Whether or not a soul/ego/mind is part of existence itself is moot: in either case, a soul/ego/mind may impose an attribute on a thing, and thereafter that attribute is an attribute of the thing itself: something which can be observed, by that or any other soul/ego/mind, as an objective attribute of that imposed-upon entity.

Continuing: if an entity has within its nature specific attributes that are its identity, then either:

(I) One or more of those attributes can be observed in or duplicated onto another entity, making them in that respect identical; or

(II) An attribute cannot exist twice or more, or be duplicated: no two things could share any attribute, and therefore each existent would be in all respects a different entity from every other existent.

Since, obviously, (II) reduces to epistemological absurdity instantly (if no attributes may be duplicated or shared, we would have no way of inducing universal concepts from reality at all), then logically an attribute, or attributes, can be duplicated. And if all attributes are duplicated, we now have two existents which are, for all intents and purposes, the same thing: two separate existents are in the respect under consideration, the same entity. They are identical.

Some corollary premises follow:

Corollary One: There are fundamentally two things a consciousness can do with an entity: observe it, inducing universals which construct percepts and build into concepts; or, it can impose new attributes in that entity.

Corollary Two: If a new attribute is imposed on a thing, that thing, in that respect, is different from the way it was before.

Corollary Three: If a new attribute imposed on an entity changes the fundamental nature of an entity, it becomes a new entity entirely.

Corollary Four: In the case that a particular attribute, or set of particular attributes, defines what a thing is, that attribute or attributes define what is the thing itself: they are that entity's identity.

Corollary Five: Impose this identity on a thing, it becomes an entity of that identity: a thing of that type. Remove that identity, it is no longer that thing.

Now the metaphysical question on which answer my logoright position will later rest: Are two separately existing Entities, sharing the exact same Identity, (A) identical in themselves (that is, metaphysically the same Entity, though observably not the same Existent, since each exists apart from the other), or (B) not identical in themselves but identical only to the consciousness that perceives them.

I see the answer is necessarily (A), for the same reason that I rejected the view that an attribute can't exist twice or be duplicated: if no two existents can share any attribute, and therefore each existent is in all respects a different entity from every other existent, then we would have no way of inducing universal concepts from reality at all: epistemology itself, by failing to answer the problem of universals, would reduce to chaotic absurdity.

I also believe that answering (B) at this point, even starting with Objectivist premises, makes one, for all practical intents and purposes that follow on this question, either a Platonist or a Nominalist. That may be all well and good when discussing realities beyond our experience, but it is to the "neo-Aristotelians" or "Objectivists" that I will be directing the remainder of my argumentation, for I believe that regarding the universe we find ourselves within as anything less than real leads one quickly to a philosophical discussion suited only to the Afterlife ... which is where denying everyday reality delivers one rather quickly.

"Natural Rights and Property Rights"

Natural rights and property rights theory has a long history of development, but it is my purpose here to define natural and property rights then move on, not trace their history.

And, the best short definition of natural rights and property rights I can give you is to be found in five paragraphs from Ayn Rand's essay, "Man's Rights," in the book *The Virtue Of Selfishness*—Copyright 1963 by The Objectivist Newsletter, Inc., and reproduced here under the Doctrine of Fair Usage:

"A right is a moral principle defining and sanctioning a man's freedom of action in a social context. There is only one fundamental right (all the others are its consequences or corollaries): a man's right to his own life. Life is a process of self-sustaining and self-generated action; the right to life means the right to engage in self-sustaining and self-generated action—which means: the freedom to take all the actions required by the nature of a rational being for the support, the furtherance, the fulfillment and the enjoyment of his own life. (Such is the meaning of the right to life, liberty and the pursuit of happiness.)

"The concept of a 'right' pertains only to action—specifically, to freedom of action. It means freedom from physical compulsion, coercion or interference by other men.

“Thus, for every individual, a right is a moral sanction of a positive—of his freedom to act on his own judgment, for his own goals, by his own voluntary, uncoerced choice. As to his neighbors, his rights impose no obligations of them except of a negative kind: to abstain from violating his rights.

“The right to life is the source of all rights—and the right to property is their only implementation. Without property rights, no other rights are possible. Since man has to sustain his life by his own effort, the man who has no right to the product of his effort has no means to sustain his life. The man who produces while others dispose of his product, is a slave.

“Bear in mind that the right to a property is a right to action, like all the others: it is not the right to an object, but to the action and the consequences of producing or earning that object. It is not a guarantee that a man will earn any property, but only a guarantee that he will own it if he earns it. It is the right to gain, to keep, to use and to dispose of material values.”

Now, Rand uses two phrases in the section I just quoted which give us the beginnings of what property is and how it comes about. So I'll focus on these then expand on them in detail.

The first phrase, when interpolated slightly, is: the product of a man's effort.

The second phrase is: material values which are gained, kept, used, and disposed of.

And these two phrases lead us right into the discussion of what property is and how it comes into existence.

“The Creation of Property”

What does it mean to say that property is the product of a man's—or using a word I prefer, a Person's—effort?

Do we mean property is that which a Person “creates”?

If so, we need a concept of “creation.”

We are told, by physicists and chemists, that we live in a universe where matter and energy can be neither created nor destroyed, but only changed. This change may include the transformation of matter into energy—or theoretically energy into matter—but existence does not allow us the possibility of creation ex nihilo—out of nothingness.

If we start with this premise then it becomes curious—at the very least—how human beings have talked casually for quite some time about how anybody “creates” anything.

Why do we speak of engineers “building,” musicians “composing,” architects “designing?” Each of these speaks of people, by their actions, bringing into existence something that wasn't there before.

Here's where the concept of logos comes into play again.

Creation is a Person's action which imposes that Person's logos on something which exists to give that thing a unique identity it did not previously have.

The fundamental act of creation is the act of patterning a logos on something: patterning notes into a musical composition, patterning words into a novel, patterning bits into computer software, patterning ink into a blueprint, patterning steel into an automobile, patterning images and sound into a movie, patterning furrows into a farm, patterning flour, water, and yeast into bread.

There are, of course, questions about greater and lesser orders of logos that can be brought up now. But I am not arguing that every act of creation is on an existent that previously had no identity at all. I am merely saying that the act of creation is the act of

imposing an aspect of a Person's identity—a logos—on something to give that object an identity it did not previously have.

“The Thermodynamic Paradigm”

As a paradigm, but one which I think is useful only in proper context, let's consider creation in thermodynamic terms as a localized and continuing lowering of entropy.

Entropy is that universal process which takes things from a state of greater improbabilities to a state of lesser improbabilities—commonly thought of as the decay of order into chaos.

Creation—the act of imposing on natural objects a logos not naturally found—is the act of moving things from a state of lesser improbabilities to a state of greater improbabilities.

Some specific examples: iron and carbon are both elements found in nature—in fact, iron ore can contain carbon in large amounts. But steel—which requires the combining of a specific ratio of iron to carbon at specific temperatures for specific spans of time—is rarely if ever produced by the automatic processes of nature.

If you make iron and carbon into steel, the resulting substance is much less probable—therefore it is tempting to use the language of thermodynamics and say that an act of taking iron and carbon and creating steel is lowering the entropy of that iron and carbon. If you take that steel, and press it into rectangular sheets of even thickness, length, and width, the result is even less probable—therefore it is tempting to say that the act of finding steel and creating sheet metal out of it is lowering the entropy of that steel.

And, if you take that sheet metal, form it into the body of an automobile, and paint it so the steel doesn't rust, the result is less probable still, and it is tempting to say that the act of taking sheet metal and creating painted auto bodies is lowering the entropy of that sheet metal.

One should resist the temptation. Taking the “lowering entropy” argument too far into the area of physical thermodynamics runs one quickly into problems of both fact and theory; the comparative “entropy levels” of a car, a piece of junk, and a chunk of ore are incalculable. Nevertheless, I believe the “entropic” paradigm of regarding creation as a “calculable increase in improbability” is sound within the context of information theory, where one discusses the “entropy” of a signal; and, in fact, I'm told there are existing formulas, used by the Search for Extra-Terrestrial Intelligence (SETI), to calculate the “improbabilities” of a signal being a “natural” occurrence as opposed to being artificially generated “information.”

Unless one accepts a “Watchmaker” argument about the creation of Earth—that in fact what we believe to be nature is in fact the artifice of an earlier Creator—bridges are less probable than rivers, symphonies are less probable than bird- songs, and houses are less probable than caves. But regardless of whether the Watchmaker under discussion is mortal or deity, engineers, composers, and architects each make their surroundings more improbable of existing than it would be without their intervention.

For example, scientists know that Mars has water, so a Martian river isn't all that improbable; but photographic evidence of an artificially constructed bridge across such a Martian river would double the number of planets in the universe which we would know to have hosted intelligent life ... likely to be, even without cynicism, one of the most improbable things found.

Specifically, then, creation is the act of patterning less improbable substances and objects to produce things more improbable of having resulted from the automatic processes of nature.

“Defining Property”

Now, the only sort of creation we’re concerned with in this discussion is the creation of property—and we find that “things rarely if ever produced by the automatic processes of nature” is a good jumping off point for defining property.

What we may, in one sense then, define property as is: that which a Person makes improbable enough to be generally recognized as an “artifact.”

If you then compare this definition with the two phrases drawn from Rand—the product of a man’s effort and material values which are gained, kept, used, and disposed of—you find no contradictions and a good deal of implied overlap.

Now I want to focus on Rand’s phrase “material value” long enough to point out the following: Rand’s definition of “value” is “that which one acts to gain or keep” and a material value would by her definition be “something material which one acts to gain or keep.”

Since the question of materiality is one which will come up again later, I wish to point out that Rand’s use of the word material in this context did not prevent her from referring to as property things not comprised of matter such as radio frequencies, in her essay “The Property Status of Airwaves” in *Capitalism: The Unknown Ideal* or patents and copyrights in “Patents and Copyrights,” her very next essay in that book.

Before I leave the area of defining property, I wish to bring out what libertarian property theoretician Robert LeFevre used for his tests in his book, *The Philosophy Of Ownership*.

LeFevre asked three questions:

First, is that which is said to be property claimed by someone?

Second, does that which is said to be property have boundary limits?

And third, is that which is said to be property under an owner’s control?

And these lead us to the next discussion necessary before we get to logorights:

“Establishing and Using Property Rights”

Let me quote once more Rand’s statement on property rights:

“Bear in mind that the right to a property is a right to action, like all the others: it is not the right to an object, but to the action and the consequences of producing or earning that object. It is not a guarantee that a man will earn any property, but only a guarantee that he will own it if he earns it.”

Therefore, a property right by its very nature refers to an action with respect to a property.

The question arising in the establishment of property rights is: what actions are required to gain rights with respect to that property?

And, the definitions of property we’ve already discussed provide (in no particular order) the following answers to the establishment of property rights:

That which is to be your property must be valued—that is, you must act to gain or keep it.

That which is valued as your property must be claimed as property—that is, it must be publicly available knowledge that you are declaring it your property.

That which is being claimed as property must in some sense be a product of human effort. It must be created—that is, a Person must take it from a state of lesser improbability to a state of greater improbability.

The claim to the property must be defined within observable boundary limits.

And, the property must be subject to the control of the person claiming it.

The question arising once property rights have been established are: what actions is the owner permitted respecting that property?

And, the question of what actions the owner is permitted respecting that property are dependent on the question: what rights specifically does the owner have in this property?

The best way to show the import of this is to give some examples:

Do I have the right to build a house on this lot and live in it?

Do I have the right to raze the building on the next lot over and build a three-car garage?

Do I have the exclusive right to use this driveway, or is there a public right-of-way?

Do I have the right to eat this sandwich?

Do I have the right to divert this stream so the water doesn't flow to the next parcel of land?

Do I have the right to broadcast radio signals on a certain frequency, at a certain power output, from a certain location, during certain times of the day?

Do I have the right to take this book home from the bookstore—and what may I do with it when I get it home?

Note that none of these actions requires the property itself to be anything: the property right—being a statement referring to the definitions of moral action—adheres not to the property, but to the owner and actions that owner may or may not take with respect to that property.

One last set of property rights concepts, and then we'll be ready to discuss logorights.

“Exclusive Use, Consumption, Bundles of Rights, and Properties”

From the instant a property is created and claimed by a Person, all rights to that property are held by that Person—who I'll refer to as the property's First Owner.

Since property results from an act of creation, it should come as no surprise that the answer to the question of what an owner of may do to a property includes its consumption. Ultimately, an owner may exercise property rights to the complete destruction of that property, without the consent of anyone who does not share rights in that property.

Again using a thermodynamic paradigm, it would be tempting to say that the entire process of owning property begins with a lowering of its entropy, continues with maintaining its entropy at a level relatively lower than that of the natural substances from which it is made, and ends with consuming that property until its entropy is as high as the condition in which its First Owner found it—at which point it is consumed entirely and ceases to be property as such.

What ownership of a property means is that all rights to exploit, consume, keep unconsumed, control, destroy, trade, or otherwise decide the ultimate disposition of a property may be made by its owner without sharing the decisions regarding the property—or its benefits—with anyone else.

That property—by its very nature—is owned to the exclusion of all non-owners: any use of that property by anyone other than the owner requires the owner’s permission.

When an owner creates a property, that property is totally and exclusively its owner’s.

Here we have the necessity of property rights to begin with: the origin of property rights stems from the need of adjudicating conflicting claims about the exclusive use of something.

Since a property can only be owned exclusively, property rights are the means of determining who holds the exclusive claim on that property.

Utilitarians argue that these claims should be adjudicated for the benefit of society as a whole: “the greatest good for the greatest number.” The utilitarian premise is at the base of all non-theistic political systems: democracy, republicanism, communism, fascism, socialism, national socialism, and militarism. Even the worst dictator claims to act in the best interests of “the people” or “the will of the blood” or “the proletariat” or “the folk.”

Libertarians, on the other hand, say that property rights adhere not to society but to the individual Person, arising out of the specific nature of humans having to control their material environment in order to survive as rational beings. To survive, a human being must be able to control the environment—that human being’s domain. To control that domain, the human being must identify the nature of each existent in the environment, and arrange them all in such patterns that they contribute to the purposes of survival and well-being.

Since the right to pursue survival and well-being is distributed universally, no good or utility to one person or group can be greater than the good or utility of any other person or group. There is no possible “calculus” of good that can say that one person’s or group’s rights outweigh another’s; a right is a moral absolute allowing no exceptions or head-counting.

The necessity of property being, by nature, exclusive stems from the necessity of dedicating an object to a specific function—giving it a form to perform that function—and having some security that the form to perform that function will not be interfered with by someone else.

And, this is precisely what the act of creating a property is: the act of imposing a new form on something found in a more probable condition to dedicate it to a function that is highly improbable of being performed without that imposition.

The creation of property, therefore, is an act necessary to human survival—and as such the requirements of our survival as human beings sanction our taking those actions, and those sanctions are called rights.

Now, because the first ownership of any given property is total and exclusive ownership, the owner can dispose of the property in any fashion that owner sees fit.

The owner can choose to abandon the property—in which case it reverts to a state of not being owned anymore.

The owner can choose to sell the property.

The owner can choose to break up the property into smaller parts, and sell those parts.

The owner can turn it into junk—then call the junk art.

Switching context to the first definition of “property” found in *Webster’s Collegiate Dictionary*—“a quality or trait belonging to and especially peculiar to an individual or thing”—it is correct to say that this property consists also of its constituent “properties.”

And we can see from this first definition how use of the word “property” as something belonging to an owner came about: that which was owned was thought of as a quality or trait—a “property” in the first definition—of the owner itself.

Therefore, it is etymologically correct to refer to each property—each quality or trait adhering to that which is owned as a whole—as a property as well.

This leads us to the additional possibility that an owner may choose to break the property down into its constituent properties—that is, each of the various qualities or traits adhering to the property as a whole—and sell, as a separate property, the right to exploit that quality or trait.

When this is done, a property is said to be made up of a bundle of rights which are then broken into distinct and separable rights—each separate right referring to a separate action that can be taken with respect to the property in question.

Two cases showing how “bundles of rights” are dealt with in respect to land use will illustrate this.

First case:

If I own a parcel of land outright, then I own all the rights—the entire “bundle”—in that parcel of land, and I may exercise any and all of those rights as I see fit.

As I’ve said, this is the situation enjoyed by a property’s First Owner or creator.

Second case:

However—and this is a big however: a previous owner may have broken up the bundle of rights on her parcel of land—the bundle of rightful actions that may be taken with respect to that land—and sold me only the single right to build a house on that land. The right to dig a coal mine there can be owned by someone else.

In this case, then, the rights to the various actions that can be taken with respect to it have been divided up by quality or trait among more than one owner—and the owner of each particular property right must exercise that right in such a way that it does not interfere with rights held by other rights- holders.

The various discrete properties taken from the original property are still owned exclusively—but the original property itself is no longer under the exclusive domain of a single owner.

We are now ready to ask whether there are, in fact, property rights in logos—whether logorights can be property.

“Does Logoright Exist?”

Earlier in this discussion, I referred to the necessity of imposing a logos on material objects as a precondition to creating them as property.

That is not the question under discussion.

Having established that an object receiving an imprint from a Person’s logos becomes that Person’s property—has it been established as well that the logos which the Person is imposing also can be owned as a separate property?

The answer is yes.

Here’s how it happens.

When a logos is imposed on matter, creating a new property, the logos becomes a material quality of the property it is imposed upon. Simultaneous with the creation of a new property, the logos becomes the trait of that property to display the logos itself, which includes the possibility that the logos can be copied onto other matter and make that property as well.

Starting from the creation of a new property, the First Owner has total and exclusive ownership of that property and all its different parts, qualities, and traits: all its different properties.

One of the properties included in this total ownership of the created property is therefore the logos itself.

Consequently, if the First Owner—or any subsequent owner of the total property—decides to break the property into bundles of rights—and maintain ownership of some of those rights while selling others—this is perfectly within that owner’s prerogatives.

Now, this next point is crucial:

Placing any restrictions on how the owner may dispose of the property—or its constituent properties—would deprive that owner of the exclusive and total ownership which belongs to a first owner.

You cannot attack the rights of a total owner to divide up rights to that property without destroying the concept of property being exclusively that owner’s.

And, a property right not exclusively owned is not a property right at all.

Once the property is broken up into separate properties— each property requiring a separate right to exploit that quality or aspect—each property right from the original bundle of rights can be traded separately.

Remember: rights—being moral sanctions of what action a Person may take with respect to a property—adhere not to the property itself, but to the owner.

If you declare that property rights are inherent in the property rather than in the owner, then you are reduced to the absurdity of saying that property—apart from the actions of its owner—is capable of committing moral or immoral acts.

Thus, is it perfectly within the prerogatives of that owner to maintain ownership to the rights in the logos—the logorights—in that property, by valuing it, claiming it, defending its boundaries, and continuing to control it.

“Four Tests of Property”

Let’s take those four points one at a time.

First. Is the logoright of value?

Yes. Remember Rand’s definition of value: that which one acts to gain or keep.

The owner has either created the logos—thus demonstrating that it is something worth gaining—or the owner maintains ownership in it—thus demonstrating that the logoright is something worth keeping.

If you say the logos doesn’t have value, then why does imposing a logos on two dollars worth of computer diskettes make them several-dollars worth of software?

A blank diskette and a diskette with a logos of information on it are two separate goods with two separate qualities: two different properties which can easily be told apart.

Perhaps you can’t tell those diskettes apart by looking at them, but my computer surely can: if I stick in one diskette with a certain logos of information on it, the computer’s display gives me an OPENING MENU. When I stick in a blank diskette— otherwise identical—it says: NOT A VALID SYSTEM DISK.

