

# The Common Property Resource Digest

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This issue of the CPR Digest examines the information commons. The concept of ‘commons’ has the potential for helping us to think in a new way about how one of our most important resources - our information - can best be managed.

*David Bollier* leads off the CPR Forum making that point, and suggesting that thinking about information as a commons helps explain observations about information-related behaviour that is difficult to understand when other lenses are used. Next our own *Charlotte Hess* (who, truth be told, was a great help in putting this whole CPR Forum together) shares her thoughts on steps that can be taken by the IASCP to explore information as a commons. *Nancy Kranich* takes these ideas a step further by focussing on the practical reality of common access to information as being part of safeguarding basic democratic rights. Then *Markku Oksanen* confronts the assumption that the incentives of privatization are the real motivations of those who create cultural goods, holding up the example of the “copyleft” movement. In the contribution that follows, *Joseph Bahati* grounds the discussion in day-to-day information access dilemmas in Africa. *Jennifer Jenkins* concludes the conversation with an examination of how commons-based techniques might accomplish the innovation promotion role that some say is the that reason exclusive rights are necessary.

This issue of the Digest also features the first announcement of The Commons in an Age of Global Transition: Challenges, Risks and Opportunities, the 10<sup>th</sup> Biennial Conference of the IASCP which will take place in August, 2004 in Oaxaca, Mexico.

Finally, the Digest is happy to announce that we are welcoming a new staff member. During its 2003 meeting the Executive Council appointed Dr. Alyne Delaney as Assistant Editor of the Digest. We expect many improvements as a result. **Enjoy!**

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## The Missing Vocabulary of the Digital Age: The Commons

**David Bollier**

**Author of “Silent Theft” and an independent policy strategist**

As a theoretical matter, it’s easy to believe in “paradigm shifts,” the concept of erratic intellectual progress made famous by historian of science Thomas Kuhn. It’s much harder to admit that our own consciousness may be imprisoned within the iron bars of invisible paradigms and that this captivity may limit our ability to see new realities and the Next Paradigm.

Alas, this is precisely the problem plaguing so many wars over the control of creativity and knowledge in the digital age. New modes of communication email, the World Wide Web, collaborative software, WiFi Internet access, rip-and-burn CDs, and dozens of other digital technologies are radically transforming the central nervous system of our society. They are changing the nature of creativity, public dialogue and social interaction. Entirely new genres of expression and knowledge are being created.

But to listen to the guardians of the Old Paradigm, you would think we still live in an age of printing presses and one-way mass media. In the name of copyright and trademark law which are intended to promote creativity — film studios, record labels, publishers and information vendors are seeking to carry out a massive cultural lock-down. Essentially, they want to protect their existing business models by controlling how digital content is transmitted and used. This increasingly requires a transformation of our open, democratic cultural environment into a strictly regimented marketplace.

This vision is being pursued through unprecedented extensions of intellectual property (IP) law, new technological controls over the flow of

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information, and one-sided retail licenses that strip people of their customary rights. Consumers who open the plastic wrapper of a software package or go to a website and click an “I Agree” button may unwittingly “agree” to surrender certain rights, such as the ability to sue for defective merchandise or the right to criticize the product. These legally dubious contracts are known as “shrink wrap” and “click-through” licenses.

Over the past decade, these forces have conspired to make copyright protection a virtually perpetual monopoly and to shrink the scope of fair use rights, which allow the excerpting of content for personal, scholarly and non-commercial purposes. Software encryption and digital rights management are thwarting legal forms of public access to and use of content. Some companies claim a cultural monopoly on common words, phrases, sounds and colors. A few examples suggest the dimensions of this reactionary crusade:

