

# The Commons

## The Commons as an Idea - Ideas as a Commons

David M. Berry

**T**he concept of the commons has a long heritage. The Romans distinguished between different categories of property, these were: Firstly, *res privatae*, which consisted of things capable of being possessed by an individual or family. The second, *res publicae*, which consisted of things built and set aside for public use by the state, such as public buildings and roads. The third, *res communes*, which consisted of natural things used by all, such as the air, water and wild animals. The commons, or *res communes*, has had an important social function in our society, it provides a shared space, a resource that is shared within a community, a network of ideas and concepts that are non-owned.

-----

Ever since the rise of capitalism, people have been putting fences around the commons and declaring “this is mine”

-----

Ever since the rise of capitalism, people have been putting fences around the commons and declaring “this is mine”. In England, the phrase “good fences make good neighbours” has become unreflexive and normalised. The form of individualised property ownership within modern society, mediated through market exchange, has gradually colonised more and more of our social world. Should it also colonise the realm of information?

### The Information Society

In the Information Age, our lives are increasingly mediated through digital technology. Through computers, technical

#### Textbox 1:

He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation (Thomas Jefferson, 1813)

devices and countless databases, servers, and storage systems, information has grown in importance and value. But, as information itself has become more crucial to modern society, so too has the desire to profit from it. Indeed, information, when viewed as a potential form of profit, justifies new ways of legitimating its ownership as a property right. And, of course, information when viewed as property seems to require fences; virtual fences that can both identify it as being owned, and prevent others from taking it without paying.

With the emergence of capitalism, more and more of the *res communes* was enclosed and transferred to the realm of *res privatae*. In the Second Treatise on Government, John Locke argued that by “mixing” our labour with the commons we transform it into private property, if you farmed the land it would become property. However, there might be

arguments and disputes regarding ownership, perhaps others might take the land from you, contest your ownership or even ignore your claims altogether. To avoid this danger and prevent “war of all against all” he proposed a social contract that would give property legal tenure in civil society. Following Hobbes, he argued that a state would need to be formed that would guarantee private property through a monopolisation of the use of violence and act as a neutral arbiter between different factions. Locke, though, made an important but often forgotten restriction on this initial acquisition of property, called the “Lockean proviso”. This states that individuals have the right of acquisition only if “enough and as good [is] left in common for others”.

Another famous justification for the “rationality” of private property is given in Garrett Hardin’s paper called “The Tragedy of the Commons”. This metaphor illustrates how individual’s interest conflicts with the common interest. In this article the Commons is a shared plot of grassland used by all livestock farmers in a village. Each farmer keeps adding more livestock to graze on the Commons, because he does not experience a direct cost for doing so. After a few years, overgrazing destroys the commons, it becomes unusable and the village perishes. It is often used to argue in favour of private property and against theories that defend communal ownership of resources. This narrative has been extremely influential, indeed much political and social policy is informed by the logic of this framework. However, it ignores the fact that property itself relies on a commons – i.e. laws that everyone agrees to abide by. A property regime only holds together on the basis of this common belief and shared understanding. In any case, the tragedy is only possible if you simplify human action to a selfish “rational choice” actor, rather than see human activity as extremely complex and part of a wider social network of norms and values.

When individuals contribute to a shared project that creates new ideas or even provides an important social function it becomes increasingly valuable

When individuals contribute to a shared project that creates new ideas or even provides an important social function it becomes increasingly valuable. It is no surprise that the temptation to appropriate and resell the products of the commons can be overwhelming. The current neo-liberal trend toward the privatisation of energy and communication

services is another example of public goods being enclosed and transformed into private property. Market regimes and neo-liberalism survive off these privatisations; of physical goods, such as the transistor; of distribution networks, such as energy or water; or of services, such as the National Health Service. The commons, which once were considered the basis of the concept of the public, are privatised, and the values of common ownership and the public good are destroyed in exchange for market exchange and consumer choice. The relation between the public and the common is replaced by the power of private property and the market.

## Digital Revolution

The digital revolution has facilitated widespread cultural participation and interaction that previously was not possible. At the same time, it has allowed the creation of new technologies, potentially limiting and controlling these forms of cultural participation and interaction. The “expression” of ideas and concepts, such as books and music, can be encoded into digital information so that it can be transferred through communications, databases and web pages. The production and distribution of this information is a key source of wealth in the digital age and creates a new set of conflicts over capital and property rights that concern the right to distribute and gain access to information. With these restrictions on the access and use of information there is a corresponding restriction on the use of ideas and concepts. What is distinctive about ideas? Unlike physical objects, concepts and ideas can be shared, copied and reused without diminishment. No matter how many people use and interpret a particular concept, nobody else’s use of that concept is surrendered or reduced. But through the use of intellectual property law – in the form of patents, trademarks and particularly copyright – concepts and ideas can be transformed into commodities that are privately regulated and owned. An artificial scarcity of concepts and ideas can then be established. Much money is to be made when creative flows of knowledge and ideas become scarce products or commodities that can be traded in the market place. And, increasingly, intellectual property law is providing corporations with vast accumulations of wealth.

This legal exclusion is being supported by technological means. To do so, corporations and governments are currently developing and configuring ever more closed disciplinary technologies. These technical devices act as electronic fences, regulating access to those that have paid, those that are approved of and those that consume. Digital rights management software, for example, sequesters and

locks creative works, preventing their copying, modification and reuse. Adobe e-Books, for example, can restrict to a fine level of granularity how you can use the text, the publisher can even mandate how many times you can print pages from the book, whether you can copy it, or if you can copy and paste sections into other texts. They can also set an expiry date for the book, so after a certain date the book will self-destruct and delete itself from the system.