And if a logos has no value as a separate property from that object which it is imposed upon, why would you be upset if you brought home the book you thought was *Atlas Shrugged* and found that the first sentence was not, “Who is John Galt?”

To state the principle explicitly:

If a logos has no value in itself, then removing it from the objects on which it is found should make no difference in the values found in those objects.

As a corollary: the value of the logos is demonstrated by removing it from an object and seeing whether that object is valued as a separate good or commodity.

Second. Does the owner claim the logoright?

Yes: and here's where the term copyright may be used exactly for once.

Copyright is a claim of a logoright—and the claim is made by embedding what is called a “Copyright Notice” onto the logos being claimed—putting anyone finding that logos on notice that the property rights in logos are owned and not open for a new claimant.

The nearest equivalent in common law requires the posting of No Trespassing signs on land if you wish to preserve the exclusivity of your property rights to prevent the land from lapsing into being a public thoroughfare.

I might also add at this point that registration of the copyright is the exact equivalent to the registration of the deed on a piece of land: a formal recorded proof that the property rights are claimed as of a certain date by a certain owner.

Such registration, of course, need not be with a State, but merely with a person, company, or organization generally trusted to maintain such records.

As an example of private copyright registration: the Writers Guild of America maintains an office for depositing copies of screenplays and screen treatments as proof that a certain person had possession of it on a certain date. Such proof is commonly used in private arbitrations, performed by the Writer's Guild, regarding disputes over rights and credits.

Third. Can the owner of the logoright ascertain the boundaries of her property rights—that is, are there limits to that which is being claimed?

The answer to boundaries—limits—on a logos is again “yes.” But—and this is a crucial point to be understood—limits always are dependent on the nature of the property right being claimed.

When one speaks of boundaries of property rights in land, one speaks of dimensions of area.

When one speaks of property right boundaries in the radio spectrum, complaining that there are no boundaries of an electromagnetic wave's area would be meaningless: in defining the limits of that kind of property, one rightly speaks of limits in an electromagnetic wave's amplitude and frequency.

And, when one speaks of the property boundaries on a logos, one speaks of the limits of identity, the signal of which is defined and limited by the principles of information theory, and the content of such signal which must be defined by each use to which the information can be put.

In discussing the identity of a logos as a signal, one discusses its limits and boundaries in terms of the minimum number of informational bits necessary to identify that logos as a distinct creation, the resolution of a logos, the threshold of predictability of that logos as against background noise, and other criteria commonly used in dealing with information storage and transmission.

In discussing the identity of the logos as content, one must make a metaphysical argument. Since by definition, each logos has a specific informational identity that differentiates, binds, and delimits its nature—the qualities and traits through which it is capable of being exploited—the boundary limits here are set by its identity itself.

Now, I can anticipate the following question at this point: Since a logos can be copied infinitely without depriving the owner of the original, how can you say that a logos is a scarce resource and therefore an economic good?

The first answer here is: The scarcity of a logos is a function of its being, like all other kinds of property, a product of human effort. Someone had to put work—the scarce resource of human labor—into the production of the logos in the first place—and storing that labor in a recorded form— patterning the logos into a material object as a material value—constitutes the creation of a scarce good—a property.

But the answer here that I prefer to give is: if this logos is so damned unlimited as not to be an economic object—then why do you want to reproduce mine?

The limits on this kind of good are not drawn by its infinite ability to replicate itself, which is a way in which the logos is not limited. However, just as property rights in the radio spectrum are not limited by area but by amplitude and frequency, the limits on logoright are not to be found in its ability to be infinitely reproduced, but in the finite identity to be exploited for its qualities and traits that distinguish any given logos from any other logos.

In terms used by economists, when defining the scarcity of a logos we must look to limits of horizontal competition between different kinds of goods, rather than to the limits of vertical competition within a kind of good.

The fourth and last test: does the logoright’s owner control the logoright?

Most definitely, in three ways:

The owner of a logos controls property rights in that logos by maintaining ownership of the logoright and “licensing”—that is, leasing—the various rights.

The owner of a logos, through limiting the license to reproduce the logos, is preserving the integrity of that logos.

And, the owner of a logos is using that logos as a producer’s good to create consumer’s goods.

You hear libertarians speak a lot about human rights and property rights—but what I’m most used to hearing about—as a working writer—are primary rights and subsidiary rights: hardcover rights, trade paperback rights, mass-market paperback rights, electronic rights, first serial rights, transcription rights, character rights, story rights, merchandising rights, dramatic rights, movie rights, episodic TV rights, live TV rights, radio rights, English rights, and foreign language rights.

Each of these is a separate right in the bundle of rights created with the original property—a separate action to be performed by using the logos—and each one can be sold or licensed separately as the logoright owner wishes.

“If A Thing Can Be Copied, Then It’s a Thing”

Traditional arguments against copyright have begun by asking how one is depriving a person of her property by copying it and using the copy, since presumably the owner still has the original.

I submit that the first question is not whether someone’s rights are being violated by copying but whether, in fact, anything exists which can be copied.

If a human being isn’t performing an act of creation by imposing an identity on an existent making it a new entity, then there is literally no thing which can be copied in the first place. If there is something distinct and observable which can be copied, the case for it having been newly created by someone is already made, and—to the propertarian who

already believes that that which is newly created is the property of its creator– the case for exclusive property rights in that new thing follow directly upon the self-evident axiom of property identity.

Conversely, if there is no identity to speak of, then there is nothing there to be copied that is distinguishable from anything else, and there is no question to debate at all. The pro-unlimited-copying case bites its own tail in saying that that which may be copied without limit does not exist at all, and therefore the argument reduces itself to absurdity.

The rule by which one recognizes an axiom is that if denying something logically requires that itself which is being denied, then that which is being denied is self-evident. Therefore, the pro-unlimited-copying case just reaffirms the axiomatic nature of the material identity of that which is being copied as a distinct entity–material identity being the definition of a logos which I presented earlier in this article. Denying the very existence of material identity as a distinguishable property of a thing leaves no Distinguishing Property to debate further.

Since That which one Creates, Owns, Consumes, Buys, and Sells is an Entity, not merely an Existent, then it is irrelevant that the Identity (thingness, if you will) can be observed in or duplicated onto more than one Material Existent. What a Creator Creates, what an Owner Owns, is an Entity (including that Entity’s Identity) and it is a reductionist argument to a thing’s materiality as an existent, rather than its being an entity having identity, to deny ownership because more than one existent is involved.

The “lack of scarcity” argument fails in not recognizing that the scarcity, on which the concepts of property and economics rest, refer to the scarcity of an entity qua its identity: it is scarce by being limited to its identity. It can be no other. That an entity can be in or on more than one existent is irrelevant to the questions of ownership.

When it comes to questions of identity, the copy IS the original; an entity is an entity: A is A.

One may wish, at this point, to expand the discussion to entities which are similar but not exactly identical, and put forward the position that each copy is a different entity as well as a different existent.

The discussion would then have to continue to take in boundary effects and threshold limits of which attributes define an entity and which do not, but the principle would remain intact. Such boundary problems and threshold effects relate to all questions of ownership and property–otherwise shining a flashlight onto someone’s lawn could be considered, on the face of it, photon invasion of that property. Obviously whether damage is or is not done to the lawn has to be asked at some point: this is what I mean by boundary limits and threshold effects.

It strikes me that the clearest illustration I can give that property rights are dependent on a thing’s identity, not merely on its material existence, is the following question: have I violated your property rights if I pulverize your car, but leave you in possession of every microgram of dust?

Answering no defeats one’s argument by reducing to absurdity.

But if one answers yes, then what one is claiming ownership of was a thing–an entity–and one must claim that by removing the identity of that thing I have violated one’s property rights. This concedes that property rights are bound to the identity, as well as the mere existence, of a property, and if this is so, then does it not follow that the ownership of that property’s identity is as exclusive to its owner as everything else about it?

Thus, to a propertarian, my logoright case is proved by the Law of Identity alone, regardless of whether my further theorizing regarding a thermodynamic model of property-creation furthers my case or does not.

“Refinements and Objections”

This next section will treat some of the objections to logoright that were brought out both during and after the debate for which this article was originally written, and refine the concept to demonstrate how these objections do not invalidate it.

Objection One: A logos is nothing tangible; it is an idea and therefore not capable of being owned.

Answer: I am answering an objection usually brought against copyrights and patents because these have been defined as the products of ideas, and defended with the concept of “intellectual property.”

But the theory of logorights as presented herein does not treat logos as being a product of an idea: it is treated simply in terms of information which is observable in material form.

“Information”—as a term used in information theory—does not require that which is being dealt with as information to have meaning or purpose; it need only perform a function. Information is a mathematical, rather than a teleological, concept.

As such—speaking colloquially—we’re in a whole new ballgame when discussing a concept of property rights in logos, which is a discussion not of “intellectual property” but of “informational property.”

Objection Two: By saying that only the owner of a logoright is entitled to the profits from making a copy, aren’t you denying the profits accruing to the labor of those who copy it?

Answer: Not at all. Copying a logos is a separate act from creating a logos, and must be compensated separately. If I write a logos on a manuscript, I must pay someone if I am to be entitled to their labor in copying it—and if they copy it onto their own materials, I must pay for that, too. This happens every time a manuscript is taken to a quick printing store to make copies.

However, the question really being asked is: doesn’t the labor of copying something entitle someone to the rights accruing to the ownership of the logos?

And the answer to that question is a clear no. That labor is involved in copying something makes no statement and produces no claim over someone else’s property.

If it did, the labor used in stealing a car could be used as a case for transfer of property rights in that car.

Property rights must be determined first, then and only then do questions about the profits accruing to labor done on or with that property arise.

The most exact analogy here to the taking of a property, applying labor, and producing additional properties is that of a factory—let’s say for simplicity that it’s an automobile factory.

The factory as a property is a “producer’s” good, and it is owned by whoever created that factory or the owner’s market descendants. Workers come into the factory and—applying their labor on new materials using that factory—produce the consumer’s good of the automobile.

Would one therefore conclude that the workers own the automobiles they are producing?

If you say that, then you are back to “labor theory of value” and discount the necessity of capital in the production of goods.

Even if the workers were bringing their own raw materials into the factory and producing automobiles, this would not be sufficient to establish their titles over the produced automobiles: it would first have to be established that they had the right to use the factory as a producer’s good.

Likewise, the logos is a producer’s good for which the rights must be obtained before it may be used to create additional goods—whether those goods are additional producer’s goods or consumer’s goods.

Objection Three: How can you say that a logos is a separate property since it can be imposed on someone else’s property?

Answer: the same way that a house can be a separate property from the land it is on.

Objection Four: What about two or more people who come up with the same invention or story independently? Who owns the logos then?

Answer: As I’ve discussed earlier, creation means the taking of something from a state of greater probability to a state of lesser probability.

To the extent which a given logos of invention or story can be produced independently more than once, to that extent the probability is still great enough to question whether an act of creation has been performed at all.

One of the objections brought against copyrights and patents can be dealt with this way: that a person being sued for infringing on a previous copyright or patent has had the burden of proof in demonstrating that their story or invention is a separate and distinct creation from that which they’re accused of infringing.

Here is precisely a case where information theory provides answers to definitional problems that previous theories were unable to deal with.

By using a process of correlation of the information in each logos, one can find out precisely how much overlap exists between them.

Only if the correlation is proven by the petitioner to be significant enough to warrant a charge of copy infringement would independent creation have to be established as a defense by a respondent. If the respondent succeeds in demonstrating independent creation, then the petitioner’s original “creation” wasn’t inherently improbable, therefore questionable as a unique creation—and therefore possibly not property at all—for either of them.

In a practical sense, however, I think twin logoses of sufficient complexity and resolution to be considered created property at all are about as likely as a million monkeys typing for a million years and producing the play Hamlet.

Objection Five. What about a case where a randomly generated logos is found and claimed as property? Has an act of creation taken place? Can there be property rights in something randomly or accidentally produced?

Answer: Any given logos—to be considered a logos at all—must be, in some sense, unique. The shape of a blade of grass is neither complex enough nor uncommon enough to qualify as a logos. Where a unique array has been produced by random or natural processes—and a person decides, for whatever reasons— that it is worth preserving, it is the act of preserving that array that is the essential act of “increasing improbabilities” which is the definition used herein for the creation of a logos.

Objection Six. What about a person who copies a logos accidentally? Isn't that person potentially a victim of the owner of the logoright?

Answer: This case is exactly equivalent of an accidental trespasser on someone's land.

In common law decisions, it has been determined that land must be clearly posted with No Trespassing signs to remove the liabilities involved in a trespasser coming to harm on your land.

The "Copyright Notice" is prominently placed on a logos for the same reason: to warn trespassers that they are responsible for their own liabilities if they violate the owner's property rights.

Objection Seven. Isn't the "Doctrine of Fair Usage" you relied on before an admission that the exact point at which using a logos becomes a property violation can't be determined objectively?

Answer: No.

The "Doctrine of Fair Usage" is a legal definition in use under current—and admittedly statist—copyright laws.

It is a utilitarian decision that says that so long as the use of part of a copyrighted work is educational or isn't a significant enough part to adversely affect the market value of that work, it will be considered that the property owner is going to allow this as a courtesy to the public—whether that owner likes it or not.

Nevertheless, the utilitarian basis of this decision does overlap similar common law decisions regarding courtesies and rights of access in private lands—which is also a utilitarian decision.

As a strict propertarian, I would have to say that the use of the smallest identifiable part of a logos—that is, identifiable by an objective process such as correlation—requires its owner's consent.

However, as the owner of a number of logoses, myself, I am willing to allow "fair usage" as a general courtesy to the public, which includes many logos owners some of whom have logorights not protected by the State, and I am presuming—until otherwise challenged by a particular logos owner—that such courtesy is also being granted to me.

I do, of course, risk having to pay restitution if my assumption of reciprocal courtesy turns out to be mistaken.

Objection Eight. Doesn't a logoright restrict the contents of a person's mind? Are you going to say a logos can't be memorized—that is, the logos imposed on a human brain? Are you going to then say that a person can't use the memorized contents of her own mind in any way she sees fit—including the imposition of it on matter?

Answer: Assuming that the logos can be taken intact into a human brain, then that copy of the logos has been swallowed by that person—in the same way that if I take a diamond and swallow it, that diamond ceases to exist as recoverable property while it is in my stomach.

In neither case would someone have a right to violate the boundaries of that person's sphere of self-ownership to retrieve either the swallowed diamond or the swallowed logos.

However, swallowing someone else's property does not constitute a transfer of property rights, which—being a statement of morally permissible action relating to a property—attach not to that property but to the owner.

Swallowing someone else's property does not constitute in itself a transfer of property rights to that property, even though the owner of the swallowed property may not invade you to retrieve it.

Moreover, if while that logos resides within you it stimulates better digestion—that it, aids you in creative efforts of your own—then that good digestion is yours to keep, regardless of whatever rights the logos's owner may have in the logos itself.

But if the person who swallowed the logos reimposes that logos on outside matter—if the person redraws the blueprint from memory or retypes the novel from memory or reproduces an invention from memory—then the logos to be found in matter must still be regarded as the property of the logoright's owner: in essence, the person reproducing the logos without obtaining the rights has just regurgitated or passed the diamond again, and the true owner has the right to demand that her property be returned.

Objection Nine. What about the reenactment or performance of a logos—such as singing in my shower? Since I am not copying or reimposing on matter that logos, how can I be said to be violating the logos owner's rights?

Answer: Logoright is not, per se, copyright—restricting only the right to copy onto matter. Logoright refers to any use of a logos, each use of which is a separate right in the bundle of rights created with the logos.

Again: “right” refers to an action which a person may or may not take with respect to a property.

The right to reenact or perform a logos is a use of that logos, and often—such as with live performances of musical compositions or plays—the rightful use must be licensed from the logos owner.

However, in all the cases of copyright I have ever heard about, I have never heard of someone being successfully sued for singing someone else's song in the shower. Presumably this is not a public performance?

I suspect the absence of such case law would survive the demise of the State and its copyright laws, to a society which recognizes and enforces the concept of logoright.

Objection Ten. Isn't it a historical fact that as soon as printing presses were invented kings began handing out copyright protection? Isn't this proof that copyright has always been nothing more than another grant of monopoly by the State, and a privilege that is dependent on the State for its existence? Even today, isn't it the existence of copyright laws itself that has led to the domination of publishing by a few oligopolies? Doesn't a value-free analysis of the publishing market demonstrate that eliminating copyrights wouldn't affect authors much since (a) most books published are for the first time and (b) an author's royalties are only a small percentage of the price of a book? Since most of the income an author receives comes up front as an “advance,” isn't it true that an outright sale from an author to a publisher wouldn't make much difference to the author anyway?

Answer: These arguments were raised by Samuel E. Konkin III in an article titled “Copywrongs,” published in a magazine titled *The Voluntaryist* in the year following the debate that sparked this article. Since the editor of *The Voluntaryist* at the time was Wendy McElroy, who was the other half of this debate, I took her commissioning of Konkin to write on this subject as a reaction to my presentation. Since Konkin is a long-time libertarian ally, and one with whom I have usually sided on most issues, I found it worthwhile to write a response to his article. *The Voluntaryist* did not, however, see fit to print my response. Some of the more general arguments contained in my unpublished reply

to Konkin have been incorporated into this version above; the segment that I include here deals directly with Konkin's arguments, and I've eliminated duplication of text used elsewhere in this article. I've also updated my reply as necessary. Those wishing a copy of the original "Copywrongs" article can obtain it from Samuel Edward Konkin III, P.O. Box 1748, Long Beach, CA 90801. [Since SEK3 is no longer using that address and I don't have an updated address for correspondence in whatever realm he now exists, here is the full article – JNS, 2018]

Copywrongs by Samuel Edward Konkin III

Published in The Voluntaryist, July 1986

Having done every step of production in the publishing industry, both for myself and others, I have one irrefutable empirical conclusion about the economic effect of copyrights on prices and wages: nada. Zero. Nihil. So negligible you'd need a Geiger counter to measure it.

Before I move on to exactly what copyrights do have an impact on, one may be interested as to why the praxeological negligibility of this tariff. The answer is found in the peculiar nature of publishing. There are big publishers and small publishers and very, very few in between. For the Big Boys, royalties are a fraction of one percent of multi-million press runs. They lose more money from bureaucratic interstices and round-off error. The small publishers are largely counter-economic and usually survive on donated material or break-in writing; let the new writers worry about copyrighting and reselling.

Furthermore, there are a very few cases of legal action in the magazine world because of this disparity. The little 'zines have no hope beating a rip-off and shrug it off after a perfunctory threat; the Biggies rattle their corporate-lawyer sabres and nearly anyone above ground quietly bows.

Book publishing is a small part of total publishing and there are some middle-range publishers who do worry about the total cost picture in marginal publishing cases. But now there are two kinds of writers: Big Names and everyone else. Everyone else is seldom reprinted; copyrights have nothing to do with first printings (economically). Big Names rake it in – but they also make a lot from ever-higher bids for their next contract. And the lowered risk of not selling out a reprint of a Big Name who has already sold out a print run more than compensates paying the writer the extra fee.

So Big Name writers would lose something substantial if the copyright privilege ceased enforcement. But Big Name writers are an even smaller percentage of writers than Big Name Actors are of actors. If they all vanished tomorrow, no one would notice (except their friends, one hopes). Still, one may reasonably wonder if the star system's incentive can be done away without the whole pyramid collapsing. If any economic argument remains for copyrights, it's incentive.