- To control the flow of information from the Olympic Games in Sydney, Australia, so that it could sell website and broadcast rights, the International Olympic Committee prohibited athletes from talking with their hometown newspapers or chatting online with local reporters. Congress has already granted the IOC statutory control over the word “Olympics,” leading to a ban on the phrase “Gay Olympics” but approval of “Special Olympics.”
- McDonald’s has asserted a proprietary claim in the Scottish prefix “Mc” when applied to food establishments, threatening legal action against mom-and-pop operations like “McMuffins” and “McSushi.”
- Warner Brothers, producer of the Harry Potter films, has warned teenage fans that they may not use the name “Harry Potter” on their websites, claiming it constitutes a trademark infringement.
- ASCAP, the music licensing body, once told summer camps that singing copyrighted songs around the campfire constituted a “public performance,” and demanded that the Girl Scouts and others pay licensing fees.
- The Los Angeles Times and Washington Post, who are otherwise notable defenders of free expression, have invoked copyright law to prevent a conservative website from posting their newspaper articles on the Internet as part of a political discussion about media bias.

However absurd such stories may seem, they are perfectly logical extensions of copyright and trademark law. IP law has distinct philosophical premises about how creative works originate and diffuse throughout our society through market transactions of content legally protected as property.

No wonder IP law is speechless in face of the fantastically productive “gift economy” of the Internet. It cannot explain how thousands of vibrant websites and listservs run by self-organized, voluntary affinity groups

can create valuable content. The logic of contracts, property and markets cannot make sense of the free sharing of knowledge that is the hallmark of science or the improbable rise of Linux, the free-software computer operating system that has been assembled by a global corps of volunteers collaborating via the Internet. Not only has Linux been created without the costly apparatus of a corporation or a marketplace, many industry leaders consider it technically superior to Microsoft software.

The very idea that sharing material over the Internet can generate greater economic value than strict propertization or that it fulfills a high democratic purpose is regarded by many industries as ridiculous, subversive or communistic. I once witnessed a Sony attorney red-bait a proponent of online sharing of content. An official of the Association of American Publishers has criticized librarians who want to share all content for free as “radical factions, like the Ruby Ridge or Waco types.”

Yet free access and sharing of information lie at the heart of an open, democratic society. In fact, all sorts of endeavors science, education, music, journalism and civic debate depend upon the free exchange of creativity and information. Scientists must be able to use previous research in order to make new discoveries. Artists must be able to use the images, musical styles and plotlines of earlier artists. Journalists, scholars and citizens must be able to quote others’ works.

The irony is that socially based genres of free information exchange are vital to our democratic society yet they are largely invisible to policymakers because they defy the premises of neoclassical economics and copyright law.

The public domain is the closest approximation we have for the concept that creativity is nourished has always been nourished through sharing, openness and community. Sadly, the public domain has always resembled a broom closet in the grand palace of copyright law. Our copyright laws instead celebrate individual authorship and the propertization of creativity, not the other fertile modes of knowledge-generation.

An urgent challenge of our time, as I see it, is to develop a new mental map and public language for describing new modes of cultural production in the Internet age. Like many others, I see great value in beginning to talk about the commons as a new framework for these issues. We need to invent some new cultural categories, much as ecologists and activists in the early 1960s literally invented the idea of “the environment.”

As Duke law professor James Boyle has pointed out, fifty years ago American society had no overarching narrative for understanding that synthetic chemicals, dwindling bird populations and polluted waterways might be conceptually related. Few people had yet made the intellectual

connections among these discrete phenomena. No analysis had yet been formulated that could explain how birdwatchers and bird hunters might actually share common political interests.

In a very real sense, the rise of environmentalism as a political and cultural movement was made possible by a new language. In the face of a new set of market excesses, we face a similar challenge today to invent a new language for protecting the cultural commons.

The functioning of our economy and culture has changed dramatically as a result of digital technologies, but our mental maps still tend to depict the landscape of another time. A handful of giant content industries continue to insist on expansive legal protections for a singularly narrow, Old Paradigm model of cultural production. This model requires centralized corporate control of nearly all significant creativity and information, after buying individual creators’ copyrights in an unequal bargaining process. It also requires that works be strictly defined as property and disseminated through market transactions. The idea that valuable cultural production might be carried out more efficiently and flexibly through a commons or in the lingo of the Internet, “peer production” is incomprehensible.

