



# What is The Code War?

*Explaining the Ideological Struggle over:*

*A Digital Information Commons of Free Content/Software/Bandwidth;  
Realspace Rule of Law vs. Cyberspace Rule of Code; &  
A Respect Culture vs. Free Culture Codism*

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*Note: The following new terms are defined here for the first time: The Code War, Codism, Rule of Code & Respect Culture*

*\*The views expressed in this presentation are the author's; see Scott Cleland's full biography at: [www.ScottCleland.com](http://www.ScottCleland.com)*

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# What is Code?

## *The Building Blocks of A Digital Information Commons*

- At its **rawest technologic form**, code is the digital 1s & 0s that comprise computer instructions and algorithms to fulfill computational tasks, functions, or goals.
- At the **virtual operational level**, code is the building blocks, component parts or virtual construction material that make up the overall virtual architecture of cyberspace, cyber-worlds and cyber-societies, that can be built on top of the Internet's world wide web.
- At the **cyber-societal level**, code is the inherent political, social, economic, & ethical choices and values embedded by default in coded programs, platforms, and ecosystems that in turn determine what and whose values/interests govern cyber-societies.
- At the **governance level** – *code is law* in cyberspace.
- At the **ideological level**, if code truly embeds and embodies cyber-utopian values -- i.e. is unfettered, free and open (meaning no requirement to pay or ask for permission to access, consume or modify digital information/code) – then code is also the effective social contract of the digital commons, meaning there is no need for realspace-like governance in cyberspace because code is inherently and perpetually self-executing.

# What is Codism?

## *The Cyber-Ideology of the Digital Information Commons*

- A utopian cyberspace **ideal** of a virtual civilization of the mind made up of many cyber-worlds and cyber- societies based upon the foundation of a digitally-coded information commons, upon which an open and neutral architecture of digital code can be built, which is public, not privately owned or controlled.
- A virtual/cyber-space **ideology** that recognizes that information technology is inherently and necessarily ideological because code embodies political choices and values, that can be hidden, if code is not open and public.
- A virtual **civilization** that resists sovereign control/governance and private/ corporate ownership of ideas, information, innovation, or intellectual creativity.
- A political-economic **theory** of digital abundance centered upon the importance of a digital-coded information commons, where there is no intellectual property or network discrimination, so that the cyber-means of production and distribution of information and creativity in cyberspace are equally accessible and enjoyed by all.
- An egalitarian utopian **vision** that everyone can have access to all the world's information and knowledge to enable technology to solve most of society's most vexing social, economic and political problems.
- An **intellectual movement** predicated on the idea of a virtual civilization of the mind where "information wants to be free," and software should be free -- meaning no one has to ask or pay to use digitally coded information, software or networks.
- *"A kind of society that real space would never allow – freedom without anarchy, control without government, consensus without power."* Lawrence Lessig Code 2.0.

# Notable Codist Thought Leaders

- **Stewart Brand**, Editor, Whole Earth Catalogue
  - [“Information wants to be free.”](#) 1985
- **John Perry Barlow**, Co-Founder, Electronic Frontier Foundation
  - [“The Economy of Ideas”](#) 1994 – “...Everything you know about intellectual property is wrong.”
  - [“A declaration of the independence of Cyberspace”](#) 1996 – “You have no sovereignty where we gather. ... Cyberspace does not lie within your borders. ... Your legal concepts of property, expression, identity, movement, and context do not apply to us. ... We will create a civilization of the Mind in Cyberspace.”
- **Lawrence Lessig**, Founder of Creative Commons and Free Culture movement
  - [“Code and other laws of Cyberspace,”](#) 1999 – “Code is law” Student’s for [Free Culture](#), 2004 – SFC Manifesto – “The mission of the free culture movement is to build a bottom-up, participatory structure to society and culture, rather than the top-down, closed, proprietary structure. Through the democratizing power of digital technology and the Internet, we can place the tools of creation and distribution, communication and collaboration, teaching and learning in the hands of the common person – and with a truly active connected, informed citizenry, injustice and oppression will surely vanish from the earth.” “... The future is in our hands; we must build a technological and cultural movement to defend the digital commons.”
- **Richard Stallman**, Founder, Free Software Foundation
  - [“Free Software, Free Society,”](#) 2002 All software should be “free” meaning “you do not have to ask or pay for permission.”
- **Eben Moglen**, General Counsel, Free Software Foundation
  - [“The dotCommunist Manifesto,”](#) 2003 calls for “Abolition of all forms of private property in ideas.”
- **Larry Page**, Co-Founder & CEO of Google
  - [Google’s Mission](#) 2004, “To organize the world’s information and make it universally accessible and useful.” “Google is not a conventional company. We do not intend to become one.” 2004 Founders’ [letter](#) to shareholders.
  - “Developers will be the engineers of human freedom.” Google Chairman Eric Schmidt [2012](#)
- **Yochai Benkler**, Yale University
  - [“The Wealth of Networks -- How Social Production Transforms Markets and Freedom;](#) 2006 “We have the opportunity to change the way we create and exchange information, knowledge and culture.” “There was a moment... in 2001, when a range of people who were doing similar things... seemed to cohere into a single intellectual movement, centered on the importance of the commons to information production and creativity in general, and to the digitally networked environment in particular.” ... It will likely result in a significant redistribution of wealth, and more less importantly, power.”
- **Mark Zuckerberg**, Founder and CEO of Facebook
  - [Facebook’s mission](#) and 2012 letter to shareholders: “Facebook was not originally created to be a company. It was built to accomplish a social mission -- to make the world more open and connected.” “We hope to rewire the way people spread and consume information.” “...We believe that leaders will emerge across all countries who are pro Internet and fight for the rights of their people, including the right to share what they want and the right to access all information that people want to share with them.” Embraces: “The Hacker Way”
- **Sir Tim Berners-Lee**, Inventor of the World Wide Web
  - [“We’re making new worlds.](#) We’re building new societies.” Foresees a second “digital divide” – those who code and the people who don’t.