But, alas, the instant elimination of copyrights would have negligible effect on the star system. While it would cut into the lifelong gravy train of stellar scribes, it would have no effect on their biggest source of income: the contract for their next book (or script, play or even magazine article or short story). That is where the money is. Crap. As Don Marquis put in the words of Archy the Cockroach, "Creative expression is the need of my soul."

And Archy banged his head on typewriter key after typewriter key all night long to turn out his columns – which Marquis cashed in. Writing as a medium of expression will continue as long as someone has a burning need to express. And if all they have to express is a need for second payments and associated residuals, we're all better off for not reading it.

“You're only as good as your last piece” – but you collect for that on your next sale. Market decisions are made on anticipated sales. Sounds like straight von Mises, right? (Another great writer who profited little from copyrighting – but others are currently raking it in from Ludwig's privileged corpse – er, corpus.)

The point of all this vulgar praxeology is not just to clear the way for the moral question. The market (praise be) is telling us something. After all, both market human action and morality arise from the same Natural Law.

In fact, let us clear out some more deadwood and red herrings before we face the Great Moral Issue. First, if you abolish copyrights, would great authors starve? Nope. In fact, the market might open a trifle for new blood. Would writers write if they did not get paid? Who says they wouldn't? There is no link between payment for writing and copyrights. Royalties roll in (or, much more often, trickle in) long after the next work is sold and the one after is in progress.

Is not a producer entitled to the fruit of his labor? Sure, that's why writers are paid. But if I make a copy of a shoe or a table or a fireplace log (with my little copied axe) does the cobbler or wood worker or woodchopper collect a royalty?

A. J. Galambos, bless his anarchoheart, attempted to take copyrights and patents to their logical conclusion. Every time we break a stick, Ug The First should collect a royalty. Ideas are property, he says; madness and chaos result.

Property is a concept extracted from nature by conceptual man to designate the distribution of scarce goods – the entire material world – among avaricious, competing egos. If I have an idea, you may have the same idea and it takes nothing from me. Use yours as you will and I do the same.

Ideas, to use the 'au courant' language of computer programmers, are the programs; property is the data. Or, to use another current cliché, ideas are the maps and cartography, and property is the territory. The difference compares well to the differences between sex and talking about sex.

My ideas are pieces of what passes for my soul (or, if you prefer, ego). Therefore, every time someone adopts one of them, a little piece of me has infected them. And for this I get paid, too! On top of all that, I should be paid and paid and paid as they get staler and staler? Would not ideas be repressed without the incentive (provided by copyrights)? 'Au contraire' the biggest problem with ideas is the delivery system. How do we get them to those marketeers who can distribute them? (Ed. note: most readers probably know the answer to this in 1996, this was written in 1986)

If copyrights are such a drag, why and how did they evolve? Not by the market process. Like all privileges (emphasis added), they were grants of the king. The idea did not – could not – arise until Gutenberg's printing press and it coincided with the rise of royal divinity, and soon after, the onslaught of mercantilism.

So who benefits from this privilege? There is an economic impact I failed to mention earlier. It is, in Bastiat's phrasing, the unseen. Copyright is a Big publisher's method, under cover of protecting artists, of restraint of trade. Yes, we're talking monopoly.

For when the Corporation tosses its bone to the struggling writer, and an occasional steak to the pampered tenth of a percent, it receives an enforceable legal monopoly on the editing, typesetting, printing, packaging, marketing (including advertising) and sometimes even local distribution of that book or magazine. (In magazines, it also has an exclusivity in layout vs other articles and illustrations and published advertisements.) How's that for vertical integration and restraint of trade?

And so the system perpetuates, give or take a few counter-economic outlaws and some enterprising Taiwanese with good smuggling connections.

Because copyrights permeate all mass media, Copyright is the Rip-off That Dare Not Mention Its Name. The rot corrupting our entire communications market is so entrenched it will survive nothing short of abolition of the State and its enforcement of Copyright. Because the losers, small-name writers and all readers, lose so little each, we are content – it seems – to be nickel-and-dime plundered. Why worry about mosquito bites when we have the vampire gouges of income taxes and automobile tariffs?

Now for the central moral question: what first woke me up to the problem that was the innocent viewer scenario. Consider the following careful contractual construction.

No, I am not worried about the simultaneous creator; although an obvious victim, he or she is rare, given sufficient complexity in the work under questions. (However, some recent copyright decisions and the fact that the Dolly Parton case even got as far as a serious trial – means the corruption is spreading.) Author Big and Publisher Bigger have contracts not to reveal a word of what's in some publication. Everyone on the staff, every person in the step of production is contracted not to reveal a word. All the distributors are covered and the advertising quotes only a minimal amount of words. Every reader is like Death Records in Phantom of the Paradise, under contract, too; that is every reader who purchases the book or 'zine and thus interacts with someone who is under contract – interacts in a voluntary trade and voluntary agreement.

One day you and I walk into a room – invited but without even mention of a contract – and the publication lies open on a table. Photons leap from the pages to our eyes and our hapless brain processes the information. Utterly innocent, having committed no volitional act, we are copyright violators. We have unintentionally embarked on a life of piracy.

And God or the Market help us if we now try to act on the ideas now in our mind or to reveal this unintended guilty secret in any way. The State shall strike us – save only if Author Big and Publisher Bigger decide in their tyrannous mercy that we are too small and not worth the trouble.

For if we use the ideas or repeat or reprint them, even as part of our own larger creation – bang! There goes the monopoly. And so each and every innocent viewer must be suppressed. By the Market? Hardly. The entire contractual agreement falls like a house of cards when the innocent gets his or her forbidden view. No, copyright has nothing to do with creativity, incentive, just desserts, fruits of labor or any other element of the moral, free market.

It is a creature of the State, the Vampire's little bat. And, as far as I'm concerned, the word should be copywrong.

Herewith my reply to Konkin's "Copywrongs"

"To start off with, I am dubious regarding the usefulness of concentrating on a value-free or even value-laden analysis of copyright until a factual metaphysical question is settled: is that which copyright protects with the status of property rights something which actually exists, or is it, at best, a delusion and, at worst, a vicious fraud? ...

"Of course Sam did say that 'The point of all this vulgar praxeology is not just to clear the way for the moral question. The market (praise be) is telling us something. After all, both market human action and morality arise from the same Natural Law.'

"And so I agree with Sam in principle, if not with his application. The question is: what is the natural law here? The answer is: the Law of Identity. ...

"But even leaving this aside—if one can leave metaphysical facts aside—Sam's value-free economic case is standing on quicksand, since he is arguing from empirical observation of current market conditions—a dangerous thing for a libertarian to do, since it can so easily be turned back against us.

"For example, we argue in libertarian theory that monopolies can't arise in a free market. A liberal then points to existing monopolies. And we retort, 'We don't have a free market today to point at—what you're seeing is monopolies in a state-controlled economy.' And, Sam would have to agree that the market his empirical case examines is state-controlled, since he's arguing that the current market is structured by, among other factors, the current copyright laws.

"But, copyright is only one of the many ways the state has intervened into the publishing industry. (I assert that the effect is largely neutral as compared to a purely proprietarian marketplace since the state intervention roughly parallels the actual property rights.) In the publishing industry, as in all other industries, there has been endless non-copyright state intervention: limited liability laws, anti-trust suits preventing publishers from owning bookstores, labor laws creating union shops, wartime paper rationing, interstate commerce regulations, obscenity laws, tax laws, postal and shipping regulations, FCC regulations, etc.

"I would therefore caution anti-copyright debaters of a libertarian persuasion to be very hesitant at looking at any current market condition and categorically asserting that any particular factor, such as copyright, is the final cause of any particular market end state, even though—in Sam's observation that most of that which is published today is for the first time—I believe Sam has, in fact, shown a final cause which destroys his own praxeological case.

"I would also caution anti-copyright libertarians against assuming their conclusion in using anti-monopoly and 'privilege' rhetoric against copyright. Arguments against 'monopoly privilege' in the exclusive ownership of a logos ignore the fundamental difference between all property rights, which are monopolistic in the sense of being held exclusively, and monopoly practices, which are invasive.

"Moreover, that printing presses and state grants of copyright protection arose at the same time in history is not conclusive evidence that the state was not protecting that which would be considered property in a stateless society anyway. It is only circumstantial evidence of two events coinciding—a 'coincidence.' The same 'argument from coincidence' could be used against any property right—proper or not—arising from new technology under current state law. Since the state claims the airwaves as 'public property' which as a 'scarce resource' is licensed 'in the public interest,' are we likewise—by the argument from coincidence—supposed to conclude that broadcast frequencies are not potential property?

“But let me focus on Sam’s contention, at the foundation of his economic case, that for Big Publishers, ‘royalties are a fraction of one percent of multi-million press runs.’

“It just ain’t so. Let’s take, as an example, the 1986 Avon edition of my novel, *The Rainbow Cadenza*. The raw manufacturing cost of each book—typesetting, printing, and binding—was roughly \$0.60. My royalty was 8% off a cover price of \$3.50. This is a royalty of \$0.28 per book, or about 47% added to publisher’s cost over manufacturing. Hardly negligible, Sam.

“This is a base cost figure before they start figuring in editorial salaries, commissioning cover art, office overhead, advertising—all of which are start-up costs for an original edition of a book in addition to buying ‘rights’ from the author—before then calculating in markups to wholesalers, shipping costs, percentage of returns, etc.

“Now, consider that without copyright protection—statist or otherwise—four days after a book starts selling well (that’s all it takes to manufacture and distribute an ‘instant book’) any reprint publisher could come out with its own competing edition of a book—at a huge discount since this publisher wouldn’t have to pay any of the start-up costs: royalties, editorial salaries, typesetting costs, commissioning cover art—anything other than pure manufacturing and distributing costs. I expect that the competitor’s copy edition could be put on the market for about half the price of the original edition. The first publisher would be stuck with all the risk and startup costs, then be undersold by half by a competitor’s edition.

“In purely economic terms, what publisher would risk investing in publishing a book knowing that if he or she hits it lucky with a book anyone actually wants, everyone else will get a much-lower-risk return on investment?

“The publishing industry would quickly become a game with One Rule: Let George Do It. If you think a book might make money, reject it. With luck, someone else (somebody real stupid) will take the risk of publishing it first, and you can clean up by knocking off a cheap reprint after it’s been developed and market-tested at your competitor’s expense.

“Thus, all economic incentives would shift from being first on the market with a product, to being second. Original publishing would cease to be a profitable market at all. If, in a market with copyrights, Sam sees the great majority of publishing being first-time, and a much smaller amount being reprint, then this statistical distribution is an effect of the existence of copyright in the marketplace to begin with. Remove this causative factor, making reprint publishing more profitable than start-up publishing, and value-free deductive logic leads directly to the conclusion that the reverse would be true: reprint would be the rule, and original printing would be the exception.

“This structure of publishing in a copyright-free market would be that of a regressive industry, at first largely parasitic on works created before the abolition of copyright (unless we assume copyright never to have existed at all, in which instance there is a case to be made that publishing never would have become an industry at all) and later dependent for its product on those persons not at all motivated by the desire to make a livelihood out of authoring. What would be left to be published would be the works of hobbyists, dilettantes, psychological ‘flashers,’ and preachers. Perhaps this might leave something worthwhile to be published—a work occasionally by a J.R.R. Tolkien—but it would certainly never have produced a Robert A. Heinlein, who started writing to pay off a mortgage. Even the Tolkien case is questionable, considering how offended he was that Ace Books took

advantage of the accidental omission of copyright on *The Hobbit* and *The Lord Of The Rings* to reprint his works without his permission.

“Thus, beginning by denying the Law of Identity and the specific nature of that which is being written and published, Sam ends by eliminating both authorhood qua work and publishing qua industry. Just as C.S. Lewis demonstrated how denying the existence of objective referents for standards of subjective- valuation would logically result in the Abolition of Man, the logic of praxeology demonstrates how denying the objective identity of a Created Work would logically result in the Abolition of Creative Industry.

“And if, as Sam states, that ‘both market human action and morality arise from the same Natural Law,’ then my praxeological analysis should give one a pretty clear indication that my case that copyright is protection of natural rights in logo-property (primarily a metaphysical, rather than moral, case, since I’m arguing that logoright derives from the Law of Identity) follows as well.”

“An Ill-Tempered Conclusion”

Now. If after all this you still think a logos can’t be property because it isn’t a “scarce economic good,” or if you think creation isn’t essential to the origin of property—then compose your own damn symphonies, write your own damn novels, invent your own damn computer—much less figure out how to program it—design your own damn houses, film your own damn movies, and come up with the damned recipe for bread on your own, —because a person who makes his or her living by creating a logos for license isn’t going to work for free.

If logorights aren’t recognized as property, a Creator of a logos is left with two choices: limit the circulation of the logos only to those who sign contracts agreeing not to copy it—and pray that someone doesn’t accidentally leave a copy unprotected for an hour in the vicinity of a Xerox machine or camera—or produce only the least-labor-intensive sort of logos that can be quickly exploited in the time before someone can undersell the licensed product by reproducing its logos without having to pay royalties.

If you don’t think a logos is a scarce good, you’ll find out how scarce it is damned quickly if you declare open season on ripping them off.

And, yes. I did say “rip off.” Logorights are property rights—and they are entitled to the same respect and protection as property rights in land, butter, guns, cars, radio frequencies, and gold that I have heard property rights advocates defending endlessly.

Just as the communist anarchist argues that it is only the monopolistic grants of privilege from the State that makes property itself possible, so the anarchist opponent of copyright has been arguing that it has been only the monopolistic grant of protection from the State that makes copyright possible. Both are making the same error.

If anything, the State is constantly violating logorights by imposing through fiat the State’s own copyright laws on logoright owners.

And that is why, as a propertarian anarchist, I proudly declare that this essay is my property—herein claimed by giving you notice that this article is

Logoright (L) 1983, 1989 by J. Neil Schulman

and anyone who attempts to violate my property rights in this logos should expect to hear from the legal firm of Smith & Wesson.

Posted on “IP: The Objectivists Strike Back!”

The reason I argue that “any conceptually identifiable ‘thing’ is ownable” — although I never put it that way — is that without identity differentiating things nothing could be ownable.

The reason that creation is the beginning of the moral case for property rights is that without creation nothing other than brute-force possession defines ownership.

As for “the obvious conundrum of people coming up with the same idea” that is just one of the questions I answered 25 years ago in my essay “Informational Property: Logorights.”

“Creation is a Person’s action which imposes that Person’s logos on something which exists to give that thing a unique identity it did not previously have. ... If the respondent succeeds in demonstrating independent creation, then the petitioner’s original “creation” wasn’t inherently improbable, therefore questionable as a unique creation — and therefore possibly not property at all — for either of them.”

Another comment I just posted on “IP: The Objectivists Strike Back!”

“I would also caution anti-copyright libertarians against assuming their conclusion in using anti-monopoly and ‘privilege’ rhetoric against copyright. Arguments against ‘monopoly privilege’ in the exclusive ownership of a logos ignore the fundamental difference between all property rights, which are monopolistic in the sense of being held exclusively, and monopoly practices, which are invasive.”

–J. Neil Schulman, “Informational Property — Logorights”

My comment posted on the Austrian Economics Blog:

There’s another side to this argument in my article “Informational Property — Logorights.”

No one who takes property rights seriously can afford to dismiss property rights in information objects without refuting the proofs and the detailed discussion of objections I raise in this article.

Stephan Kinsella has been claiming since 1996 that he’s done so. Read it for yourself and decide whether you agree with me that he hasn’t.

From my replies to Stephan Kinsella at *Query for Schulman on Patents and Logorights*:

I use a screenwriting program called “Movie Magic Screenwriter.” It’s not ethereal; it’s loaded on the same computer I’m writing this from. This currently existing commercial software package can compare any two scripts and highlight the overlaps and differences between them. No speculation is involved. No counterfactuals. It merely uses a process memorialized in the Sesame Street song “One of These Things is Not Like the Other.” Only it can count higher than two.

If two scripts were written independently and correlate as the same (yes, a hypothetical), then neither one was original.

But in the real world, if you encounter this, what has happened is plagiarism, even if of an author lost to antiquity.

Creation requires something unique — a one-up. If two inventors independently come up with the same “invention,” the question arises whether what they did was not invention but discovery. The movie *Flash of Genius* is a great exposition of a real-life patent case which explains the process of correlation (and differentiation) between two claimants.

There is only one *Atlas Shrugged*.

There is only one *A Christmas Carol*.

There is only one *The Rainbow Cadenza*.

The processes of differentiation and correlation can prove whether or not they are unique creations. And if they are unique creations, they are the exclusive property of their creator.

“If the state exists, my IP claims however evaporate with the state, as do my claims to social security and medicare.”

Social Security and Medicare are state payments. Transfer of money taken by force from taxpayers.

My ownership of the things I’ve written are private property independent of the State and its copyright laws. I don’t own them because of a grant of privilege from the State. I own them because I made them and they’re mine by natural law and natural right. I took them from no one else. Their existence is dependent on no one but me. They would not exist except for my creating them.

According to Stephan Kinsella, writers make nothing and own nothing.

According to Stephan Kinsella composers make nothing and own nothing.

According to Stephan Kinsella architects make nothing and own nothing.

According to Stephan Kinsella digital filmmakers make nothing and own nothing.

According to Stephan Kinsella digital graphic artists make nothing and own nothing.

According to Stephan Kinsella Bach, Beethoven, Brahms, John Lennon, Charles Dickens, Robert Heinlein, Rudyard Kipling, Mark Twain, George Orwell, Ayn Rand, L. Neil Smith, and I made nothing and deserved to own nothing.

This is so ridiculous that I am ashamed that I waste my time responding to it. It is absurd and self-annihilating nonsense and those who believe it if they put this vile nonsense into effect kill the geese who lay the golden eggs — from a story by Aesop, who according to Stephan Kinsella made nothing and deserved to live as a slave.

I advocate the substitution of statist law with market-derived law, a position I have advocated since the mid 1970’s. So do I advocate the abolition of statist copyright and patent law? Absolutely — when the state’s tyrannical edicts are replaced by liberty.

All statist protection of property rights is flawed — and copyright law, patent law, and trademark law is as flawed as statist protection of any other “property” rights which involve violation of others’ natural rights.

All property rights questions involve defining boundaries. Again, covered in my original article.

If I shine a flashlight on your land, am I committing photonic trespass? What if my flashlight triggers your burglar alarm and the ADT agents shoot you thinking it’s an intruder?

If I grow peanuts and peanut dust blows into your child’s bedroom and sickens your child who has a severe peanut allergy?

There is no property right that can’t generate extreme cases.

What I think you have most failed to understand in my defense of logorights is how high a bar logorights theory sets for a claim of exclusive ownership. Yes, my theory requires a proof of uniqueness before a property right can be claimed. Failing that standard there is no rightful claim of property right.

Stephen King's new novel, *11/22/63*, is about a time-traveling teacher who goes back in time to stop the JFK assassination.

Is his plot an infringement of my own *Twilight Zone* script, "Profile in Silver"?

The burden would be on my to prove that it would have been impossible for Stephen King to come up with that plot if "Profile in Silver" hadn't been broadcast in CBS prime time, first. If I can't, there's no violation of my rights.

But if Stephen King has in his novel identical characters and story elements to my writing so numerous as to defy common sense for independent creation, then he's committed plagiarism and he's violated my rights. That's common sense.

By the way, the only people who say that "nothing is original" are people who don't trust their own powers of creation. That statement is the hallmark of the quitter.

Do you own a house with a county-issued deed, Kinsella? If you do, is the statist issued deed sufficient reason for you to abandon your property?