The commons is a useful discourse because it confers a theoretical respectability and standing on phenomena that are otherwise seen as isolated and aberrational. For example, it helps explain the actual dynamics of online scholarly publishing, scientific research and peer production, which have little standing, let alone legal protection, in the philosophical traditions of IP law.

The commons also helps us showcase the many realms being threatened by overly powerful market forces while validating a new affirmative framework that recognizes our non-market interests as citizens. It’s not that the market is bad in principle, but rather that its reach and influence are becoming too intrusive, dysfunctional or expensive.

The commons offers us a vocabulary for talking about these excesses. It gives us a language for talking about inappropriate commodifications of knowledge and the systematic privatization of resources that should belong to all of us as a civic right.

I like to talk about the commons because it helps identify roles, behaviors and relationships that cannot be adequately expressed by market theory. It gets us beyond market-speak in which everyone must be either a producer or a consumer. It gets us beyond property-speak in which everything must be strictly owned by an individual or corporation or government. It gets us beyond the short-term, profit-maximizing mindset of the business enterprise, and allows us to entertain broader long-term

objectives that may or may not be profitable, but are nonetheless useful and socially constructive and now feasible using Internet technologies.

In short, the commons re-situates our understanding of knowledge and creativity from a market context to the larger context of our political culture. This is a long-overdue paradigm shift.

Inevitably, the existing legal discourse of copyright and trademark will persist and dominate policy debates. But until we begin to talk about the commons and its importance to our shared creative and civic environment, we should not hold any illusions that the property-speak of copyright and trademark law will significantly advance our larger interests as commoners.

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# CPR FORUM RESPONSE

## The Information Commons and IASCP

**Charlotte Hess**

**IASCP Information Officer**

Throughout its short history, the focus of most IASCP research has been natural resource management. The primary mission of our organization has been to improve institutions “for the management of environmental resources” (see: <http://www.iascp.org/brochure.html>). But in the past eight years since the 1995 Norway conference “Reinventing the Commons” increasing attention has been given to other types of commons: highways, playgrounds, apartment buildings, and the Internet, to name a few. The information/knowledge commons deserves a prominent position in our consciousness and as an area of study because of its crucial importance to all of us. Bollier provides a useful summary of one of the most troubling arenas of this commons: copyright legislation and the enclosure of knowledge that used to be open and free.

While we are all aware of the benefits of the Internet, the threats arising from the same technology are less apparent. New information technologies have the ability to capture previously untapped information resources through computer code. The combined forces of recent legislation, market forces, and social complacency, have the capacity to erode public access to information. Enclosed public knowledge impedes democratic processes, informed citizenry, open science, free libraries, artistic and scientific innovation, and our decision-making capabilities for sustainable environmental management.

Much is being written today on the information commons, from the effects of recent intellectual property-rights legislation, economic commodification of ideas, over-patenting, the move from property law to contract law in electronic publishing, the effects of new copyright laws on libraries and the academy, to issues of westerncentrism, piracy of indigenous knowledge, and the north/south digital divide. Almost all studies are concerned with the idea of the “commons,” rather than common property or common-pool resources. While the “commons” is a well-worn term, there have not been any systematic analyses, as far as I know, of this more general term. The “commons” is a much more general concept than “common property.” It conveys a sense of “sharedness” or “jointness.” The word is often used instead of an “open-access public good.” The “commons” can carry a moral weight. It is connected to a sense of a birthright and closely linked to the “common good,” or the “common heritage of humankind.” Is there room for “information” as a resource type or a place for the “commons” within IASCP?

If so, how do we get our hands around this huge, complex topic, especially when the resource at hand information is often intangible? A first step was James Boyle’s Conference on the Public Domain (PD) at Duke University in 2001, which brought together for the first time a wide range of interdisciplinary scholars and artists (see *Law and Contemporary Problems*, 66[1 & 2] at <http://www.law.duke.edu/journals/lcp>). Boyle’s suggestion of using the environmental movement as a model and crafting a new language resonated with many of the participants. Understanding the information “ecosystem” would enable scientists, musicians, information specialists, indigenous groups, resource practitioners, teachers, and policymakers to see their shared interest in the preservation of public knowledge.