# What is “The Code War?”

## *The Ideological Struggle for Global Cyber-Supremacy*

- “The Code War” is the 21<sup>st</sup> century global political-economic ideological conflict between cyberspace utopians who believe in *rule-of-code* -- i.e. no limits or limitations on digital coding, information sharing, or cyber-free-speech -- and those in realspace who believe in sovereign *rule of law*.
- **What do cyber-utopians oppose as limits** or limitations on digital coding (the building blocks of cyber-utopia)?
  - Private property ownership or control over the cyber-means of information/creative production and distribution: i.e. information/content, software, and network/bandwidth (broadband & spectrum);
  - Capital and property-based network economics: i.e. tiered pricing/speeds, network discrimination (net neutrality), data usage limits or caps, and encrypted WiFi;
  - Payment or permission required to access cyberspace, information, content, software or networks; and
  - Sovereign obligations for digital coding to respect the rule of law and others: i.e. property rights, anti-piracy enforcement, right to privacy, and cyber-security.
- **The main *practical* conflict of *The Code War*** is over the fulcrum-societal concept and principle of permission;
  - Cyber-utopians believe all cyberspace building blocks – code, information, and networks -- should be public and thus every coded thing by default is sharable in cyberspace – i.e. no permission is required;
  - Believers in rule-of-law respect the essentiality of permission/contracts to property rights, commerce, privacy, cyber-security, and individualism; and believe taking something belonging to others without permission is legally/morally wrong and stealing, not sharing.
- **The *practical* problem** with the cyber-utopians claim of absolute Internet freedom is it means no accountability for those who: disrespect the human, property or contractual rights of others; or harm others via theft, fraud, abuse, etc.
  - Sovereign rule of law provides essential mechanisms for resolving real social, political & commercial disputes.
- **The main *philosophical* conflict** here is over dueling concepts of liberty (see philosopher Isaiah Berlin’s [essay](#)):
  - Cyber-utopians embrace “positive” freedom to coerce others or to take from others without permission;
  - Believers in the *Rule of Law* embrace “negative” freedom from coercion to keep what one naturally has.

# Code War Ideologies Compared & Contrasted

## Realspace -- Respect Culture

### Sovereign Rule-of-Law

1. Real space, physical world of people & tangibles
2. Sovereign authorities and social contracts
3. Constitutional democracies, elections
4. Rule-of-law resolves disputes
5. Elected & officially-appointed leaders
6. Societal accountability, sovereign justice systems
7. Property-based, profit-driven market
8. Economics of scarcity predicated on capital
9. "Negative Liberty" i.e. the freedom from coercion to be able to keep what one has
10. Respect Culture: Respect for people, privacy, property, morality, & rule of law
11. Permission seen as essential to: individual liberty, privacy, morality & protection of private property
12. Golden Rule: no taking without permission ethic
13. Copyright, software patents, market competition
14. Private property promotes creation/innovation
15. Free/open Internet: unregulated free market
16. Market-based bandwidth, spectrum & content

vs.