How about your car? You can't own it without DMV permission in many states. Oops. Statist laws. No property rights. Give me your car!

How about your kids? Agree to keep them in school so the county doesn't arrest you for violation of truancy laws and place your kid in a state home? Or divorced and got a custody arrangement issued by a judge? Oops! Not your kids anymore unless a statist judge grants permission.

There are *no* private property rights not in effect without permission of the State. You expect me to abandon my rights because the state actually allows me to keep some of my own property?

You're not stupid. You're not evil. You're not trying to abolish all property rights. You're merely mired in a three-century old Lockean paradigm of property rights that is so reductionist that it is ludicrous.

MCP

In a discussion on the Mises Economics Blog I've decided the term "Media Carried Property" ("MCP") is far more self-explanatory of the concept I've been advocating as logorights for three decades than any use of the abbreviation "IP" — either as Intellectual Property or even my own previous usage, Informational Property.

The implications of this debate inevitably extend not to the narrow discussion of "IP" but to all property. This will happen because at some point technology will more than likely enable *Star Trek*-like transporters in which matter is disassembled then reassembled elsewhere and "material identity" will be the defining feature of all property; or because human beings will enter into virtual realities where, once again, no property has a physical presence other than "material identity."

In fact, any truly advanced technological civilization, if it has property rights at all, will regard an original "sample" as the only property worth having, since everything else will be replicable.

So, now's the time to stake out the defining propertarian position for the rest of economic destiny. If the Stephan Kinsellas do manage to wipe out what they call IP and I'll now be calling MCP, the future will eventually be one with no property rights at all.

Reply to Video “Copying Is Not Theft”



Video URL: <http://www.boingboing.net/2010/04/15/copying-is-not-theft.html>

The above video is probably the cleverest, catchiest, and most cogent argument in favor of eliminating I.P. laws I’ve ever seen. As a piece of advertising for a concept it’s hard to top. Bravo!

Now I will destroy it.

The argument of “Copying is Not Theft” is that by copying a novel, a song, a movie, the owner is still in possession of the original and therefore by making a copy nobody is doing anything to deprive the owner of the original of anything of value.

Clever. *Very* clever.

But wrong. *Very* wrong.

Remember the scene in the movie *The Net* where Sandra Bullock’s character, Angela Bennett, arrives home to find her house empty and a real-estate agent selling it? The real-estate agent has a copy of the deed to the house with a copy of Angela’s signature on it. Hey, those are just copies — Angela still has the originals ... somewhere. She wasn’t deprived of anything by the act of making copies, was she?

Let’s say you graduate from medical school and get a diploma, with additional certifications so that you’re entitled to put “MD, FACS” after your name. Now, anyone copying those diplomas and certifications hasn’t deprived you of anything if they perform surgery in your name and a few patients die in the O.R. right?

Or for my last example — and you gotta love this one — you’re a scientist working at a lab that stores various viruses — weaponized anthrax, as an example — that if released could kill millions of people. Hey, you still have all your original security passes, ID’s, and clearances if someone clones your biometric data and uses it to go grab some anthrax and drop it into the Lake Mead reservoir, right?

Come on, Neil, now you're just being arch, argumentative, and ridiculous. Get to the point — copying a book, or a song, or a movie.

I never left the point. It's exactly the same subject.

I spend five years of my life writing a novel — go through eight drafts before I finally have it right. That's a major investment of blood, sweat, toil, and tears.

I put it up for sale on my website as a PDF file, or on Amazon.com as a Kindle file, or get it accepted for sale through iTunes for reading on the Apple iPad.

The next thing I know, all these versions of my novel are free Torrent downloads for which I don't get anything in return.

Oh, Neil, you still have your original. Copying Is Not Theft. By making a copy I haven't deprived you of anything.

Except, why should anyone making a rational economic calculation pay me for something they can get for free? So people get the benefits of my five years of blood, sweat, toil, and tears, and my checking account doesn't have money in it to pay for doctor's visits and prescriptions needed to treat my Type-II Diabetes.

Or, I spend four years of my life and a half million bucks of my family's dough — including fourteen cuts in an editing bay — making a movie. Then I put it up for sale on Amazon.com as a Video on Demand. Someone with software to get by any copy protection Amazon.com has takes my movie and presses it into DVD's for sale in kiosks in Hong Kong ... and, once again, as a Torrent.

Now before I even get the chance to sell my movie for commercial distribution — which might get me back the cash, talent, and time invested in making this movie so I can afford to make another one — people are getting the benefit of my blood, sweat, toil, tears, and cash ... and I am prevented from self-financing my next movie.

If I invent, compose, or craft something original, it's part of me. It's part of my identity.

The basic libertarian principle of liberty starts with self-ownership. Preventing me from owning the sole right to offer copies of things that are part and parcel of my personal identity — preventing me from owning the exclusive right to make copies of what I make as *part* of my personal identity — is the destruction of my life and liberty ... and quite literally could end up killing me.

Think about it. Please. None of this is theoretical for me. This is how I make my living. This is how I survive ... or not.

Kyle Bennett (presumably no relation to the fictional Angela Bennett I referred to in the movie *The Net*) wrote in a comment on my Facebook wall this morning:

All of your examples are of fraud or trespass secondary to the copying. There's a difference between my selling a copy of "*Lady Magdalene's* by J Neil Schulman," and selling a copy of "*Lady Magdalene's* by Kyle Bennett," or a copy that has different content than the buyer was led to believe it was.

Kyle admits that someone making a copy of "*Lady Magdalene's* by J Neil Schulman" and selling a copy of "*Lady Magdalene's* by Kyle Bennett" is committing the fraud we call "plagiarism." Putting your own name on someone else's work product without their authorization and distributing that mislabeled product as your own is misrepresenting the pedigree and provenance of that product to the end users. It is claiming someone else's accomplishment as your own. It's cheating.

So let's look at the cases where you make copies of something I made and still keep my name on it. That is no longer plagiarism.

It's now a different form of fraud, which in the art world is called "counterfeiting" and in the world of other commercial products — such as designer clothing or luxury watches — is called "forgery."

Remember: my first premise here is the libertarian premise of self-ownership. I own my name when it refers back to me, my biographical details, my resume, my accomplishments, the proprietary artifacts I've used to generate my reputation, my personal expertise and taste. All of these are elements that when attached to my name make it a personal brand. Someone else using my name — my identity — for things not owned or authorized by me is committing identity theft — and I gave examples of that.

But let's say I write a novel and put my brand — my author's name on it: J. Neil Schulman. The first claim of authorship of something I write is my byline attached to the writing. In a novel this is on the cover and title page. I write a dedication and acknowledgments, giving the work a purpose and a pedigree. On the copyright page is a claim of ownership — in land terms the posting of a "No Trespassing" sign, to stake out the boundaries of ownership.

Often I will personally affix an additional brand enhancement — my signature. This is called an inscription or an autograph. That takes the particular copy from merely being *authentic* — *authorized* by its *author* — to being an object of memorabilia and gives it additional trade value in the marketplace. If the author is particularly noteworthy then under the right circumstances a personal signature can make an authorized copy many times more valuable than a copy that has merely the original commercial brand authorization.

You see this all the time in designer clothing lines, or perfumes, or celebrity photographs, or luxury watches. All of these products have enhanced market value by affixing a known celebrity brand.

The celebrity brand tells the buyer that the celebrity had personal input into the design, quality control, and manufacturing conditions of the product. The celebrity is risking his reputation if the quality control of the copy fails to meet top standards. This is an argument I made in another of my recent articles — *What's Your Bible?* — when I argued:

As a professional writer whose name is his commercial brand, I can no more allow someone else to rewrite me as they like and put my byline on it than the Walt Disney Corporation can allow someone else to publish cartoons of Mickey Mouse buggering Donald Duck.

In a comment in reply to a challenge from a reader, I further wrote:

No true craftsman allows someone else to ruin their work and keep their name on it. A license that allows unlimited rewriting but keeping the original writer's name on it is an abomination to anyone who gives a damn about the integrity of their work. Deal breaker. ... I have contempt for people in any field of human endeavor who don't care about maintaining the quality of their work product. If that makes me a snob, so be it. I call it having standards.

I have sat next to celebrities at conventions while the star signed personal memorabilia, taking cheaply manufactured objects — photographs of themselves, shirts, objects

memorializing their career accomplishments — and charged up to several hundred dollars to sign it for a buyer — with lines around the block for them to do it.

Auction houses and auction websites make markets out of common objects that would be trash except for a celebrity having owned or used or once touched it.

A set of golf clubs or a box of golf balls is worth far more in a pro shop if the brand name “Tiger Woods” is on the label, because by affixing the name of the golf legend the buyer is being told that Tiger Woods had personal input into the quality of the products.

Anyone who copies that box of golf balls with the Tiger Woods label on it — without proper authorization — is committing an act of forgery.

Anyone who copies something I make without my license to make authorized copies is committing Identity Theft against me and some form of fraud against the person to whom they’re providing the copy: either plagiarism if they substitute their own brand or forgery and counterfeiting if they keep my brand name on it.

Sell knock-offs of Tiger Woods label Nike shoes to the wrong person and don’t be surprised if you get capped upside your head, *mutha*!

Postscript:

The questions of how copyrights, trademarks, and patents are currently defined and enforced by States are an entirely separate issue from the arguments I have been making since the 1980’s about property rights in identity and information objects.

For now I would be entirely satisfied if libertarians and anarchists recognized my property rights in the things I create and respected my right to license copies, using no other enforcement mechanism than social preferencing.

If we ever get there, I would only sign a General Submission to Arbitration with an arbiter whose legal code recognized my property rights in name, brand, identity, and information objects I create.

But if libertarian/anti-statist writers and organizations continue to deny property rights in Identity and Personal Brand — both violated by unlicensed copying of created works — the libertarian movement fails to be an effective defender of the right to self ownership — the center of all libertarian thought — and belongs in the dustbin of history along with all other failed forms of socialism that treat the individual as a slave to the wants and needs of their brothers.

Neil

Alongside Night Author to Sue United States for Copyright Infringement

I can't tell you how many readers thought this was real. – JNS, 2018

(OPENPRESS) May 21, 2010 — Author/filmmaker, J. Neil Schulman, today announced his intention to file a lawsuit for copyright infringement of his 1979 novel, *Alongside Night*, which tells the story of the collapse of the American economy due to massive government overspending and the issuing of unbacked money and credit to pay the interest on the national debt.

Schulman intends to name the United States government as his primary defendant. According to Schulman, “The United States government — both the executive and legislative branches, aided by the courts, have stolen the entire premise — and a lot of the plot — of my novel!”

Schulman also intends to name, as co-defendants in his copyright infringement lawsuit, the Federal Reserve Bank, the European Union, the International Monetary Fund, General Motors, and the country of Greece.

“Just look at TV news or read a newspaper,” Schulman said. “Plot point after plot point is identical. In my 1979 novel I have General Motors go bankrupt — General Motors then files for bankruptcy. I have Europe issue a common currency in my novel called the ‘eurofranc’ — the European Union then goes and issues the ‘euro.’ In my novel I have a European Chancellor, based in France, accuse the U.S. President of having the monetary policies of a banana republic — then the President of the European Union — also based in France — slams U.S. plans to spend its way out of recession as ‘a road to hell’ and says President Barack Obama’s massive stimulus package and banking bailout ‘will undermine the liquidity of the global financial market.’ The copycat nature of all these plot points and dialogue” — says Schulman — “could not be more obvious!”

Alongside Night won high-profile praise when it was released in hardcover by Crown Publishers in 1979.

Milton Friedman, who in 1976 won the Nobel Prize for economics, wrote about *Alongside Night*, “An absorbing novel—science fiction, yet also a cautionary tale with a disturbing resemblance to past history and future possibilities.”

The *Los Angeles Times Book Review* wrote, “High Drama ... A story of high adventure, close escapes, mistaken identities, and thrilling rescues. ... A fast-moving tale of a future which is uncomfortably close at hand.”

And Anthony Burgess, author of the dystopian novel *A Clockwork Orange*, wrote, “I received *Alongside Night* at noon today. It is now eight in the evening and I just finished it. I think I am entitled to some dinner now as I had no lunch. The unputdownability of the book ensured that. It is a remarkable and original story, and the picture it presents of an inflation-crippled America on the verge of revolution is all too acceptable. I wish, and so will many novelists, that I, or they, had thought of the idea first. A thrilling novel, crisply written, that fires the imagination as effectively as it stimulates the feelings.”

The novel was entered into the Prometheus Hall of Fame Award in 1989 — its first year of eligibility — and in May 2009 was named Freedom Book of the Month by the Freedom Book Club.

Congressman Ron Paul wrote of the novel's 30th anniversary edition in 2009, "J. Neil Schulman's *Alongside Night* may be even more relevant today than it was in 1979. Hopefully, the special thirtieth anniversary edition of this landmark work of libertarian science fiction will inspire a new generation of readers to learn more about the ideas of liberty and become active in the freedom movement."

Alongside Night has had over 87,000 downloads of its 30th Anniversary PDF edition since it was made available on the web on June 13, 2009. The publisher, Pulpless.Com, will remove this PDF edition from its website when 100,000 copies have been downloaded.

As described by the Wikipedia entry on *Alongside Night*, "The book focuses on the character of Elliot, the son of a fictional economist and Nobel Laureate ... set in a United States on the brink of economic collapse, where inflation is spiraling out of control and the government struggles to keep hold of its power. Trading in foreign currency has become illegal and many shops are subject to rationing; as a result there is a sprawling black market for almost all conceivable goods. Other nations have not fared so grimly, and organisations such as EUCOMTO (European Common Market Treaty Organization – the novel's prophetic vision of the future EU) issue stable gold standard currencies."

J. Neil Schulman intends to produce and direct his own screenplay adaptation of *Alongside Night* as soon as he has production financing in place.

"Who knows?" Schulman says. "Maybe one of the defendants in my lawsuit will settle quickly and I can use that money to make the movie!"

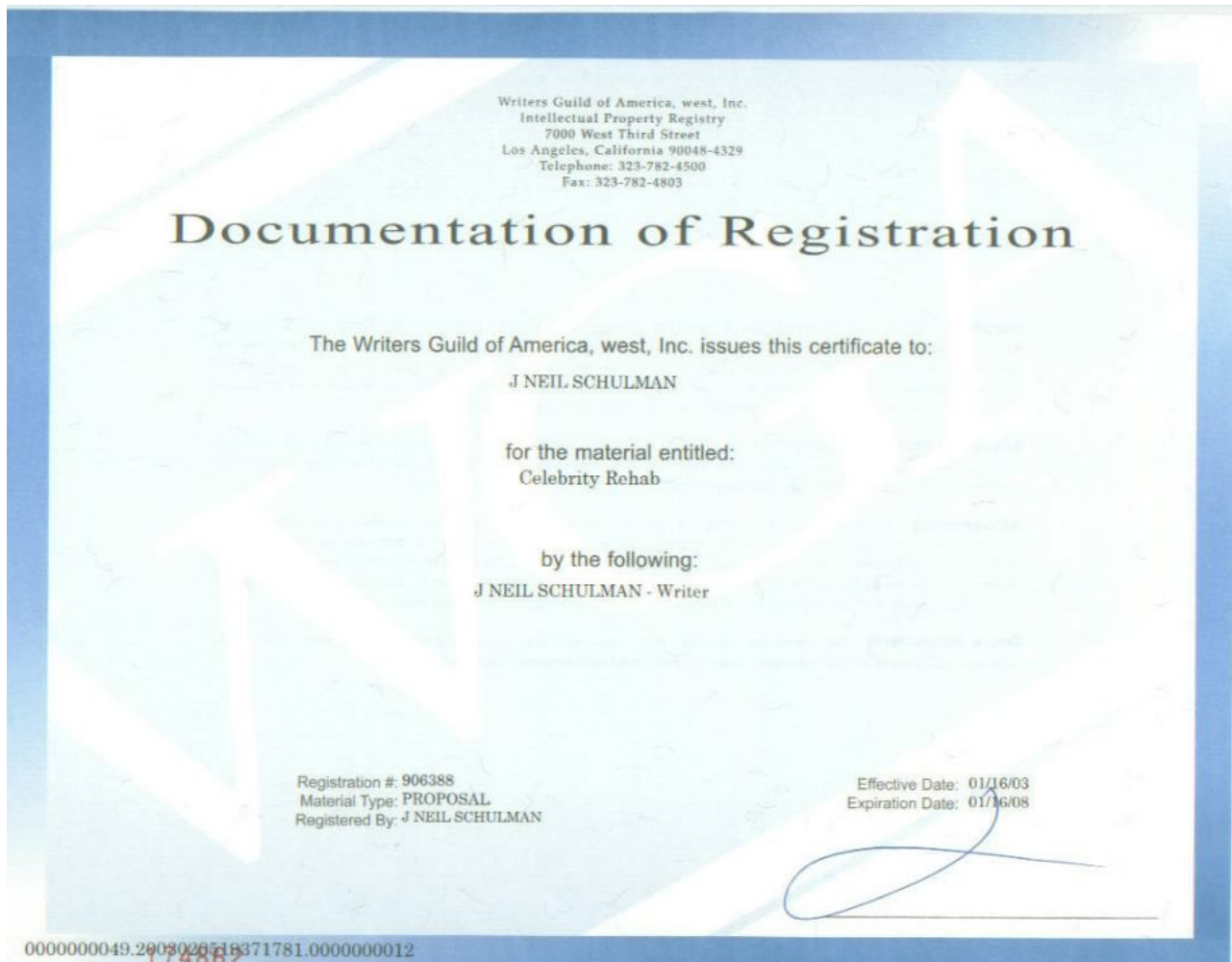
Celebrity Rehab

On January 15, 2003 I was sitting in the Sunset Boulevard office of my manager, Joel Gotler, pitching him ideas that I could write as a screenplay and he could send out for me. After I hit him with several of my best high-concept story ideas, Joel said to me, “The problem is, Neil, that these days nobody’s really interested in buying scripts. It would just be a lot easier to sell a reality TV show.”

Fine, I thought. I can do that.

Within twenty-four hours I’d written up a proposal for a reality TV show, registered it with the Writers Guild, and emailed a copy to Joel.

Here’s the Writers Guild Registration receipt:



Here’s the email:

Date: Thu, 16 Jan 2003 15:49:46 -0800
From: “J. Neil Schulman”
To: Joel Gotler
Subject: Celebrity Rehab

Joel,

Per our conversation, attached is the Microsoft Word file for “Celebrity Rehab.”

You wanted a hot Reality TV show proposal? You got it!

Neil

I attached the file. Here it is:

Celebrity Rehab by J. Neil Schulman

Log line:

Either as a Reality TV show or a movie about a fictional Reality TV show: a celebrity agrees to allow a camera crew to follow him/herself 24/7 while “in recovery” including detox, therapy sessions, court appearances, interactions with family and friends, business interactions.

Idea in brief:

Reality TV is hot, right? Celebrities are always hot, right? Why not put them together for even more heat?

The primary idea would be to get some celebrity whose life is falling apart and who is on the verge of never working again, because of drug and/or alcohol abuse—and possibly pending related criminal charges—to agree to allow a camera crew into their life as part of their rehab. Approval might be needed from authorities or treatment facilities to allow this, but assurances that the resulting tapes will conceal the identity of any unwilling third parties might allow this project to go forward, since, in effect, the camera crew could be part of prescribed or court-ordered monitoring to make sure the celebrity stays in recovery.

What would convince a celebrity to go along with this? Favorable publicity, for one thing. Opening up one’s life failures to public scrutiny would be an act of admirable courage. Demonstrating the consequences of self-destructive behavior and the steps needed to reverse course could be an important part of the self-examination needed for recovery.