The next step is the development of a new research agenda that examines and pulls together the disparate threads of the “knowledge commons.” Much of the study thus far has focused on U.S. legislation, economics, and dilemmas. But clearly, public knowledge is a global commons. Questions of equity, reciprocity, and “common but differentiated responsibilities” must also be considered. This global commons, threatened by enclosing intellectual property laws, can only be managed with increased awareness, vigilance, and action at the local level.

We not only need a new vocabulary, we need to go beyond the 1985 Oakerson framework and develop an adaptable analytical framework that incorporates complexity, scale, and rapid change. Besides the legal

and economic issues, cultural, moral, and behavioral questions need to be addressed as well.

Ultimately, responsibility for the collection, management, and preservation of knowledge is upon us all. There are many collective-action initiatives that may help sustain the knowledge commons: from grassroots networks such as SRISTI's Honey Bee, the preservation of traditional knowledge and languages, to self-governing digital libraries.

Information about physical resources is itself an important common-pool resource. Can we draw from what we have learned from natural resource commons in order to better understand the information ecosystem? As Lele, Hill and others have pointed out in these pages, the commons has indeed been "pixilized." We need better focus and a clearer picture.

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## CPR FORUM RESPONSE

### **The Information Commons: From Metaphor to Reality**

**Nancy Kranich**

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David Bollier illuminates how the battles over control of creativity and knowledge have limited our ability to see new realities and paradigms in the digital age. At the same time, though, we are witnessing exciting new initiatives that bypass the controls of the information marketplace and foster free expression and democratic engagement.

The emergence of the digital age brought the promise of open access to an infinite array of information -- information that would enrich the way we live, learn, work and govern. Observers of this technological revolution imagined an information world that would migrate from a state of scarcity to a state of abundance, transcending geographic, legal, and political boundaries. This dream envisioned a utopia where people could connect with myriad ideas and individuals just by clicking a mouse, no longer constrained by location, format, cost, time of day, on-site rules and regulations, or other barriers. In essence, anyone, anytime, anyplace could receive, interpret and exchange ideas outside the limit of government controls or the marketplace. Many enthusiasts assumed that this new information infrastructure would reserve public spaces for educational and nonprofits institutions charged with promoting and fulfilling the public interest, and would

constitute a sphere of free speech and open intellectual discourse that enhances democracy.

Over the past 20 years, a national policy of deregulation prompted the industries that create, transport, and disseminate information to transform from independent operators mostly involved with infrastructure into highly integrated, multinational conglomerates eager to increase market share and dominate access to both home and business. The convergence of new technologies empowered these industries to expand their reach while controlling the terms and conditions of access. This evolution has resulted in what many describe as an "enclosure" that creates a highly inequitable information marketplace.

Today, many Americans have no access or ability to use the new technologies. Others cannot afford the high prices or are forced to comply with rules that control and limit their usage and rights. Meanwhile, with Congress continually extending the duration of copyright, the chance of many works ever entering the public domain keeps diminishing. And for those items that are freely available for public use, no plan for permanent public access has yet emerged.

Given the array of new restrictions limiting public access, the promise of a free and open 21st century information society remains beyond the horizon. The technology that enables unfettered access is just as capable of restricting personal information choices and the free flow of ideas. The utopia of a high-tech society is now threatened by the dystopia of a highly controlled society. To protect our most precious right in a democratic society the right of free speech and inquiry we must develop alternatives. The information commons presents a viable alternative to this quest to preserve free expression in the digital age.

The metaphor of the commons offers a fresh approach, emphasizing fundamental issues essential to our future as a democracy. It provides a useful framework for envisioning the public interest. It gives an opportunity to stake a claim in the future of the public sphere—to give a language from which we can explain how the extraordinary public assets invested in our information infrastructure can deliver opportunities for the participation of all citizens.