Thus, public pathways for the free flow of concepts and ideas and the movement of creativity and the creative are being steadily eroded — the freedom to use and re-interpret creative work is being restricted through legally based but technologically enforced enclosures. Against this trend, a new global movement of networked groups that operate across a variety of creative media (e.g., music, art, design and software) is now emerging. These groups produce a gathering of concepts, ideas and art that exist outside the current property regime. The creative works of the Free/Libre and Open Source communities, for instance, can all be freely examined, challenged and modified. Here, knowledge and ideas are shared, contested and reinterpreted among the creative as a community of friends. The concepts and ideas of these groups, like the symbols and signs of language, are public and non-owned. Against the machinations of profit, these groups are in the process of constituting a real alternative.

## Locking down Culture

Meanwhile, corporations are constructing the means to control ideas and concepts at a level of pay-per-view, whether watching, reading or listening. We all use and reuse ideas and concepts that are shared and non-owned without realising it. Changes are taking place due to the lobbying of the multinational media corporations and governments, particularly through the American use of TRIPs (Trade Related Intellectual Property agreements) and other international bodies such as the World Trade Organisation (WTO) — changes which are sadly lacking in democratic debate and deliberation. These moves threaten our ability to speak, write and even think differently (for if we can never read, see or hear concepts and ideas we can never use them).

An example of this new trend is given when Fox News Corporation trademarked the phrase “Fair and Balanced”. In August 2003, Fox sued the humorist Al Franken and his publisher E. P. Dutton/Penguin for alleging infringement on Fox’s three-word trademark “Fair and Balanced”. Franken’s book *Lies and the Lying Liars who Tell Them* was subtitled “A Fair and Balanced Look at the Right”. In the US, a dis-

trict judge refused to accede to Fox’s claim and Fox dropped the lawsuit but has retained the trademark. Next time they may be more successful as they and other multinational corporations lobby to strengthen the intellectual property laws when they are unsuccessful in court — for example, the Digital Millennium Copyright Act (DMCA) and the currently debated Induce Act.

The creation of new knowledge requires that ideas and concepts may be freely exchanged. If ideas and concepts can be digitally locked and controlled, it will have a devastating effect on our ability to draw on ideas from the past. A non-owned public domain, or commons, of freely shared concepts and ideas, where each may draw, without diminishing the availability of ideas and concepts for others is crucial. But whereas the enclosure of land contributed to the rise of capitalism and the power of the bourgeoisie to challenge the feudal order, this paper argues that the informational enclosure will conversely lead to a new feudal order. By drawing profit from the ownership of information the corporations will in effect be living from rents, a new rentier system based on the ownership of ideas.

This information-based system will allow the corporations — and they are predominantly corporations — who own the books and the newspapers, the music, the films, the patents and inventions to live off a monopoly rent from the rest of society. Taxing all members of society, maximising their profit and their income without any concomitant requirement to contribute creatively towards society. This movement threatens our ability as a society to re-use existing concepts and ideas and hence threatens social and cultural stagnation by closing our ability to be creative.

Our ability to use concepts and ideas is being restricted and controlled by an all encompassing and enveloping digital field that increasingly surrounds us

The corporations profit hugely from their libraries of art, films, music and writings, indeed, they need not worry about future creativity, as they increasingly own vast quantities of the creativity of the past. They can then package and resell this creativity in endlessly re-issued compilations, director’s cuts and special editions. As it is consumed it provides an endless stream of profit to the owners — for if you like it you’ll gladly pay again and again for the privilege of viewing. And should the founding ideals of intellectual property threaten profits — that copyright and patents should provide

a limited monopoly on ownership – the corporations lobby to extend the length of copyright terms. Indeed, corporations argue for unlimited ownership and control of creative works and new crimes to protect from the new “dangers” of informational theft, of so-called “piracy” and of “hacking”.

## The Control Society?

Our ability to use concepts and ideas is being restricted and controlled by an all encompassing and enveloping digital field that increasingly surrounds us. Gilles Deleuze identified a control society, which moves beyond the disciplinary society that Michel Foucault observed. Rather than institutionally bound, such as in the school, the hospital or the prison, the control society monitors our every action. This form of digital surveillance is extremely well suited to observing and controlling our use of concepts and ideas, and will allow payment and punishment to be extracted in the use of any creative work. This new rentier world is being silently built around us, partly using existing legislation, such as copyrights and patents, but increasingly by the active construction of technologies of surveillance and control, digital rights management technologies (DRM), authentication and identity recognition systems.

To combat this threat, a new concept of the “commons” will have to emerge. New technologies of the commons will need to be developed. New stories will need to be told and new metaphors and common-meanings created. Rousseau said that the first person who wanted a piece of nature as his or her own exclusive possession and transformed it into private property was the person who invented evil. What is common, however, is good.

## Copyright information

© 2005 by David M. Berry

This article is made available under the “Attribution-Share-alike” Creative Commons License 2.0 available from <http://creativecommons.org/licenses/by-sa/2.0/>.

## About the author

David is a researcher at the University of Sussex, UK and a member of the research collective The Libre Society. He writes on issues surrounding intellectual property, immaterial labour, politics, open-source and copyleft. Further information can be found at <http://www.libresociety.org/>