Whichever celebrity agreed to allow their recovery to be recorded and broadcast would be a pioneer, using Reality TV for a purpose far nobler than seeing people eat bugs or figure out ways to screw each other off an island.

Back up position: if one can’t find a celebrity willing to participate, or obstructions are placed in the way by facilities and authorities, turn this idea into a movie a la *EdTV* or *The Truman Show*. Same concept as a Reality TV show, only it’s a meta-story about the fictional Reality TV show that comes up with the idea of turning a celebrity’s life into an open book while going through recovery. As fiction, this idea can script out all the ups and downs one would accept in a movie-movie, including the drama of relapses, high-speed police chases, overdoses, broken relationships and concerned loved ones, wild parties, sneaking around, suicide attempts, etc.

The idea was crass. It was exploitative. It showed celebrities at their worst, knocking them off their pedestals, exposing their feet of clay, feeding them to the unwashed mob who could feel good about themselves because no matter how much their own lives sucked the

lives of people richer and more famous were even more miserable. It was pure *schadenfreude*, feeding on envy and spite.

It was perfect for Reality TV.

And if nobody wanted the high-toned and brilliant drama and comedy I'd written and could write more of, what was I supposed to do — go back to delivering pizzas? That wasn't going to work. I had an 11-year-old daughter to support.

Joel said he'd start thinking of places to submit.

Before he did, I had drinks with publicist Michael Levine — whose radio show I'd guested on while promoting my book *Stopping Power: Why 70 Million Americans Own Guns*. Michael needed a writer; I needed a publicist and couldn't afford one. We reached a barter arrangement — I'd do writing for Michael in exchange for him doing publicity for me.

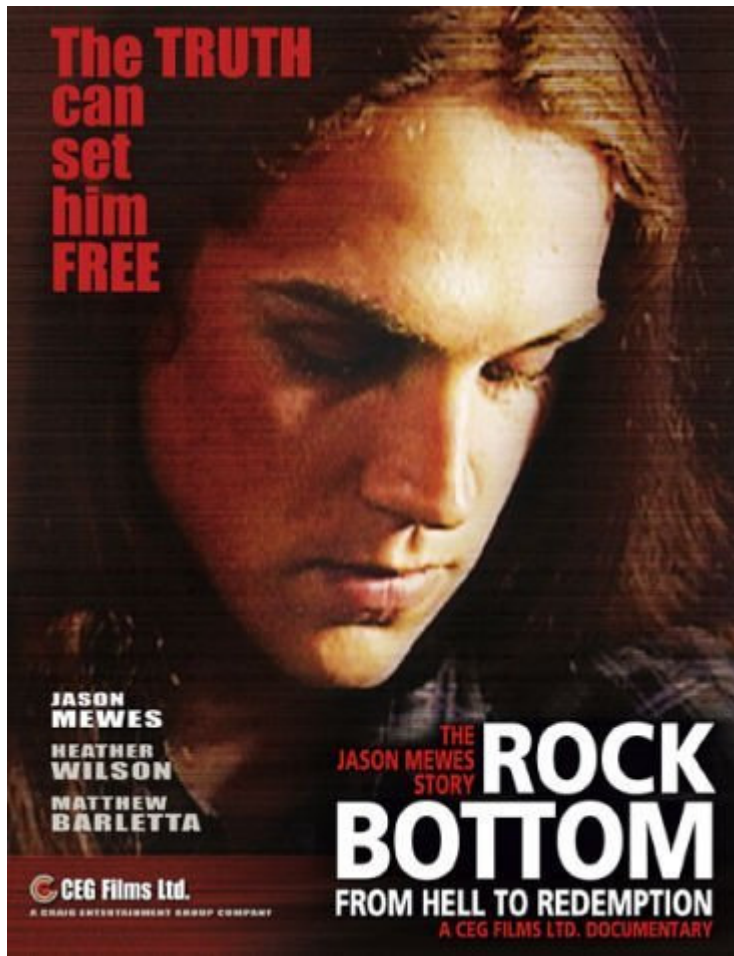
I told Michael the idea for *Celebrity Rehab* and he said he knew a development executive at the E! Entertainment Network — Michael described him as a “straight shooter” — and for whom he thought it would be perfect.

The E! Entertainment Network executive was Barry Nugent, and I met with him Thursday, February 27, 2003, pitching him the *Celebrity Rehab* premise and leaving the proposal with him. I sent him my usual follow-up email to thank him for meeting with me, and he emailed me back that he'd get back to me after the weekend.

By Wednesday, March 5, 2003, I had my answer. E! Entertainment loved the idea and wanted to move forward. Their only pre-condition was that I, as a producer, had to bring in the first celebrity ... and this turned out to be a Catch-22. I wanted a letter of intent from E! Entertainment that I could show to a celebrity's management to get them interested; E! didn't want to put anything on paper until I'd supplied the first celebrity. In fact, they didn't want me even to mention the interest from E! Entertainment until I had a celebrity to bring to them.

As I suspected, without the proof of interest from E! Entertainment I wasn't able to parlay the celebrity interest I needed. When making cold calls to agents, managers, and rehab-facility operators, I sounded just like a typical Hollywood phony, blowing smoke and selling bullshit. So it never happened.

On April 15, 2003, HBO announced a documentary titled *Rock Bottom* which was to follow actor Jason Mewes (“Jay” from the “Jay and Silent Bob” Kevin Smith movies) through heroin rehab. I got in touch with HBO to inquire whether the production company had any prior contact with E! Entertainment and possibly seen my registered proposal, and my proposal circulated to the entire documentary production and legal departments of HBO, who informed me that the project was only in early development, and they hadn't made a production commitment to *Rock Bottom* yet. My inquiries to *Rock Bottom*'s executive producer, Craig Veytia, asking if he had anything for *Rock Bottom* registered with the WGA or filed for a copyright earlier than January 16, 2003, went unanswered.



The documentary *Rock Bottom: From Hell to Redemption* was completed July 22, 2003, is listed on IMDb Pro as “released” October 15, 2003, and played at the Cannes Film Festival on May 17, 2007. No DVD is listed on Amazon.com.

That was that, so I thought, moving on to trying to develop other projects — specifically my screenplay adaptation of *Escape from Heaven*.

That was that until November 28, 2007, when Bill O’Reilly did a segment on his Fox News show about an upcoming VH1 reality show titled *Celebrity Rehab*, starring author, radio talk host & psychiatrist Dr. Drew Pinsky, which was to premiere in January 2008. The description was identical to my January 2003 proposal. I forwarded details to the attorney who had handled the production of *Lady Magdalene’s*, but her law office did not have a litigator to handle this.



Another attorney friend of mine who was a litigator did eventually send a letter to the VH1 *Celebrity Rehab* producers, asking for a development credit and a corresponding payment, but we got no response and since we had no way of proving that they had access to my original proposal we decided not to pursue it further.

It's just no fun at all seeing something you wrote before there's any evidence anybody else thought of it — in at least one case even with the same title — ending up produced with someone else's name on it.

Especially when this is how you make your living and — just like people with a steady job — have bills to pay.

Who Has Rights?

You'd think that a writer like me who regularly dives into controversy — everything from O.J. Simpson to Roman Polanski, guns to God, PETA to petroleum — would get a wide range of hate mail. But I've probably received more email on one subject — two articles I wrote years ago in opposition to animal rights — than any other subject I've tackled.

The American Revolution was fought over rights. The Declaration of Independence says “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

Rights were so important to Americans who fought the Revolutionary War that when a strong federal government was proposed to be created by the new constitution, the necessary support required a promise that a Bill of Rights would soon be added.

A couple of centuries and some decades down the road, and rights are still the main event of American politics. Do unborn babies have rights? What about animals and trees? Is there a right to health care? To education? Is there a right to get married? Do minorities have rights that majorities don't have?

When one word is used so many different ways, it gives you a sense that people are using the word without having a common understanding of what a “right” is.

I've spent years reading various different theories of what rights are, in the moral sense, the legal sense, the political sense, and the common sense.

I've read all sorts of theories about where rights come from. Jefferson, in the Declaration of Independence, takes a faith-based position: that rights come from God.

Utilitarians such as John Locke suggested rights are a useful idea needed to secure the greatest good for the greatest number.

Ayn Rand, who believed in morality but not God, worked hard to use Aristotelian axioms and deductive logic to come up with a God-free metaphysics in which rights can be derived from the Law of Identity.

Politicians often regard rights like the kings of old did — handing them out as favors to their supporters.

In my articles on animal rights I probably used the word in a sense not often understood anymore, since I was using the word in the context not of legalities or politics, but as part of a theory of moral accountability.

I suggested a new definition of rights: that a right is the moral authority to act without prior permission of another, and that as a consequence, rights could only be held by moral actors who could be held singly responsible for the consequences of their actions. If any legal concept was to be applied it was that of *mens rea*. Only a being capable of criminal culpability could be regarded as having rights — and in my view, vice versa.

So, of course, the challenges began. Are you saying that babies don't have human rights, so it's not murder to kill them? What about the mentally deficient and those suffering from dementia? If they don't have rights can we also kill them? Then of course — ironically enough — those right-wingers who argue that unborn babies have rights use pretty much the same logic as left-wingers who argue that animals and trees have rights.

And of course the questions about marginal cases come up that reminded me of an old George Carlin routine about Catholic kids questioning their parish priest, “Fadda, fadda, if I'm supposed to come to church on Sunday but we was on the International Dateline ...”

You get the idea.

Look. All I'm looking for is a use of the word "right" that makes sense and has some logical balance to it.

It doesn't make sense to me that a thirteen-year-old girl can be subject to a law which forbids her from consenting to sex, deprived of the legal ability to enter into binding contracts, own or rent property in her own name, buy a pack of cigarettes, and decide whether or not to attend school — with no possibility of legal emancipation — but the second she's suspected of a heinous crime she can be tried as an adult at the whim of the same judge that would never consider granting her any rights accruing to adults.

It's hypocritical. Such double standards make a mockery of justice — which is based on equity under the law — and a law which regards someone so capriciously is not law at all but established tyranny.

So my solution is simple. If you can't be held fully accountable for your actions, you need a keeper.

Or to put it another way: if you're not grown-up enough to be trusted with a gun, you need a keeper.

And the keeper — of the fetus, or the animal, or the tree, or the mental incompetent — is the one who is held responsible for the well-being of his charge, and for any liabilities resulting from its doings.

An Inquiry into the Nature and Causes of the Poverty of Nations

I write this on a day when three million of the poorest people on planet Earth — living in the poorest nation in the Western Hemisphere — just had a natural disaster take from them even the little they had.

Twenty-three decades ago the Scottish moral philosopher, Adam Smith, published his book *An Inquiry into the Nature and Causes of the Wealth of Nations*, and in doing so offered the first principles on which to found what may someday become a science of economics. It's obvious from our current condition that economics is not yet a science, otherwise engineers could produce as predictable practical results for economics as they can for chemistry and physics.

Thus the production and delivery of plentiful goods to the Haitians would have been a done deal years ago. Their buildings would have been built to Tokyo standards and even a 7.0 earthquake on the Richter scale would not have devastated their country.

Or maybe that's unfair. Maybe the principles of economics are sufficiently developed for practical applications and were simply ignored. In that way any rational analysis of the devastation in Haiti would in some sense be "blaming the victims" for their failure to apply the science needed to escape from their nation's poverty.

It's easy to do that as an intellectual exercise. That's a lot of what you'll be hearing from right-wing pundits today.

It's heartless and inhuman to make that one's first response to the pain anyone not psychically armored against empathy will feel.

But, as a practical matter — not being wealthy enough to pay even all of my own creditors — I am unable to add very much of my own to that Haitian relief effort which wealthier human beings than I will make.

The second emotion I experience following any disaster I see on the news is a feeling of dismal futility. I can contribute little but if I did not do even this the lack of my contribution would be submarginal.

You may call this the principle of Marginal Futility, and I am being only mordantly funny.

That's why I now supplement my marginal futility to help the Haitians with the intellectual futility of examining why this is still a problem.

The first axiom of just about any school of economics is scarcity.

The Austrian School of Economics — the school of thought to which most current-day libertarians subscribe — treats anything less than instantaneous gratification of any desire as an object of scarcity. The way writers like Murray Rothbard put it is that if you desire a Coca Cola, it would have to be trickling down your throat at the instant you desire it otherwise you would need to take some action — even it's only lifting the bottle to chug it — to satisfy the scarcity of Coca Cola in your throat.

Both by the first premise of Austrian economics — "Human beings act to remove felt unease" — and by empirical observation of the universe around me, I've concluded that everything — every *thing* — that exists is scarce.

There is only one of two conditions to escape economics, then.

The first condition is to desire nothing. That's the teleology offered by Zen Buddhism, whose adherents desire a state of non-desiring they call Nirvana. This logically requires total unconsciousness because the conscious mind — being active — can still perceive

something new to it and desire that new thing. Arriving in Heaven would be a disastrous outcome for the Zen Buddhists, since they'd still be conscious and thus capable of desires and actions to pursue them.

The second condition is to be conscious within a reality in which the moment any desire is detected it's instantly gratified. Lust is instantly gratified by sex and orgasm. Hunger is instantly satisfied by taste. Thirst is instantly quenched. Every itch is instantly scratched. I believe a lot of Christians think that's what Heaven would be.

Both Zen Buddhists and many fundamentalist Christians appear to idealize the condition of the fetus in the womb. It exists and — if it desires anything — that desire is instantly satiated.

Birth just *ruins* everything.

The conscious, active mind is incapable of existing in either of these conditions permanently. The mind stuck in either of these conditions will eventually atrophy and die from boredom.

Thus, economic scarcity is a fundamental condition of being sapient, whether as a mortal or immortal.

Heaven, itself, must have an economic life.

The pursuit of happiness is therefore an economic study as much as a spiritual study, and that is a universal truth.

I am a creative person by activity and profession. My professional life has been devoted to bringing into existence — or trying to — information objects — stories, scripts, novels, movies, and even inventions — that have not previously existed.

Three novels would not have existed if I had not written them.

One feature film would not have existed if I did not write, produce, and direct it.

There is at least one invention I have “on the drawing board” that will not exist unless I manage to get it produced, tested, and — if market-worthy — manufactured and offered for sale.

I do not believe in the concept of creation *ex nihilo* — out of nothingness. Therefore, all creation is working with the stuff you find around you and recombining what you find into new things.

As a practical matter, as well as in economic theory, nothing is so plentiful as not to be an object of desire.

Even the ocean is scarce if you live in the desert ... or on a planet that doesn't have one.

There are those who think there are already too many people and wish to reduce the human population by discouraging human fecundity. They think the earth has limited resources and if human population growth continues unabated our species will use them up.

But they have it just backwards. The only actual resource is intelligence, and every human body comes with the potential of being that mind which solves the problem of satisfying a need. So I say: the more minds the merrier. Be fruitful and both multiply and divide.

The solution for poverty is the creation of new and plentiful wealth. But as every indie filmmaker like me quickly learns, there's nothing to distribute if you don't first produce it.

That principle could have saved Haiti. And I hope it will before Haiti needs saving from some new disaster.

The wealth of this planet is the fruits produced by the free and individual human mind. That requires a society which values the free and individual human mind, and offers the protection of property rights in what they create.

The libertarian movement is now made up largely of intellectuals who do not believe that. They think because something can be copied that it's not scarce and therefore the rules of economics state that it can't be claimed by its creator as property.

They haven't understood the first principles of economics. They don't "grok" the pyramid of premises — from the "is" to the "ought" — which necessitates the recognition of property rights as the source of all progressive capitalism leading to human wealth. They left their common sense in their rear-view mirrors.

That's one big reason I no longer consider myself part of the libertarian movement.

I just wrote a book called *Unchaining the Human Heart — A Revolutionary Manifesto*. It's about the same length as *The Communist Manifesto* and *Quotations from Chairman Mao* ("The Little Red Book.")

Feel free to start a new revolutionary libertarian movement around it.

But don't expect me to be hanging around when it finally gets going.

Meanwhile, if you have a spare buck or two, find a way to get it to someone who might actually help the Haitians, rather than the usual thieves who will ask for your money then pocket it themselves.

It might be futile but then, what isn't on this darned planet?

What's Your Bible?

I just spent the day in what I thought was a business negotiation with a man I've known as a libertarian anarchist, conducted by email, only to find out after hours of trying patiently to explain some business principles related to my profession that it wasn't a business negotiation at all. Near the end, I was told I didn't get what was going on because I hadn't read *A Book*. If only I would read *This Book* it would explain what I was missing.

Now, I have a journalistic dilemma here. On the one hand I need to quote a pretty big chunk of text written by someone else in a private email. On the other hand, the person who wrote this to me has made it quite clear in public writings that he does not subscribe to the concepts of intellectual property or copyright. On the third tentacle — as my old buddy Sam Konkin used to say — I feel a need not to embarrass my correspondent because I value his friendship and possible future collaborations.

The fear of embarrassing my correspondent has nothing to do with the quality of what I wish to quote — which is really very literary — but with the arguments I need to make in opposition to its author, and the syndrome I believe this writing represents.

Since 1998 I have maintained on my personal website, *The World According to J. Neil Schulman*, a page titled, "Personal Statement of Information Policy."

Personal Statement of Information Policy

I am a writer, a journalist, and a publisher. I consider that all information given to me is for my use in those professions, unless the information contains a notice of copyright or a request for privacy.

I respect copyrights, but operate under the Doctrine of Fair Usage, interpreted liberally. Reciprocally, a major portion of my writings are available free on the World Wide Web to anyone who wants to read them. I've placed copyright notices on my writing to define what rights I'm maintaining and what uses I'm granting.

Persons conveying information to me do so at their own risk. Sources requesting secrecy are hereby given notice that I will maintain such secrecy at *my* sole discretion, according to my utilitarian considerations and personal ethics. If I make a promise to maintain secrecy or privacy on a particular piece of information, I will keep that promise except under duress, or unless in my judgment revealing that information will result in the net saving of lives or property. Don't expect me to keep your secrets under torture, or under threats to my family. I won't do it. I'm not a soldier pledged to any cause. But I am a human being with high ethical standards and will try like hell not to cause unwitting harm to others.

If material is sent to me in email, I consider that I have the right to forward it to anyone I choose, or to publish it in any form I choose, unless a specific copyright notice or request for privacy is made within the body of that email message. I take no responsibility for my unwittingly forwarding private email in which no specific request for privacy has been made, or copyrighted materials in which the copyright notice has been stripped from the material. If you "cc" or "bcc" me on an email, I reserve the right to reply as I see fit. If you don't want me to reply to someone, either don't include me in the email or conceal the email address of anyone you don't want to receive a reply. My email software includes in its design the one-click ability to reply to the sender or "reply all" or "forward." The inclusion of those features means the software designers contemplated that I and millions of others would want to use it and often enough I do. Accusing me of violating "netiquette" because I use features designed into my email software is snobbish,

Pharisaical, and lame-brained. Do that to me and the stream of profanity you get will likely be the last email you will ever receive from me. I've never suffered fools gladly.

While we're on the subject of Netiquette, as far as I'm concerned it's up to you to reject or filter out unwanted HTML code or other attachments. My eMail is checked for viruses before I get it so I know it can be done. I often forward web pages and other assorted file-types to friends I think will be interested. If you don't want to hear from me, tell me and I'll remove you from my email address book.

Submission of literary materials for publication will be treated as copyrighted, so long as they are labelled submissions, and will not be published without permission from the copyright owner.

Publication embargo dates will be honored, if requested on the materials, and if I don't forget. Any disputes will be decided in my favor.