For these reasons, we need to applaud and encourage exciting new initiatives that transform the metaphor of the commons into reality. Some of these initiatives are simply digital library collections, others digital repositories, and still others digital communities. Several employ the Internet itself as a commons, utilizing open source software, peer-to-peer file sharing, and collaborative Web sites. These projects share the characteristics of free and open access, self-governance, archiving and preservation,

and limited of any copyright restrictions. Often, they offer electronic versions of the traditional library an enduring model for new information commons. All represent a new genre of creativity and information artifacts, best understood within the framework of the commons. Such groundbreaking initiatives as the Creative Commons, Project VoteSmart, and the Digital Library of the Commons demonstrate the benefits of new paradigms for content creation and use.

The emergence of the information commons as both metaphor and reality fills a critical need in the digital age. The commons elevates individuals to a role above mere consumers in the marketplace, shifting the focus to their rights, needs and responsibilities as citizens. Reviving a language of the commons along with adopting new paradigms for access allow us to advance knowledge and creativity while realizing a democracy that guarantees full participation in the free and open exchange of ideas.

The author is currently working on a report on the Information Commons.

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# CPR FORUM RESPONSE

## Response to Dr Bollier: Towards a Copyleft?

**Markku Oksanen**

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Dr Bollier's paper on intellectual property in the digital age is a timely and critical attempt to set an agenda for creating discussion on intangible goods, in particular information. According to him, nothing less is at stake than a fundamental element of democracy: free access and sharing of information lie at the heart of an open, democratic society. It is easy to agree with him about this and also about most other of his claims. Bollier's analysis raises, however, numerous questions, of which I want to consider two related issues: the relationship between the publisher and the author and the idea of copyleft that has emerged in information technology.

As Bollier remarks, the recent trends in the global market place have threatened the objective of free dissemination of information, as corporations are willing to protect their intellectual property rights to such extent that, ironically, their use might be hampered. It is easy to ridicule the extreme ideas about safeguarding copyrights, but a more serious consideration indicates a change in the mentality in regard to intellectual works that has taken place during the two or three centuries. Proposals for tighter copyright

control are nothing but logical extensions of IP law that were previously unforeseen.

Had a folk musician a century ago known that his/her songs would survive from one generation to another, he/she might have simply been happy about this. If these songs had a recognized author rather than being a part of the body of anonymous folk music, the author might have been even happier. The other day I read an interview of an internationally successful Finnish pop-musician in a newspaper, and the pop-star emphasized that the starting point of an enduring career is to be aware of the complexities of the music business and copyrights law from the very beginning: musicians have to protect their songs, their bands' names and images and so on. In some respect these reflections differ a great deal from the picture, perhaps romantic, I painted above. However, each songwriter wishes, I believe, that his/her creative work would become part of the cultural commons rather than being forgotten. Honour and reputation have been motives of artistic works (along with many other motives), and I can't see why they still wouldn't be so, even more than economic interests. Corporations' interests are basically economic. The excessive protection of musical works, for example, might very well have undesired consequences from the author's perspective, to which Bollier refers. In such a situation, the artistic and business motivations could be at odds yet again in the same way as were the interests of the writer and the publishing house in the eighteenth century when, as Rose explains, the romantic idea of the author was set against the practice that the publisher of the material was its owner.

Information technology (IT) has recently witnessed the rise of the copyleft movement. In the music industry, some groups have published their music on the Internet, but there has no IT equivalent to this, as far as I know. Considering the nature of intellectual commons, the copyleft objects are rather peculiar. Three features of the IT situation are interesting. First, they are protected in the same way as all the other copyrighted items but not enforced in the form of royalties payment. Thus, the paradoxical nature of the idea of copyleft is that free use is based on the existence of the copyright institution. Second, they are not anonymous but the moral author of the object is often recognized. Third, and this is particularly important in IT, the item can be freely modified.

Perhaps to put Bollier's idea of intellectual commons into practice within the present legal context requires that the authors' rights to intellectual property objects are protected in the sense of copyleft. It guarantees their free but fair use. As far as the legal system and economic realities allow this to happen, this is an option for the authors of intellectual property. If they take up this option

and do not try to stretch IP law to its limits, they act in the spirit of the commons. To expand my moral criticism to concern those corporations Bollier mentions, nothing compels as far as there is freedom of choice in economic matters them to behave in the way they actually behave.