## Cyberspace -- Free Culture

### Virtual Rule-of-Code

1. Cyberspace virtual world of the mind/ideas 1s & 0s
2. No sovereign authority or social contract
3. No constitution or elections, wisdom of the crowd
4. Rule-of-code determines outcomes by default
5. Elites/engineers/coders are leaders
6. No societal accountability or justice systems
7. Property-less information commons of sharing
8. Abundance economics of marginal, not total cost
9. "Positive liberty" freedom to coerce others to take what they have from them
10. Free Culture: no need to ask or pay others for permission to use info/software/network/spectrum
11. Permission seen as: wrong, censorship of free speech, oppression, & anti-innovation
12. Sharing requires no permission ethic
13. Copyleft, no software patents, net neutrality
14. Property is discriminatory, opolistic, anti-innovation
15. Free/open means no payment/permission needed
16. Public free bandwidth, spectrum, & content

# The Code War's Many Battles

## *Part 1: 1996-2010*

- Constitutionality of Communications Decency Act successfully challenged 1996-1997
- Ongoing challenges to DMCA Digital Millennium Copyright Act and anti-circumvention 1998-2013
- Unsuccessful constitutional challenge to Sony Bono Copyright Term Extension Act 1998-2003
- RIAA vs. Napster successful challenge to shut down Napster for piracy 1999-2001
- MGM vs. Grokster successful challenge to shut down Grokster for piracy 2001-2005
- RIAA lawsuits against individual song down-loaders to deter piracy 2003-2008
- Net neutrality broadband regulation in U.S. & Europe 2006- 2013
- *Authors vs. Google Books legal challenge of Google's mass book copyright infringement 2006-2013*
- Wikileaks ongoing legal controversies over Wikileaks release of government secrets, private property/information 2006-2013
- *Viacom vs. Google-YouTube lawsuit for Google-YouTube's willfully blind mass infringement of video copyrights 2007-2013*
- Ongoing opposition in multiple forums to patentability of software
- Pirate Bay copyright infringement trial 2008-2012
- *Apple sues Google-Android manufacturers for multiple patent infringements 2010-2013*
- *Microsoft sues Google-Motorola-Android over patent infringements and standard essential patent abuse 2010-2013*
- *Oracle vs. Google-Android lawsuit over copyright infringement of not licensing Java 2010-2013*

# The Code War's Many Battles

## *Part 2: 2011-2013*

- Sudden mass cyberspace online opposition defeats SOPA/PIPA anti-piracy legislation in U.S. 2011-2012
- MegaUpload shutdown case over mass infringement via cloud service 2012-2013
- U.N.'s ITU asserts regulatory authority over Internet for first time 2012-2013
- Opposition to ACTA Anti-Counterfeiting Trade Agreement stalls ratification in Europe in 2012-2013
- Net neutrality opposition to reasonable network management as discriminatory -- resolved in Comcast vs. FCC appeal 2008-2010
- Ongoing opposition to broadband data caps/usage-based broadband pricing as not net neutral 2009-2013
- Cyber-opposition to TPP, the Trans Pacific Partnership, trade negotiations 2012-2013
- *DOJ-EU warn Google over abusing standard essential patents SEP, FTC-Google consent decree on Google SEP abuse 2012-2013*
- ECPA Electronic Communications Privacy Act updates to require court warrants for emails 2012-2013
- ISP Copyright Alert System – ISPs to notify infringers to stop infringing downloads 2011-2013
- Challenge to FCC Internet authority in FCC Open Internet Order imposing net neutrality 2011-2013
- *Google's lobbying campaign globally to neuter copyright law spreads to multiple nations 2012-2013*
- DMCA reform legislation introduced over cell-phone unlocking (DMCA circumvention) in U.S. 2013
- SHIELD Act weakens patent rights by making PAEs, "patent trolls," pay legal fees if lawsuits fail in U.S. 2013
- CFAA, Computer Fraud & Abuse Act, revisions proposed to decriminalize hacking – "Aarons law" 2013
- CISPA cyber-security Intelligence and Sharing Act legislation opposed as privacy invasion in U.S. 2013