I don't consciously take credit for other people's creative work, and I expect that anyone consciously making use of my creative work will give me credit.

If these conditions are not acceptable to you, keep whatever it is to yourself!

J. Neil Schulman

I put up this page after another correspondent took issue with my using an email sent to me alone as the basis for a business proposition to a close circle of other associates whom I worked with regularly. The person who wrote to me knew all these others personally; I did not think there was a problem. Yet it caused a rift that lasted many years. So to prevent a repeat of that I posted that page.

So I feel comfortable in quoting the relevant text here, and not identifying the writer. The writer is free to claim authorship and I'll be happy to verify it.

Here's what was written to me:

A lot of my thinking may seem inexplicable if you've never read up on the generational cycles theory of history put forth by William Strauss and Neil Howe.

https://secure.wikimedia.org/wikipedia/en/wiki/Strauss_and_Howe

To make a long story short, we're currently in an approximately 20 to 25 year period in which revolutions are possible, called a Crisis. A

lot of the reason for why that is simply the relative ages of different recurring generational types that can be characterized by certain archetypes. Baby Boomers such as yourself are the Prophet generation, from which arises the visionary leadership in a Crisis that leads by articulating ideals. GenX is a Nomad generation and a Nomad generation contributes the mid-level leaders in a Crisis. The Millennial Generation born after roughly 1985 are the Hero generation — the NEXT "Greatest Generation" of foot soldiers who will make nearly unfathomable sacrifices to secure social change and put their elders to shame with their own good-natured teamwork.

Because of this hidden underlying dynamic of social change that Strauss and Howe articulate, particularly in their book "The Fourth Turning", people seeking to be effective leaders in revolutionary social change during a Crisis must attempt to cultivate the correct archetypal qualities in themselves.

To be blunt, you need be FDR here. Me, [Person 2] and [Person 3] — we're Patton, Al Capone and Sgt. Rock (not necessarily in that order).

Logistics and organizational policy are our domain. Period.

You don't have to get with the program if you don't want to. We're going to keep doing what we must, though, and won't be browbeaten or emotionally blackmailed into deviating from that path.

Wow.

Click through to the Wikipedia link my correspondent provided me. That — plus my correspondent’s excellent Plain English Executive Summary — makes it unnecessary for me to read any of Strauss and Howe’s books to know what I’m dealing with: another Marx and Engels, Adolf Hitler or — more benignly — H.G. Wells or Oswald Spengler.

Strauss and Howe don’t see billions of free-will-endowed individuals making moment-by-moment value-judgments on what each of their needs and desires are, which will change the moment the menu changes. Strauss and Howe — and my correspondent — see abstract collective “generations,” “movements,” grand “sweeps of history” — which look very impressive, especially when you see them all shouting in unison at a rally, or marching in goose step.

But Messrs Strauss and Howe can tell you absolutely nothing useful about what will happen tomorrow or the day after that. They don’t understand that the only certainty is the utter and unpredictable *uncertainty* of each individual participant in the human drama.

My correspondent thinks he’s a libertarian. He heads up a libertarian institution. I just learned today that he’s wrong.

For all the strategic causes he and I have in common — which may yet lead to us working together in common cause — his fundamental understanding of his own species and its Human Action is utterly anti-libertarian.

Perhaps I should have guessed because of the specific discussion we were having. I was offering to write future articles for his institution’s website. They have a policy in place that anything published on their website is released under what’s called a Creative Commons Attribution License. The Creative Commons Attribution License this website uses authorizes anyone to republish the writing under the following conditions:

You are free:

- to Share — to copy, distribute and transmit the work
- to Remix — to adapt the work

As a professional writer whose name is his commercial brand, I can no more allow someone else to rewrite me as they like and put my byline on it than the Walt Disney Corporation can allow someone else to publish cartoons of Mickey Mouse buggering Donald Duck.

So I tried to explain to them — giving extensive examples from close to four decades in the business of how even experienced professional editors and other writers had managed to screw up my writings — why if I was going to release my work under a Creative Commons Attribution License — it would have to be this one:

You are free:

- to Share — to copy, distribute and transmit the work
- Under the following conditions:
- Attribution — You must attribute the work in the manner specified by the author or licensor (but not in any way that suggests that they endorse you or your use of the work).
- No Derivative Works — You may not alter, transform, or build upon this work.
- With the understanding that:

- =Waiver — Any of the above conditions can be waived if you get permission from the copyright holder.

I tried to explain — over and over — that while part-time writers, academic writers living off their teaching salary, or ideologues writing merely to express their views wouldn't have a problem with the first Creative Commons Attribution License, any media professional with experience in reaching millions of people at a time — expanding outreach into the major marketplaces of ideas — would be unavailable without some accommodation of this policy. In essence I said: fix this or continue to work on the margins.

The response I got from this “libertarian anarchist” was an intransigent and continuous restatement of a policy that amounted to “My way or the highway” — and a psychological projection that in my attempts to protect my writing from vandalism or outright sabotage from parties unknown I was being a bully.

I don't need to go any further, here, on the question of why libertarianism without individualism is a contradiction in terms and a metaphysical impossibility.

The most important reason I have not identified my correspondent — and sincerely hope he does not choose to identify himself — is that it would utterly foil my intent to be as ecumenical as possible in encouraging as big a tent as possible in welcoming any and all who think of themselves as libertarians into the fold.

In strategy my correspondent functions as a libertarian in many, many ways. I would hate to exclude him from libertarian activities and causes, even from his position of leadership.

So I make my point in principle, and by example, but without any intention of actual exclusion.

But what I do need to say something about is that libertarians, anarchists, and socialists of every stripe who make fun of people who use the Bible as their life's guide are as prone to adopting other Bibles — and that word, if you look it up, means no more nor less than “Book” — as any religious acolyte.

My correspondent, who thinks of himself free from religious dogma, has chosen Strauss and Howe as his apostles, and their books as his gospels.

I also write books.

God save me from the unintended consequence if I ever — like some of my favorite authors have come close to doing — spark my own religion.

Karl Marx versus Political Correctness

Karl Marx is the most influential economist in human history. Since the publication of *The Communist Manifesto*, co-written with Friedrich Engels, in 1848, and Marx's magnum opus, *Capital* (*Das Kapital*, in its original German) the first volume of which was published in 1867, Marxist scientific theories regarding the exploitation of workers have motivated revolutions throughout the globe. Marxism has been the primary force behind the ideological hostility to free-market economics, which Marxist theory argues allows non-productive classes to rob and dominate productive classes.

Karl Marx didn't pull his scientific theory of working-class exploitation out of a hat. It was a logical extrapolation from the "labor" theory of value. This originates with the second-most influential economist in human history, Adam Smith — generally considered the father of capitalism and of economics as a science, itself — with publication in 1776 of Smith's book, *An Inquiry into the Nature and Causes of the Wealth of Nations*.

Adam Smith argued that a product's value comes from how much labor went into making it. Marx took that a step further and postulated, therefore, that if someone other than the person who made a thing was getting more back for selling it than the person whose labor went into making it, there was a gap which Marx termed "surplus labor value" — and the difference between a sale price and how much went back to the laborer was "exploitation" of the worker — a systematic robbery.

It was to close this exploitation gap and restore equity to the worker that Marx developed his class theories and divided the world into productive exploited classes and non-productive exploiter classes.

Now, it's not at all uncommon throughout human history for a scientific theory to become widely adopted even if it's dead wrong. The classic example is the cosmological theory that the earth was the center of the universe (because it was created by God) and therefore the rest of the universe rotated around the earth. Those who made astronomical observations which disproved this theory took a lot of heat for suggesting what is now regarded as scientific orthodoxy: that the earth is but one planet revolving around a star, one of many stars in a galaxy made up of billions and billions of stars, one of a universe made up of billions and billions of galaxies ... and don't even get me started about whether there might be billions and billions of universes.

The counter of Marxist theory comes from more-modern economists who started from scratch and decided that Adam Smith's theory of value was obviously wrong — that you could spend years as a laborer making a grandfather clock that is worth less to you than a bottle of water if you happen to be dying of thirst — and came up with the idea that a thing's value is only what you're willing to trade for it at an exact moment in time. Deductive logic follows from there and ends up with a holistic argument for unfettered free trade so everyone gets precisely what they want most.

But that's actually a side-argument for me at the moment.

Regardless of going about it all the wrong way because everything they were doing was based on what today can be regarded as outmoded crackpot science, Marxism has its heart in the right place: justice for the productive class. When Marxism identifies freeloaders on the backs of the productive worker, it sees it as its job to free the worker from the freeloader ... not burden the worker with more freeloaders.

That is the exact opposite of what's going on in what is seen as left-wing politics today, which claims to be the workers' friend but burdens their productivity with taxes,

regulations, and setting up workers to go to war against each other by dividing them into “unionized” workers and “scab workers.”

Scab workers are independent workers willing to work for less than the government-protected price for labor the unions have negotiated for themselves. Businesses like to hire the cheaper guys because if they don’t, other businesses elsewhere (like China) who don’t have to pay union rates can undersell them and drive them out of business.

With most U.S. manufacturing now having gone elsewhere, keeping labor prices artificially high creates a new *ex*-working class that now organizes to tax workers so they can get their food, rent, and healthcare paid for.

If Marx were alive to see this, he’d have to go back to the drawing board and ask himself if *ex*-workers are now the biggest burden on the diminishing working class.

Marx wasn’t nearly as hostile to capitalism as most Marxists. Marx saw capitalism, exploitation of the worker and all, as a necessary evolutionary phase on the way to a stateless utopia in which nobody had to exploit anybody else. Once again, if Marx had managed to live long enough to see how his theories worked out in practice — Marx died in 1883, 34 years before the first Marxist revolution in Russia — he might have gone back to the drawing board.

Regardless, when conservatives and Republicans — Glenn Beck being the best example — constantly harp on members of the American Democratic/progressive movement being Marxists, they’re giving far less credit to Marx than Marx deserves, and far too much honor to the American Democratic/progressives than *they* deserve. They should be so Marxist as actually to care about productive people and want to get the free riders off their asses.

Marxist or Capitalist: it’s time to cut the crap and for leftists to admit that anything that enslaves productive people under the thumb of the non-productive and exploitative special interests is counterrevolutionary ... and needs to be denounced and opposed.

Kinsella on Liberty Podcast Episode 208

Conversation with Schulman about Logorights and Media-Carried Property

March 5, 2016

Transcribed by Rosemary Denshaw at rdenshaw@franklin.solutions

[Edited for clarity. – JNS]

Stephan Kinsella: Hey, this is Stephan Kinsella doing an episode of *Kinsella on Liberty*, podcast. This should be number 208. I've got my old friend, Neil Schulman, online. We've actually met in person, haven't we Neil?

J. Neil Schulman: Yeah. As I recall, it was at Libertopia a few years ago.

Kinsella: How are you doing?

Schulman: I'm doing well. How about you?

Kinsella: It's all right. Today is March 4th, 2016. You and I have known each other for maybe, what, 30+ years now?

Schulman: It's been a while. And I must say a lot friendlier now than we used to be.

Kinsella: Well, in the beginning it was friendly. Remember on the GENie Forums in the old days before the internet?

Schulman: My God, I didn't remember that we met on GENie. That goes back to the early 90s.

Kinsella: Yeah, that's where I sent you the review of your *Heinleiniana* book.

Schulman: Oh yes, yes. And it's one of the many interests we have in common.

Kinsella: Yeah, Heinlein. Of course, you knew him better than I did.

Schulman: Well, I was very lucky to be able to interview him for the *The New York Daily News* which led to our meeting and subsequent friendship.

Kinsella: Right. Right. Well, I think we're friendly when we're not threatening to convert each other to IP socialism. It depends on our definitions.

Schulman: Actually, it's amazing how much we agree on. And there's just one bone of contention which has occupied 90% of our energy.

Kinsella: Yeah and probably it's only because, as I have dug into this IP issue over the years, I get more and more into meticulous details because I keep seeing what I think are the errors that cause some mistakes to keep being perpetrated. So I get more and more into minutiae, but anyway.

Do you remember a few years ago, I think I dug up the old information and got the tapes from someone, from that IP debate you had done with Wendy McElroy back in like '83 I think, right?

Schulman:

Yes. And that was my first entry into this controversy.

Kinsella:

And I think Wendy's was '81 with some newsletters in California and then '83. So I really think the modern debate on this started around then, to be honest.

Schulman:

Well, actually for me, it went back even further in time because I was part of the close circle of Samuel Edward Konkin III and his magazines: *New Libertarian Notes*, *New Libertarian Weekly*, *New Libertarian* and various other publications. And of course I was also good friends with Robert LeFevre. Both Sam and Bob LeFevre were opposed to the idea of state copyright and state patents. And where I was coming in was a very early attempt to justify not statist concepts, being an anarchist, an agorist, I'm opposed to that, but to see if there was a natural law and natural right for these things, for a concept of ownership of content which existed only as what today I now call media-carried property, but back then I called logorights.

Kinsella:

Well, but...

Schulman:

The idea being that something didn't have to be made out of atoms and molecules in order to satisfy the requirements for a copyright claim. Now Sam allowed copyrights for individual writers in his publications. So he was not so opposed to it that he said, no, it has to be without copyright. And at that time, I don't even think there were creative commons licenses to enter the discussion.

Kinsella:

Well....

Schulman:

And Bob LeFevre, while he was opposed to copyright, he actually endorsed my concepts of logorights as worth considering, beginning right after my debate with Wendy McElroy. I would say that if I were to boil it down to my position today, is that I am not so much discussing the question of intellectual property, or ideas as property, two concepts which I reject out of hand, but that I am exploring that property itself is an intellectual artifact. And as I posted on your Facebook wall today, I think that it comes closest to being an intellectual artifact of contract law. Whether or not, as you posted, contract law is a subset of property law or whether property law is a subset of contract law, is a debate I don't think is really worth spending a lot of time on. But I do think that property itself is an intellectual concept which falls under both a discussion of legal rights and a discussion of natural law and natural rights as libertarians would understand

it.

Kinsella:

Yeah. Before we get into your theories, let's talk a little bit more about the background because I think we have another thing in common. Maybe you would agree or not on this, but my suspicion is you had – I know you had sort of a Randian approach to some issues in your libertarianism and you also were, and are, a writer and a successful career writer, right, a novelist. So you had an interest in trying to find a way to justify something that you had like a financial interest in, right?

And I did, too, in a way because I was a patent attorney and I still am. That's one reason I started searching as well. And the reason I was searching was because I found Ayn Rand – she influenced me early on. And one of the arguments she made that never did persuade me was her argument for IP. Something about it was just not like her other arguments. It was sort of arbitrary and utilitarian. It just didn't make sense like her other arguments did. But I was going to do patent law and copyright law for my career and I'm a libertarian. So I started thinking let me find a better solution for this. So I was searching as well. It's just you came up with logorights and I came up with skepticism.

Schulman:

It's ironic that you as a patent lawyer are probably one of the leading scholars today opposed to the very field you are operating in, which is patent law. But, in my case, I think you have the cause and effect reversed. My being a writer was not the reason why I felt it worth pursuing. It was my interest primarily as a libertarian natural law/natural rights believer which led me to this. And, in fact, I would say that I was probably more influenced by Robert LeFevre's approach to property rights *per se* than I was to Ayn Rand's.

Kinsella:

Okay, I accept that. But you would admit there is, there tends to be some correlation. I tend to find...

Schulman:

Well, let me let you off the hook by saying that in my original article, *Informational Property: Logorights*, I did quote from Ayn Rand because I found that parts of her argument were expressive, but in terms of the basic theory of property which I was pursuing,

I thought that Robert LeFevre made a more comprehensive case.

Kinsella:

No, but what I was going to say it seems to be no coincidence that there's a disproportionate number of libertarian novelists who happen to support copyright, just like almost all patent lawyers happen to support patent and copyright. Do you follow me? I don't think it's quite a coincidence.

Schulman:

But you see, it seems to me that that's starting off with, if I may use a term that Ludwig van Mises liked a lot, parallogism. In other words, it transferred the argument from a debate of the merits to a debate on the motivation of the people who are arguing it.

Kinsella:

Yeah, I don't mean to argue substance by psychologizing, but I do find psychologizing fun sometimes. I can't deny it. And I do think that at least, at very least, we should be aware of our biases and try to be sure that if you're advocating something that happens to be in your favor, that you have good reasons for it anyway. But, of course, the arguments stand on their own merits I think.

But, by the converse, I get attacked quite often for being an IP lawyer and for opposing it as if my arguments, if they were correct, is as if you wouldn't expect an IP lawyer to be one of the people that would recognize that. I mean it's possible to actually know something about the field that is unjustified and corrupt and to come to those conclusions, even though it's not in your personal, immediate interest.

Schulman:

Well, look, just switching to somewhere else just as a for instance, because what I'm noting is not what I call hypocrisy but merely irony, okay? I'm saying it's ironic. Wouldn't you find it at least ironic if you had a medical doctor, an obstetrician, say, who said that he was opposed to abortion who then, as part of his practice, performed abortions.

Kinsella:

Yes. In fact, I think that might be hypocritical. It could be. But, first of all, I don't think there is anything wrong with pointing out irony any more than psychologizing, it's kind of interesting—and it may be ironic. I don't think it happens to be ironic. Let's suppose that there is a healthy difference of agreement among the population as a whole or among academics or scholars about IP; 30% to 70%, whatever. I don't know. I mean it would be ironic if some percentage of patent lawyers didn't take that side, that if

everyone *automatically* agreed with it. As for the hypocrisy or the irony issue, it would be more ironic if I were out there *suing* people in the name of IP. So I agree that would be more difficult. But if you understand the way...

Schulman: Then let me establish this. I have never filed a lawsuit on behalf of any of my literary rights.

Kinsella: Right. No, I understand that because most copyright holders don't have those scruples. You have your anarchist and your voluntary scruples. So that tamps down the excesses that people might otherwise go to. So I understand that.

Schulman: Let me also make clear, let me also make clear, that in practice, when I have opposed pirating of my rights, I've only done so vocally in instances where I felt that it was damaging to a third party.

Kinsella: Right. Like more of a fraud type argument or something like that?

Schulman: Well, not even fraud. But let me give you an example. There was supposedly, I'm not sure, and I'm being told now that this never happened, but there was a representation that there was going to be a pirate screening of the *Alongside Night* movie at PorcFest to compete with the official screening that I went to a lot of trouble to sell at a movie theater...

Kinsella: Right. I heard about that.

Schulman: ...nearby Roger's Campground. Okay? And I was upset about it because the whole purpose of the screening was set up as a fundraiser for the Free State Project. And so, I felt that a pirate screening competing with a fundraiser for the Free State Project was damaging to the Free State Project and that upset me.

Kinsella: I understand that. Of course, that has nothing to do with the validity of copyright or even logorights, but I understand.

Schulman: Right. And, again, all of this is sort of like, as I say, paralogia. It's an interesting back to discussion, but really it doesn't speak to the actual question of whether under a general theory of property rights which I maintain is a moral and a legal construct. It's a subset of a theory of natural law leading to natural human rights. That I consider property rights to be primarily an ontological and moral issue. And then you get to it as a legal issue.

But let me start by conceding to you that, as I observe it right now, the mainstream position of the libertarian movement, as I perceive it, is anti what they perceive as artistic rights in things which are not physical objects.

Kinsella: Okay.

Schulman: So, in essence, I'm fighting an uphill battle, a battle in which you have the high ground, the strategic high ground.

Kinsella: Well, I understand that, but I think there's also, especially among anarchists, right, we are generally skeptical of existing statutory schemes. And so someone like you who supports some kind of, I don't want to call it intellectual property. You call it informational property or now material-carried property and we can get into the details in a second.

