

THE PAST AND FUTURE OF THE INTERNET: A SYMPOSIUM FOR JOHN PERRY BARLOW¹

JAMES BOYLE[†]

John Perry Barlow passed away on Feb 7th, 2018. John Perry's name is generally followed by a long list of qualities: poet, lyricist, rancher, civil libertarian, co-founder of the Electronic Frontier Foundation, teller-of-stories, organizer of parties, bringer of light. Good friend. Certainly he was all of these. The picture above gives you some sense of his personality. But he was also the author of two influential essays in the very early days of the World Wide Web—*A Declaration of the Independence of Cyberspace*² and *Selling Wine Without Bottles: The Economy of Mind on the Global Net*.³

Written in 1996, *A Declaration of the Independence of Cyberspace* declared the moral and legal independence of the online world. Its tone, both hopeful and defiant, can be captured from this brief excerpt:

Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.

We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear.

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[†] William Neal Reynolds Professor of Law, Duke Law School

² Originally published as John Perry Barlow, *A Declaration of the Independence of Cyberspace*, ELEC. FRONTIER FOUND. (Feb. 8, 1996), <https://www.eff.org/cyberspace-independence>. The essay can also be found in this volume at 18 DUKE L. & TECH. REV. 5 (2019).

³ Originally published as John Perry Barlow, *The Economy of Ideas*, WIRED (Mar. 1, 1994), <https://www.wired.com/1994/03/economy-ideas/>. The essay can also be found in this volume at 18 DUKE L. & TECH. REV. 8 (2019) (*reprinted from* John Perry Barlow, *Selling Wine Without Bottles: The Economy of Mind on the Global Net*, ELEC. FRONTIER FOUND., <https://www.eff.org/pages/selling-wine-without-bottles-economy-mind-global-net>).

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You have not engaged in our great and gathering conversation, nor did you create the wealth of our marketplaces. You do not know our culture, our ethics, or the unwritten codes that already provide our society more order than could be obtained by any of your impositions.

You claim there are problems among us that you need to solve. You use this claim as an excuse to invade our precincts. Many of these problems don't exist. Where there are real conflicts, where there are wrongs, we will identify them and address them by our means. We are forming our own Social Contract. This governance will arise according to the conditions of our world, not yours. Our world is different.

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We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth.

We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.

Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here.⁴

Selling Wine Without Bottles had been written for WIRED in 1994 under the title *The Economy of Ideas*. It asked how the creative economy and its legal and ethical superstructure—particularly intellectual property—would fare in this new context. Barlow makes many predictions—including the rise of encryption as a central feature of the economy, an increased primacy of viewpoint, voice and timeliness to online experience, and the difficulties of creative people getting paid in the digital world. But he also makes bold claims about what will happen to intellectual property.

The riddle is this: if our property can be infinitely reproduced and instantaneously distributed all over the planet without cost, without our knowledge, without its even leaving our possession, how can we protect it? How are we going to get paid for the work we do with our minds? And, if we can't get paid, what will assure the continued creation and distribution of such work?

⁴ John Perry Barlow, *A Declaration of the Independence of Cyberspace*, 18 DUKE L. & TECH. REV. 5, 5–6 (2019).

Since we don't have a solution to what is a profoundly new kind of challenge, and are apparently unable to delay the galloping digitization of everything not obstinately physical, we are sailing into the future on a sinking ship.

This vessel, the accumulated canon of copyright and patent law, was developed to convey forms and methods of expression entirely different from the vaporous cargo it is now being asked to carry. It is leaking as much from within as without.

Legal efforts to keep the old boat floating are taking three forms: a frenzy of deck chair rearrangement, stern warnings to the passengers that if she goes down, they will face harsh criminal penalties, and serene, glassy-eyed denial.⁵

Versions of the Internet date back to the 1950's but the World Wide Web is of much more recent provenance. Histories date its "invention" by Tim Berners-Lee to 1989, but the network as we know it did not have any real public manifestation until late 1991 or 1992. These essays, in other words, are from its very first days. How do they stand up today, more than 20 years later? To be sure, John Perry was far from the only internet visionary. Others, including some of the people writing in this volume, tried their own hand at it and offered perspectives that brought in academic rigor, interdisciplinary insight and complex legal analysis. But for many of us, these essays started a conversation. Where is that conversation now? Are Barlow's visions hopelessly outdated or, worse still, discredited by the digital evils we now know so well—from YouTube comment trolls to privacy-invading social networks to hackers attempting to subvert elections? There are arguments both ways. To quote from Cindy Cohn, who also writes in this volume:

Barlow was sometimes held up as a straw man for a kind of naive techno-utopianism that believed that the Internet could solve all of humanity's problems without causing any more. As someone who spent the past 27 years working with him at EFF, I can say that nothing could be further from the truth. Barlow knew that new technology could create and empower evil as much as it could create and empower good. He made a conscious decision to focus on the latter: "I knew it's also true that a good way to invent the future is to predict it. So I predicted Utopia, hoping to give Liberty a

⁵ John Perry Barlow, *Selling Wine Without Bottles: The Economy of Mind on the Global Net*, 18 DUKE L. & TECH. REV. 8, 8–9 (2019).

running start before the laws of Moore and Metcalfe delivered up what Ed Snowden now correctly calls ‘turn-key totalitarianism.’”⁶

Rather than offer a simple Festschrift for Barlow, this symposium uses those two essays as the jumping off point for a reflection on the current state of the digital world. They marked a particular moment in time and space. How far from that moment, from those hopes and fears, are we now? What mistakes did we make? What opportunities did we grasp or miss? In an online environment dominated by closed and controlled apps rather than the open web, on a web without a guarantee of net neutrality, with many global citizens having their experiences defined by a monopolistic telecom, or a government-imposed Great Firewall of China, is it even worth our breath to talk about a “World Wide Web” anymore? What will we wish we had worried about, or hoped for, in our digital environment when another 20 years has passed? The distinguished contributors—and it is not going too far to say their work has set the terms of the legal and policy debate we are now in—have each agreed to write a short essay offering their own answers.

The articles gathered here do not seek to canonize John Perry or praise his ideas where our contributors believe they were simplistic or flawed: he would have found that offensive. Worse, he would have found it boring. There is criticism here as well as praise. But, in their own way, these remarkable essays offer a memorial to his work, insight and humor, to his contribution to our world.

We are all the poorer for losing him. I miss him.

⁶ Cindy Cohn, *John Perry Barlow, Internet Pioneer, 1947–2018*, ELEC. FRONTIER FOUND. (Feb. 7, 2018), <https://www EFF.ORG/deeplinks/2018/02/john-perry-barlow-internet-pioneer-1947-2018>.