# The Confusing and Deceptive Language of “The Code War”

- Cyber-utopians call for a “free and open Internet” to broadly appeal across the political spectrum.
- The political and ideological problem here is that the cyber-utopians have a different definition of the words “free” and “open” in a policy context than the definitions of most people.
- Cyber-utopians define:
  - “Free” as no cost, permission or payment required to consume and share information, software, or bandwidth, (whereas supporters of Rule of Law define “free” in this context as politically free where people have rights and freedom from political tyranny and economically free as in a capitalist free market;) and
  - “Open” as no property or commercial/governmental control, (whereas supporters of Rule of Law define “open” in this context as technologically interoperable and commercially unregulated/non-coerced free trade.)
- Some cyber-utopians believe “Internet freedom” equals “net neutrality” (common carrier non-discrimination regulation of networks) where others believe Internet freedom means free market competition absent government regulation/taxation.
- Central to understanding the philosophical conflict in “The Code war” is dueling definitions of political “freedom” (see philosopher Isaiah Berlin’s [essay](#)):
  - Cyber-utopians, in seeking cyber-equality where everyone has the same access and right to share all cyberspace information without any permission, see freedom as a right to take from those who have more information to give to those who have less information. This freedom is a government-imposed right to take what belongs to others; and
  - Believers in the *Rule of Law* believe in *natural* rights, the rights to: own property, be an individual, and be free from lawless tyranny or anarchy. In particular, they view private property as a bulwark of individual liberty.
- Cyber-utopians also see “permission” as inherently a bad word and bad concept, because it implicitly involves a limitation of cyber-freedom, that’s why cyber-utopians embrace and glorify “hacking” and “hackers” as heroes.
  - Supporters of rule of law see permission as inherently respect for others, central to the moral/ethical concept of the Golden Rule of treating others as one wants to be treated; that’s why they see “hacking” as breaking and entering.
- Cyber-utopians also oppose any rule of law action that threatens the rule of code of no cyberspace limits, by charging that:
  - It will break the Internet; hurt innovation; or limit free speech and the free flow of information.

# The Harms of Codism and the Rule of Code

- Cyber-utopians opposition to the limits of national sovereignty, accountability, property rights, and permissions in cyberspace, at core represent a fundamental disrespect of people, privacy, property, contracts, morality, and the rule of law.
  - Respect is an essential positive limit on the unfettered freedom of others in any social contract; and is a precondition for a free, civil, safe, stable, and prosperous society.
  - This cyber-culture-of-disrespect yields a wild-west environment that irresponsibly harms many.
- **For consumers** it creates an Internet environment prone to more:
  - *Internet corruption* of crime, abuse and misconduct like: identity theft, fraud, piracy, stalking, cyber-bullying, and denial-of-service-attacks; and
  - *Internet pollution* like: spam, viruses, worms and other malware; and
  - *Disrespect for property and accountability*, which makes cyberspace less safe for honest users and a safer haven for criminals, predators, and terrorists.
- **For creators** of valuable content it destroys:
  - A merit system/culture that economically rewards talent, creativity, innovation, hard work and value creation; and
  - Professionalism, and the quality standards, integrity and ethics, that professionalism fosters.
- **For networks and distributors** it destroys everything necessary for business:
  - Proprietary ownership of networks, content, distribution, and trade secrets; and
  - The freedom of enterprise to determine the prices, terms and conditions of products and services; and to create and offer consumer protections of quality, choice, privacy and security.
- **For the economy** it destroys a bedrock of commerce and incentives for innovation, investment and risk-taking, that are essential for economic stability, growth and progress.

# Appendix: Bio: Scott Cleland, President, Precursor<sup>®</sup> LLC



- **Scott Cleland** is a precursor, a thought leader with a track record of industry firsts. He is: President of [Precursor<sup>®</sup> LLC](#), a Fortune 500 research consultancy specializing in Internet competition, property rights, privacy, and Google; author of the widely-read [PrecursorBlog](#); and Chairman of [NetCompetition.org](#), a pro-competition e-forum supported by broadband interests. Cleland is author of [Search & Destroy: Why You Can't Trust Google Inc.](#) and publisher of [GoogleMonitor.com](#) and [Googleopoly.net](#). He served as Deputy United States Coordinator for Communication and Information Policy, during the George H. W. Bush Administration. Eight U.S. Congressional subcommittees have sought Cleland's expert testimony and *Institutional Investor* twice ranked him the #1 independent telecom analyst. Scott Cleland has been profiled in *Fortune*, *Barrons*, *WSJ's Smart Money*, *USA Today*, and *Investor's Business Daily*. For a full biography see: [www.ScottCleland.com](#)
- **Precursor LLC** is a research consultancy for Fortune 500 companies; its mission is to help companies anticipate change to better exploit emerging opportunities and guard against emerging risks. Precursor's research focus is on the future of Internet competition, property rights, privacy, and Google. Precursor's specialty is anticipating, bringing clarity of thought and applying framework analysis to complex emerging Internet problems before others.