Schulman: Media-carried property.

Kinsella: Sorry, media-carried property. You shouldn't be in the position of having to defend the existing patent and copyright system.

Schulman: No and I find it frustrating that most of the vitriolic attacks on me assume that I am supporting what is being portrayed as a monopolistic grant of privilege from the State. In my very first debate with Wendy, I started off by saying if the concept I was putting forward could not be defended other than as a monopolistic grant of privilege from the

State, then I would immediately abandon it.

Kinsella: Well, but the problem is, I would say, and see if you agree with this, the vast majority of pro-IP libertarians would oppose the abolition of patent and copyright, at least until we could replace with their ideal system. So they do not have this abolitionist view towards...

Schulman: And this is where I go into my usual spiel about how I don't think that any kind of property, if there is in fact a property, that there should be – there's a statist phrase, but it's a legal term of art, mostly a sunset.

If you're going to say that a copyright is statist, then why isn't a deed from the county clerk just as statist? And if you're going to say that we need to abolish now one, why not the other?

Kinsella: But you see, then I see that you're trying to have that both ways because you act, on the one hand, like you're not in favor of defending the existing patent and copyright system, but when someone calls for abolishing it, then you sort of say, well, if we abolish that, why not abolish real property titles?

Schulman: But that's the thing. Presumably you drive a car which is

registered with the Department of Motor Vehicles in which you're not allowed to operate without that license from the State. And presumably the land deed issued by your county is in the same situation, if you are in fact a homeowner. Or, if not, at one remove as a renter from somebody who does have property which has a deed issued by the county. I just don't see the difference.

Kinsella:

Okay. Well, so the problem I have with that argument, that analogy, is you and I as libertarians don't have much disagreement on the basic notion that there ought to be property titles recognized in scarce resources like land. We oppose the state from monopolizing...

Schulman:

Well, scarcity is only one of the things.

Kinsella:

Okay.

Schulman:

And I don't see scarcity as absolute as I discuss in my article, *Human Property*. Scarcity is not absolute. I'll refer people to that article rather than repeat myself.

Kinsella:

Yeah and I'm going to link to it in the podcast. I have all the links. I'm going to those. I'm just trying to pick something uncontroversial. We both agree there should be property rights in land, right?

Schulman:

Yes. I'm not a Henry Georgist.

Kinsella:

And the basic function of the existing property title records offices in the counties around the country is to just keep track of that. Now we oppose the State monopolizing the function, but it's basically a correct function, a libertarian function. You can't just leap from that and say that similarly the copyright system does something crudely but it does a similar function because, well, for several reasons. We don't agree that these kinds of things should be property. That's what we dispute. And the property title system itself is not terrible, the way the State runs it. It's just that the State has the right to come in and seize your property because of imminent domain.

Schulman:

Okay. Well, you see here we can get into another agreement immediately. I think that the way that the laws have been lobbied by large corporations to extend and protect their claims of copyright and patent are egregiously anti-property rights. For example – I will give you one example in patents and another in copyright. What Monsanto did in suing farmers whose crops were invaded by Monsanto's seeds from adjoining property...

Kinsella:

Patented seeds, right.

Schulman:

...and then sued the small farmers who had no ability to legally defend themselves against this mega-giant corporation, I think is one of the most horrific misuses of patent law that I can imagine.

Similarly, the way that corporations such as Disney have taken things that are traditional fairytales and copyrighted them and then aggressively attacked people who wanted to use this stuff which originated long before Disney got to it and sued the heck out of them to restrict their doing so, is equally egregious. Getting images and taking paintings which hang in the Louvre and then pursue claims against people who reproduce them, things that go back hundreds of years, is similarly egregious. So if you are looking for Schulman to agree with Kinsella, that the way that the State handles this is egregious, we have no disagreement.

Kinsella:

Well, let me disagree a little bit about on that. I wouldn't, I mean this is a quibble, but I wouldn't call it a misuse at all. And I wouldn't blame Monsanto and Getty. I mean maybe they're immoral, but they're using the legal rights the system gives them. In every one, all three of the cases you mentioned, you can explain why what they're doing is basically supported by the copyright and patent systems. What they're doing is totally legitimate.

Schulman:

And I'm not going to disagree with you, but that is the problem with all statist law. None of it supports a pure libertarian concept of property.

Kinsella:

Right.

Schulman:

And, in fact, one of the historical reasons why libertarians have opposed such law is that they started out with grants from kings and other royalties. So there is an historical parallel that the development of this body of law was corrupt going back to its root. But, to me, that is an artifact of statism itself. In other words, I would say that, in fact, the Robin Hood story of how you have the king's land being poached on, okay, is just as much of an argument not to have privately held land as the argument for grants of privilege from kings being one of the earliest uses of artistic creation. It's equivalent. In other words, the problem here is not that we don't have something which deserves to be treated as a property right. The problem is we have the State.

Kinsella:

I don't think that the argument that IP is unjust is the same as

arguing that current property rights and land are unjust because of some corruption back in the old days because we all agree there ought to be property rights in land and we have to have some system for determining who the best owner is. So that's not really controversial.

Schulman: Hold on. You can't say that we all agree.

Kinsella: All us libertarians, yeah.

Schulman: There are, in fact, communists who don't agree.

Kinsella: Well, you and I agree, okay? You and I agree on the land issues. That's one difference. The other thing is, if someone asks a libertarian, well, what would roads be like and would land title registry be like in a free market, we would say, well, it would be similar to what we have now. You'd have roads. It's just they'd have private owners and that would have different economic effects in how they're run and all that. We would have land title records.

Schulman: If you go to Cato and Reason, you're going to find scholars who found out that some of the earliest highways and turnpikes were, in fact, privately created. Then you get to the long history of the railroads where you have all sorts of statist interference.

Kinsella: But my point is you could use some of the existing common law based and other systems that we have as a rough model to what the libertarian system would look like, but it would be better. But you cannot say that. So in terms of IP, I could give 50 or 100 or 1000 examples and you might call them misuses of the system. I would just say this is just the implications of the current substantive law of patent and copyright that the State has created and you would probably agree with me on every one of those.

Schulman: I will immediately concede your historical point. What I represented in 1983, beginning with my debate with Wendy, is that I was putting forward a new natural rights theory that did not have an historical base.

Kinsella: Right. I understand. So let's get to something a little bit...you and I have gone back and forth over the years, mostly in writing. One reason that I just pinged you today was I was talking with another gentleman and he was questioning the IP issues and we were talking about it. And I was trying to explain something to him. And I made the point, which is my view, which I don't know if you completely agree with, but I was arguing that, look, one of the fundamental mistakes in the IP argument, or in your logorights argument I believe, is this idea that you can own an attribute or a characteristic or a feature of an object separate from the object itself, okay? And then I said...

Schulman: And that...

Kinsella: Hold on...

Schulman: And that comes directly out of Robert LeFevre's theory of property.

Kinsella: Okay, it may be. It's also somewhat of an implication of Locke. I think Locke was confused on his labor comments, etcetera, but, and then I said actually that Schulman has modified his logorights characterization. You call it material-carried property, right?

Schulman: No, media-carried property.

Kinsella: Sorry, I keep messing it, media-carried property. And I said, so basically, you view it the same as I. You just have a different conclusion. That's why I said, well, let's just talk about it. And let me just summarize quickly what I think the mistake is and you can tell me where you think I'm wrong or what I'm missing.

To my mind, if you own an object, and that's the media, that's the physical thing that is owned, that is always impatterned with some information or some attributes. And, in fact, the information cannot be a free floating abstraction. Information to exist and to be perceived and to persist has to be embodied in some media. Wouldn't you agree with that part?

Schulman: Yes, but let me tell you where I think you're going where I think that you're not seeing what I'm seeing.

Kinsella: Go ahead.

Schulman: In my view, something intangible can't be owned, okay? For something to be own-able, it has to be something observable in the world and it has to be distinct and definite. Now the question which I pose, which you said that you agreed with my formulation...

Kinsella: No, I don't agree that is efficient. That might be necessary.

Schulman: Let me get this out as concisely as I can.

Kinsella: Alright, go ahead.

Schulman: If you have an alphanumeric sequence which retains its material identity, in going from physical object to physical object, and is a commodity separate from the things on which it is carried which give value, trade value, to the objects on which it is carried, but it is transferrable one from physical entity to another, I maintain we have now identified an object, a thing, something observable and distinct in the real world, which is in fact a property separable from the objects on which it is carried.

Kinsella: I got it but what...

Schulman:

The example I gave in my debate with Wendy and have used ever since is you buy a book with the title *Atlas Shrugged*. You take it home and start reading. And what you read is, “It was the best of times. It was the worst of times”. *A Tale of Two Cities* by Charles Dickens. It’s not the same novel.

But if you’re a reductionist saying that what can be owned can only be a physical object, then you have something which -- for the sake of argument-- has the same number of pages, has ink impressions, has the same binding. And so, if you were going to reduce it and say that only a physical object can be owned, then the question arises: did you get what you paid for? If you say yes, okay, then you have now eliminated the possibility of a novel being an existent, a thing, an entity; not an existent so much as an entity. You’re saying that it cannot be a thing.

But if you’re saying that you’re entitled to the composition of words of *Atlas Shrugged* and not of *A Tale of Two Cities*, then you’re saying that the composition of words, the alpha-numeric sequence itself which is separable from the thing on which it is carried, the immediate carried property is the economic good which is being crated. And therefore you have an economic good which is a thing separable from the media on which it is carried.

Kinsella:

I get your chain of reasoning. Let me see if I can summarize it. You tell me if I got it right. You start off with the presumption that if you can identify something as an existent, entity, as a thing, as you call it, something that is – what was your word? Specific and definite? You’re presupposing that that is sufficient for ownership. Like as long as something is specific and definite and you can give it some kind of ontological category or name and call it a thing, and especially if it is valued in commerce and therefore it’s a “commodity”, which I guess is only economic goods, not other kind of goods, then that’s sufficient for ownership. I just don’t see the argument from the.....

Schulman:

No, I would say necessary but not sufficient.

Kinsella:

Okay but...

Schulman:

There are other things. And in my original debate with Wendy and then in my subsequent 1983 treatise, *Informational Property: Logorights*, I go through a whole bunch of other things that are necessary, but they’re the same sets of questions that have to be satisfied for any other claim of ownership.

Kinsella: Well, the way you just stated it though, you only specified what was sufficient for ownership. I'm sorry, what was necessary for ownership, not what was sufficient. Just because...

Schulman: No, I'm saying that I've identified a category of things that can be owned if the same questions can be answered in the affirmative that you would have to answer for any claim of ownership of anything else.

Kinsella: See, I just don't think, to me that doesn't make sense for several reasons. Number one, I tried to give you an example in writing today, just as a pure contract situation. You could have a contract and the concept of fraud even if you want. You don't have to bring fraud into this, just contract. Contract theory and property rights alone explain why you're not getting what you asked for when you get the book that has the wrong pattern of information on it. In other words, if I give you money conditioned upon the book having a certain pattern in the book, and I don't get that, then the money that I paid you didn't transfer to you because it was conditioned upon a certain...

Schulman: Well, you see, it doesn't have to be fraud. Look, I'm a book publisher, okay? And I have in my possession an accidental artifact of a book which I received from Lightning Source. The cover is the cover of my novel, *The Rainbow Cadenza*, but the interior of the book is volume one of Robert LeFevre's autobiography. Now there was no deliberate fraud when this was manufactured...

Kinsella: Let's forget fraud, right. Let's just assume it's a contract.

Schulman: I'm not making a legal argument so much as I'm making an ontological argument. I'm saying that if, in fact, the composition, the alpha-numeric sequence in this particular case is different, then you have a different thing, a different commodity.

Kinsella: Right. But the different commodity is the physical book which is different than another physical book because of the way it's mpatterned. The question is can you own the attributes of the book in addition to the book itself. That's the question. Can you own...

Schulman: Well, this is the case even when there were no copyright laws to be enforced. In fact, you can argue...look, I will tell you right now that the argument you're making is one which is generally accepted by the film and television industry. The Writers' Guild treats writing as if it's an act of labor, but they're much less specific on whether the labor produces something which can be owned. And I'll tell you that this is something which the Writers' Guild calls separation of rights. In other words, if I as a screenwriter were to write for, let's say, *Gunsmoke*, it's a work for

hire because I'm basically creating new stories based on existing characters. But when I write an original episode of the *Twilight Zone*, an anthology series, they say I have separated rights unless it's a remake of an earlier *Twilight Zone*, such as the 1980s *Twilight Zone* that I worked on; remade some episodes from the original *Rod Serling Twilight Zone* from the 50s and 60s.

So, if I were the writer, who was creating a new script based on an original script by Richard Matheson or Charles Beaumont or Rod Serling, then there are no separated rights because it's a work for hire. But if I create an original script with original story, not based on that, then there's a separation of rights.

Kinsella: Yeah, but these are just legal terms based on current copyright. I don't really see how that's relevant.

Schulman: These are legal terms of art.

Kinsella: It's not really relevant to what we're discussing, philosophy of what natural property rights would be. I mean you wouldn't have all these arcane arrangements.

Schulman: I am arguing, first of all, that all property exists only as an intellectual artifact. And where I make this argument the most concisely is in my essay, *Human Property*.

Kinsella: But didn't you just say earlier that you don't believe in property in intangible things?

Schulman: Nothing found in nature is property. That it is basically a human intellect which creates the concept of property itself.

Kinsella: Well, that's true. But you could say human desire creates it too, but that doesn't mean desire gives rise to property rights absent other features.

Schulman: No, but what we're talking about is how human beings interact with each other. Unlike non-intellectual animals, we do it on the basis of intellectual construct.

Kinsella: Okay. Let me try to summarize a different way to look at it and get your take on this. It seems to me like your argument is basically this. You want to say, look, here's a book. There are two books that look identical on the outside. They have different patterns on the inside. You would be upset if you wanted one and you got the other. Therefore, it's a commodity or some kind of economic good. And because it's an economic good, that shows that the pattern, the logos as you call it, is an ontological thing that has existence.

Schulman: That's my argument.

Kinsella: I don't disagree with that as a philosophical exercise. It's just that you want to leap from that to saying, aha, because I've identified that there's a thing that has ontological existence, therefore it can have an owner. That, to me, is the entire mistake you're making because you haven't shown that that's ...

Schulman: ...I approach this a number of different ways in my original *Informational Property Rights*, 1983, article. And one of the ways I approach is a reduction ad absurdum, using praxeology. In my reply to Konkin, his article, *CopyWrong*, I basically deconstruct several of his premises in which I show using Austrian economics, a praxeological approach, how, in fact, if you eliminate that concept, then you basically run into the contradiction of saying that that which you are arguing about doesn't exist.

I think that it is not a coincidence that literary contracts, regardless of whether we're talking about copyright or not, refer to something as the work. In other words, it's a noun.

Kinsella: Because that's how the copyright statute defined it that way.

Schulman: It's not arguing labor. It's arguing that there is a thing that is being traded called the work. It is referred to in the contracts granting rights, which I have signed, there is a term of art called the work.

Kinsella: That's just how it's defined in the copyright statute.

Schulman: I am saying that is a thing which is, in fact, being traded or licensed in the same way that there is a right of occupancy which is being traded in a rental agreement for a car or an apartment.

Kinsella: Well, okay. So the copyright statute defined that term work and that's why contracts use it now.

Schulman: The copyright statute is beside the point as far as I'm concerned.

Kinsella: I don't think they would use the term work if not for the copyright statute.

Schulman: We're talking plain language.

Kinsella: But they wouldn't use that word if the copyright statute hadn't introduced it and defined it. That's a new innovation.

Schulman: I'm not sure that that's true. In other words, what you're arguing is which is the cart and which is the horse and so am I. And I'm maintaining that there is a common sense observation in these contracts which would survive the demise of the State and its admittedly mucked up copyright laws.

Kinsella:

Well, let me ask you this. Would you agree with me that your argument to work, you need to show that something having ontological existence is sufficient for there to be property rights possible in it? Don't you think you need to establish that?

Schulman:

I think that given that you need to establish the same boundary issues that you would with other forms of property and contracts, that, yes, it qualifies as being entered into the running as a possible type of property.

Kinsella:

My point is you have to show it though. That is a presupposition of your argument, that establishing that something is an ontological existence, is an existent, is sufficient for it to be ownable. You have to prove that.

Schulman:

It is necessary to qualify it for the debate on whether or not it is a property.

Kinsella:

I mean, my view on this, I'm very Randian in my epistemology, my concept theory. I just think what you're doing, is you are doing reification on this. You're conflating the efficiency and the usefulness and the practicality of certain concepts with calling something existing and then leaping to the point where it can be owned.

Like, so for example, I think the concept of love is a valid concept. It has a referent in the world. You can say there is love. But just because we have identified an ontological type of thing that exists, love, doesn't mean it's a type of thing that can be owned. You have to do more than establish the validity of a concept to show that the referent of the concept is an ownable thing. I mean we have time. We have motion.

Schulman:

I agree with that, but that, in fact, when you're identifying something which exists...look, love is something which is an expression, okay? And it is something which may be observable in human behavior but it is not something which you can identify as existing outside of human behavior in the way that an alpha-numeric sequence is. I maintain that an alpha-numeric sequence is, in fact, a thing.

Kinsella:

Hold on a second. Earlier you said...

Schulman:

An array of photographic frames is an observable thing in the real world.

Kinsella: Not outside of human...you said earlier that property doesn't even exist, right?

Schulman: Just in the real world.

Kinsella: Hold on. You said property doesn't even exist outside of human intentions and human subjective evaluation. So how could alpha-numeric sequences in something called a movie exist without regard for human intention?

Schulman: Okay, because thingness is one of the necessary, but not sufficient, conditions for a claim of ownership. Ownership is about action and intellectual creation of identity and...look, I would say that the identity exists independent, the thing exists. This is why it's both an ontological and an epistemological question before you get to the moral and legal questions. What I think that my work has done is establish the ontological and epistemological basis for these media-carried objects to be identified as ownable in the same way that other things can be ownable according to the general common sense principles of contract.

Kinsella: No, I understand your general thrust, but you seem to be agreeing because you say it on occasion. You seem to be agreeing with me that "thingness," which is just another way of saying something exists. Or in my view it just means it's a valid concept. Thingness is a necessary but not sufficient condition. That's why I keep saying...I just want to make sure you agree with me...

Schulman: Yes, that's what I'm saying.

Kinsella: But you need to...

Schulman: Necessary but not sufficient. But the sufficiency is by applying the exact same question that you would for any other claim of property.

Kinsella: Yes, I understand. We don't have time to get into that, but in your argument, in your logorights article and, I think, in your...what's the other, *Human Rights*? What's it called? *Human Property*?

Schulman: Property.

Kinsella: Yeah, in that one I think you try to give reasons why you think it is sufficient. I don't agree with you on that, but I think that's really the crux of our disagreement. But before...

Schulman: Can we at least come to the point where you think it is debatable, within the realm of possibility?

Kinsella: Honestly, I don't, Neil. But it's only because I've thought about it so much and I can see no way that you can own the characteristic of an object without that being a universal that gives you property rights in other people's owned resources. In

other words, to my mind, information...

Schulman:

And here's where I'm saying that the defining distinction, which makes it possible, is that it is something outside of one human being. It is something that now exists in the world. At the point where it exists in the world, separate from the person who brought it into existence, now you have something real.

Kinsella:

Let me ask you this. Is your view here, is it Platonic or mystical at all? Because I know you're a little bit mystical, more than I am, on some spiritual issues. So does this view, because it seems to me...

Schulman:

Back in '83 when I was making these arguments, I was an atheist.

Kinsella:

I'm asking about now though. I understand. But do you think there is anything mystical or Platonic about what you're saying? You seem to envision these...

Schulman:

Only in the sense that Ayn Rand used the term spiritual.

Kinsella:

No, I don't mean that. I mean it's like you're envisioning the separate sort of ghostly existence of these Platonic objects that are out there, independently ontologically separate from the...

Schulman:

I don't accept Platonic metaphysics.

Kinsella:

Well would you agree that information has to be...hold on. Let me ask you this.

Schulman:

Let me say this. I have made the argument that there is no such thing as a virtual reality, that either something is real or it isn't. You go back to the movie, *The Matrix*, okay? And in fact there were these bodies....

Kinsella:

Yeah, yeah, yeah, of course. There's always an underlying media or underlying....

Schulman:

That was a reality.

Kinsella:

Yeah, there is a substrate. I understand. I agree with you on that. But my point is, wouldn't you agree that information, these alpha-numeric sequences you're talking about, they're always embedded in some substrate or some media. They have to be just the impatterning of a thing. Wouldn't you agree with that?

Schulman:

Yes, yes. And that's why I talk about media-carried property. And the question is whether or not there is something separable which can be transferred from physical object to physical object to physical object. And that is the distinction which makes it a thing in and of itself.

Kinsella:

Well, let's forget about whether it's separable. Let me ask you this. If all information has to be embodied or impatterned in a media, don't you agree the media has an owner? That physical

thing that is the media has some owner.

Schulman: Yes. And the ownership of that can be separated from the ownership of the thing which is carried.

Kinsella: It can be. I suppose it could be. But how does the fact that someone writes a novel give them the ability to control the media that other people own?

Schulman: Because there is a thing being carried for which property rights have not been transferred.

Kinsella: Hold on, hold on. Give me thirty seconds. Hold on. Neil, hold on. I've got to answer the door. Hold on thirty seconds. Neil, thirty seconds.

Schulman: If you book a ride with Uber, your claim to a ride is a usage which is separable from ownership of the vehicle.

Kinsella: Neil, sorry. I had to answer the door. Sorry. Go ahead.

Schulman: I'll repeat that because I don't know if you heard it. I'm saying that it's separable in the same way that if you book a ride with Uber, what you're buying is a use, but you're not buying the Uber vehicle itself.

Kinsella: Well, I agree some things are separable, mostly by contract or by co-ownership arrangements. But that doesn't mean that you can control what other people do with their property unless you have a good reason. I go with the Lockean and Rothbardian theory of property.

Schulman: Hold on. You're making an assumption. You're begging the question. You're saying you're restricting what other people can do with their property. I'm maintaining that what is being argued over is, in fact, what is not being transferred to somebody else and what they cannot do because it is not their property.

Kinsella: Well, but there is not always a transfer. So, for example, let's take the patent case. Okay, if you claim a property right in being the owner of this mousetrap design, alright? Now if I am toiling away in my garage with my own wood and steel, my own substrate, and I configure it into a certain shape, you can use the patent system to tell me I can't sell that. I can't even make that device. Now where was the transfer?

Schulman: You know, Stephan, I have to say that over the years I have become a lot less sanguine over arguing about patent rather than copyright.

Kinsella: Okay.

Schulman: I think the case for a patent is a harder case than arguing for what I've been calling media-carried property.

Kinsella: Well, let me do kind of a lightning round with you because there's some things I want to talk to you about because you know a lot of things about the history and Konkin and these things. Not to dwell too much on them. Let me just get your take on some things.

Number one, let's just stick with copyright, because you think that is some rough system that approximates something like, might, could exist in a free society. Do you think that the time limits on copyrights should be finite and arbitrary or perpetual?

Schulman: I think that for media-carried property, you ask the exact same question that you would for ownership of any other kind of property.

Kinsella: So the problem with the copyright system is that it expires at about 120 years. In your view, it should last forever.

Schulman: Yeah, but again you're talking about a statist defined system.

Kinsella: I understand but one defect of the system is that...

Schulman: They could also arbitrarily say that land ownership ends with death and can't be carried....

Kinsella: I know. I just want to get you on record and see what you think. I mean you do realize the original copyright act was about fourteen years.

Schulman: All I'm saying is that when approaching this question, I think you need to satisfy the same requirements that you would for ownership and transfer of any other kind of property.

Kinsella: Are you aware, by the way, that Jefferson, when the Bill of Rights was being considered, he wrote a letter to Madison and he proposed...because at that time the copyright clause was already in the Constitution, right, 1789. But for the Bill of Rights, Jefferson proposed amending the Bill of Rights, or adding a provision to the Bill of Rights saying that the State can grant these monopolies, by which he meant copyright and patent, but only for x years. So he wanted to put a time limit in there. You know, probably fourteen years.

Schulman: Jefferson, like Locke, was taking a utilitarian approach. I'm not. I wrote an entire novel, *The Rainbow Cadenza*, attacking the concept of utilitarianism being sufficient to come up with fairness. I'm an absolute believer in theories of natural law and natural rights. And I would say that would separate me from Jefferson and Locke.

Kinsella: So in your system, you couldn't even publish the Bible or Shakespeare's plays or Homer's works without getting some permission from some long lost descendent down the line? You

would have to permission for everything. There would be a complete permission culture for all ideas.

Schulman: Well, I mean, again, I expand the question to every other sort of property.

Kinsella: So that's a yes.

Schulman: In other words, do we need to get permission from the heirs of the Roman emperors before we can take a tour of the Coliseum?

Kinsella: Okay. So let me ask you this one about Konkin. You mentioned that he didn't oppose people using copyright, or in some cases, and LeFevre either. I mean, of course, I don't either. I've gotten copyrights on my works and used it before....

Schulman: Sam did not copyright his own works and Robert LeFevre did not copyright his own works.

Kinsella: Well, you realize that copyright is automatic. So that is actually not true. They do have copyrights in their work. As soon as you write something, you have a copyright.

Schulman: Well, according to the State. But, I mean, are we...these are two people who did not recognize the authority of the State to define these questions.

Kinsella: Well, but they had copyright in their works, whether they wanted it or not.

Schulman: According to the State but not according to their own preferences.

Kinsella: Well, yeah, but someone couldn't, someone can't go publish one of LeFevre's books right now without getting permission from someone, even though LeFevre himself might have opposed copyright, unless he put some kind of license...

Schulman: That would be the case if it were an unpublished work. Then that argument could be made. In fact, I will tell you where this arises in a practical sense. As far as I know, the only copy of the manuscript for Samuel Edward Konkin III's *Counter-Economics* is in the hands of Victor Komin. Victor Koman has published other of Sam's works which were first published when Sam was alive. And Sam explicitly published them without a copyright.

Kinsella: No, that's not true. You can't publish something without a copyright.

Schulman: The legal rights to this are held by the Konkin estate which devolves upon Sam's brother, Alan Konkin in which Alan has made me the literary executor. So Victor is in the position of

having the only manuscript, the only physical manuscript which he refuses to provide to the estate. But he cannot legally publish it himself...

Kinsella:

Correct.

Schulman:

...without permission from the estate.

Kinsella:

Right. Well, this is just the kind of bizarre logic that comes from any type of IP system, I believe. You can blame the State's copyright system but I think it's just the logic of copyright. You're going to get these absurd and obviously unjust and obscene results. It's just an inevitable part of separating the idea of ownership from scarce resources.

I wanted to ask you. You mentioned earlier that in your earlier arguments you tried to rely on praxeology to support your case. I think praxeology....

Schulman:

In my original 1983 article, *Informational Property: Logorights*, Sam makes what he represents as a praxeological case and so I responded with a praxeological case.

Kinsella:

Right. And then what I was going to say is I think that praxeology, especially Mises' version of the Austrian economics, is absolutely crucial, and indeed essential, to getting these issues straight. But I think it points in the other direction. I think that praxeology, basically, regards human action as the employment, right, the conscious, purposeful employment of scarce means to achieve something in the world, guided by knowledge. So praxeology views human action...

Schulman:

Let's start out with the first premise of Austrian economics which I almost parodied in the first line of my novel, *Alongside Night*. Mises argues human beings act to remove self-unease.

Kinsella:

Correct. That's their purpose. That's their motivation, right.

Schulman:

First line of the novel: "Elliot Vreeland felt uneasy the moment he entered his classroom".

Kinsella:

Right. And I think that's a brilliant aspect of praxeology but it only goes to the motives or the purpose. What human action is is the employment of scarce means, which you can call scarce resources, guided by knowledge. So there are two important components to successful human action. One is the availability...

Schulman:

Mises then goes on, through a whole series of deductive derivations on that premise.

Kinsella:

I know. I'm just focusing on the bare structure...I just want to get your take on this okay? My argument is very simple. And I

think Mises is right. When we act in the world, we're trying to achieve an outcome, right, to remove felt uneasiness or to achieve something at the end of the process, but we do it by employing scarce means that are causally effective in the world and we do it by using our knowledge to decide what to do. So you have to have knowledge and you have to have scarce means.

Property rights apply to...

Schulman:

But you see, again, and I think that I made this argument in one of my other articles responding to that video, *Copying is Not Theft*.

Kinsella:

By Nina Paley.

Schulman:

I responded to that...I think it's linked in an article called *The Libertarian Case for IP*.

Kinsella:

But I'm just trying, hold on.

Schulman:

I'm basically saying that scarcity is itself a limited concept. In other words, that it is a relative concept...

Kinsella:

But what do you...but hold on...

Schulman:

That there is no requirement for absolute scarcity. It merely needs to be scarcity within a particular context.

Kinsella:

But what do you mean when you say you're opposed to intangible property and that you think all information is in a media? A media is a scarce physical resource. Land is a scarce, physical resource.

Schulman:

I'm arguing that if there is an alpha-numeric sequence, for example, then that alpha-numeric sequence is a unique object.

Kinsella:

I know you think it's a unique object.

Schulman:

Therefore, if there's only one of something, it's by definition scarce.

Kinsella:

Okay, but let's go back. I want to just finish this very short praxeological argument and see what you think is wrong with it because you keep stopping me before I get to the end and it's very simple. We employ scarce means. That is you manipulate things in the world that can have a cause and effect. But to do that, you have to have some idea of what causality is, what physics laws are. And you have to have some idea of what's possible and what you're going to achieve. So knowledge is in your head. It guides your choice of means and your choice of ends. So every action is the employment of scarce means and the use of knowledge. Would you agree with that?

Schulman:

I would say that that is a chain of reasoning which precedes the

possibility of property, yes.

Kinsella:

Yeah, I'm just saying that it's inconceivable to imagine human action that doesn't employ scarce means and isn't guided by knowledge. Correct?

Schulman:

Well, ...uh...yes, but there's the possibility of human action acting on something which is ubiquitous.

Kinsella:

Yeah right. That's the general condition of human action.

Schulman:

In doing so, converting something from ubiquitous to scarce.

Kinsella:

That's possible. I'm just saying the structure of action is that every single human action has to employ scarce means and has to be guided by knowledge. It's just inconceivable without it.

Schulman:

In a sense...

Kinsella:

But wait. Do you agree with that or not?

Schulman:

Hold on. Let me try to answer your question. I think that human action is itself a scarcity and therefore the employment of human action on something else has at least the potential to satisfy the conditions of creating a scarce something.

Kinsella:

That's fine but I'm not talking about the end results of your action. The end result of an action does not need to be the acquisition of a scarce resource or the ownership of some object. The end of an action can be anything. It can be totally subjective, right? It might be to get a little girl to smile after you do a card trick for her.

Schulman:

Hold on. The reason that the human mind effects an action is not the same thing. And I would say that there is a disconnect. Once the results of that action produce an etching in the real world, which is separate from the actor and observable by other actors.

Kinsella:

I know. Okay, but you're getting...I'm not trying...I'm just talking about if you view human action praxeologically as the employment of scarce means to achieve an end and the action that you take is guided by knowledge, that that shows that knowledge, or information....

Schulman:

We're having a communication artifact problem at the moment. What you just said verbally. Can you say it again please?

Kinsella:

Oh sorry. What I'm trying to say is my understanding of the way property norms arise and the way they relate to Mises' economic understanding of....

Schulman:

Oh geez. I'm sorry Stephan. What you're talking I'm not hearing verbally....try saying it one more time.

Kinsella:

Test, test, test. Can you hear me now? Hello? Test. Neil?

Schulman: Yeah, I'm not really getting anything. Do you want to stop the recording and call me back and start it again?

Kinsella: Sure. I'll do that right now. Sorry about that. Yeah, let's just finish it up quickly. What I'm doing is calling you on one iPhone and I'm recording it over the air on another. A very low tech solution because everything is always glitchy in technology. In fact, why don't we wrap it up. Yeah, let's just wrap it up. I told you what I wanted. I was just running an alternative praxeological theory by you. The basic argument is that you need property rights in the scarce means that are essential to human action but you cannot have property rights in the knowledge that guides human action because that's not a scarce human resource.

Schulman: I agree with you. I'm not making a knowledge argument.

Kinsella: Well, you do believe in informational property. So you think there are property rights in information.

Schulman: I believe that information *per se* cannot be owned but an information object can be. And that is a crucial distinction.

Kinsella: Okay. Okay. Well, I think...

Schulman: In the same way that you can't own matter, but you can own things made out of matter. You can't own information but you can own things made out of information.

Kinsella: So like, if you own a horseshoe, you don't own the matter in the horseshoe. You only own the way the matter is shaped?

Schulman: I'm sorry. Say that again please.

Kinsella: So like, if you own a horseshoe, you don't own the metal matter of the horseshoe. You only own the way the horseshoe is shaped?

Schulman: Well, again, you own the thing which is the horseshoe. You own the thing which is the horseshoe in the same way that, if you own a novel, you own the thing that is the novel.

Kinsella: Let me ask you this....

Schulman: The part on which it is in the same way that you can own the horseshoe without owning the horse.

Kinsella: Yeah, but...so let's suppose lightning strikes the horseshoe and melts it. And now you have a puddle of molten iron. Do you own that or have you lost the ownership of it because it's not a horseshoe anymore?

Schulman: Let me ask you this. If you own a house and the house burns down, do you own the ashes?

Kinsella: Yes, I would say that because I don't believe that the ownership of the house is dependent upon its shape.

Schulman: Well, here we have an interesting thing because unless the sole copy of a thing is destroyed, then you have something which is durable. And destroying a carrier of it does not necessarily destroy the thing which is carried.

Kinsella: But it does because you can't have information without some media that it's carried in.

Schulman: Yes and...

Kinsella: Yeah, there could be multiple copies of it. I know.

Schulman: And here is a case where there needs to be at least one surviving carrier.

Kinsella: Right, but this also implies there could be multiple copies of it. You see, you want to call it one object.

Schulman: There could be multiple copies. But the way that I would phrase that is what is the variable is the number of carriers. There is still only unique object which is being carried.

Kinsella: Yeah. So it's a universal or it's a Platonic. That's why I say it's a Platonic object; to me it seems like.

Schulman: No, I can understand why, from a philosophical standpoint, this concept could be regarded by Plato as Platonic. However, I am not a Platonist and I'm not making a Platonic argument. There it is. I believe that Aristotle had the concept of the atom but later science started talking about electrons and neutrons and protons and sub-particles called quarks. So just because the language seems to say something which was said by the ancients doesn't mean it's equivalent.

Kinsella: Sure. Sure. Anyway, I'm going to tie it up now. I'm a little upset with you because I asked you to keep this to thirty minutes and you insisted on going a whole hour, Neil.

Schulman: I'm sorry. How much did we actually use?

Kinsella: No, I'm just joking. I don't know because I have it broken up. Probably about an hour and five minutes.

Schulman: Well, I don't have a problem with that.

Kinsella: No, no, I'm joking.

Schulman: But then again, you and I have no problem being loquacious.

Kinsella: That's true. That's true. Well, I appreciate your time and your sincerity on this issue. I think for now we'll have to agree to disagree, but at least people can listen to this and see where you're coming from and evaluate the different ways of looking at this stuff.

Schulman: I appreciate it very much. Thank you.

Kinsella:

All right Neil. Hold on, hold on after I stop and we'll chat. Talk to you later. Thanks man.

Schulman:

Okay.

About J. Neil Schulman

J. Neil Schulman is an award-winning writer, filmmaker, journalist, and entrepreneur whom the *Wall Street Journal* called a pioneer of electronic publishing in 1989.

His 1979 Prometheus-Hall-of-Fame novel *Alongside Night* -- endorsed by Milton Friedman, Anthony Burgess, and Ron Paul -- projected the economic meltdown and was Freedom Book of the Month for May, 2009.

Alongside Night was his second feature film as writer/producer/director/actor, and starred Kevin Sorbo, Jake Busey, Gary Graham, Tim Russ, Garrett Wang, Mara Marini, and Said Faraj. After a red-carpet Beverly Hills premiere it released in a limited theatrical run in 2014, and is now available on Amazon Video & Prime along with his award-winning 2008 comic thriller, *Lady Magdalene's*, starring Nichelle Nichols.

His latest novel is the science-fiction alternate-timeline romp, *The Fractal Man*, released by Steve Heller Publishing in May 2018 as a \$0.99 Amazon Kindle.

Schulman is currently at work on his fifth novel, *The Metronome Misnomer*. The title comes from a fractal version of the author in *The Fractal Man*, who wrote a book of that title in an alternate timeline.

His 1983 novel, *The Rainbow Cadenza*, won the Prometheus Award, was adapted into a Laserium show, and Robert A. Heinlein told the 1983 L-5 Society, "Every libertarian should read it!" His 2002 novel *Escape from Heaven* has been compared to Mark Twain.

His short story "Day of Atonement" appeared in the Prometheus-award-winning Tor book *Free Space*, and his short story "The Repossessed" led off Carol Serling's anthology *Adventures in the Twilight Zone*. Both are reprinted in his short-story collection, *Nasty, Brutish, and Short Stories*.

Schulman scripted the CBS revived *Twilight Zone* episode, "Profile in Silver," about a future historian who creates a disastrous alternate timeline when he time travels back to November 22, 1963 and prevents JFK's assassination.

He taught a graduate course on electronic publishing for The New School, has written for popular magazines and newspapers including *New Libertarian*, *Mondo Cult*, *National Review*, *Reason*, the *Los Angeles Times*, and *Reader's Digest*, and monographs ranging from animal rights, informational property rights, and medicalization of criminology have been widely anthologized by academic presses.

His other books include *Stopping Power: Why 70 Million Americans Own Guns*, endorsed by Charlton Heston and Dennis Prager, *Self Control Not Gun Control* endorsed by Walter Williams, and *The Robert Heinlein Interview and Other Heinleiniana*, which Virginia Heinlein said "should be on the shelves of everyone interested in science fiction."

His latest printed book is *The Heartmost Desire* which includes two other of his books available as Amazon Kindles: *Unchaining the Human Heart – A Revolutionary Manifesto* (his answer to Mao's "Little Red Book") and *I Met God – God Without Religion, Scripture or Faith* (his answer both to atheists like he used to be and to dogmatic religious zealots).

His Kindle book *J. Neil Schulman's The Book of Words* collects much of his humorous and controversial writings.

He's recipient of the James Madison Award from the Second Amendment Foundation, the Samuel Edward Konkin III Memorial Chauntecleer by the Karl Hess Club, and the Sovereign Award from the Libertopia convention.

Full bio at <http://www.pulpless.com/jneil/jnsbio.html>

J. Neil Schulman Author's Photo



J. Neil Schulman
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