For further information:

Rose, Mark 1994 *Authors and Owners: The Invention of Copyright*  
Cambridge: Harvard University Press

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## CPR FORUM RESPONSE

### **Knowledge Banks for the Commons from the African Perspective**

**Joseph Bahati**

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Stand early one morning, at the side of a major road outside of any regional town in almost any country, and you will still probably see a library van chugging out for its rounds of nearby villages for the day, set to return at sundown. Be it in Uganda, Zimbabwe, Kenya, or Ghana.

In most towns today, you find one or more libraries, their modest collections outshone by their ambition, their few dozen or so titles much coveted by their users. Such local initiatives occupy a special place in the constellation of world libraries, alongside some legendary libraries of much greater size, such as the one at Indiana University.

In Alexandria in Egypt, for example, the new Bibliotheca Alexandrina was opened in October 2002 on or near the site of the ancient one, which aimed to serve humanity from 295 BC to the early 5th century AD. It shares some goals with the ancient library: a focal point for research, the advancement of knowledge and the open exchange of ideas, but not for storing every book in the world, that will happen one day in a place called the Internet.

Alternatively, in Timbuktu, Mali, work is in progress on preserving 20,000 books, many scientific and agricultural and dating from the 13th century, that are stored in the Ahmed Baba Center for Advanced Islamic Studies. Electronic copies will be available on the Internet. Just as these books recall the depth of Islamic scientific enlightenment, so the 8th century Stift in St. Gallen, Switzerland, with its illumination scientific books, is a reminder of how libraries run by monks served as a refuge for knowledge in Europe's Dark Age.

While most people in society value libraries, few value librarians. However, with the onset of the digital age, this century-old paradox is changing, as these information

professionals throw off their meek image and start to assert themselves. For example, from the International Association of Agricultural Information Specialists, librarians are catching up with the task of becoming service-oriented, raising standards and seeking financial sustainability. In Africa today, there is a paradox of democratization and decentralization regarding the commons. These processes are drawing inspiration from the library-stored records of the struggles of our predecessors.

The spread of the information and communication technologies (ICT) has led many untrained people to believe that they can organize their information and find out about anything, anywhere, on the Internet. In theory, yes, but only if the information searcher knows how to search. Besides, Internet facilities are not yet common in most parts of Africa. Therefore, all this calls for more, and not less, use of the librarian's toolbox of classification systems, thesaurus and abstracting skills and programming intelligent searches. With the growth of informal, community-based libraries, the challenge for information professionals, especially in Africa, is to share skills with the different users in ICT. After the initial excitement of plugging into world-wide networks, the user comes to the realization that it is not just a question of access but, increasingly, of being able to select information.

In the African perspective, there are many bridges to cross along the library's path into the future. But while we must worry about selection skills, let us cross one bridge at a time. Community residents must first be taught how to read and write. There is quite an enormous amount of indigenous information that they would love to share. Unfortunately, indigenous information, and therefore the accrued memory, tends not to be valued by its holders. They may either believe the experience is common knowledge or, at the other extreme, insist that culture dictates that it be retained as a sacred trust to be passed only to the select, as part of heritage. Yet, such indigenous and local information is valid and has potential value to a wider community, if only distributed and shared.

The greatest challenge is to change the culture of information sharing to benefit the global commons so that the global commons appreciate that the sharing of knowledge is enriching to trustees, global commons, and future generations

There is an enormous amount of information in Africa that would benefit the trustees, global commons, and future generations if documented and shared. I agree with David Bollier that commons help identify roles, behaviors and relationships that cannot be adequately expressed by market theory alone. Everyone must be either a producer or a consumer at different times and situations.

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# CPR FORUM RESPONSE

## Innovation in the Information Commons

Jennifer Jenkins

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In his excellent lead article, David Bollier argues that the commons offers a valuable paradigm for talking about, understanding and protecting free information exchange and knowledge-generation in the digital age. Online scholarly publication, scientific research and peer to peer production are only a few of the commons-based modes of production that have simultaneously been enabled by digital technologies, and threatened by recent intellectual property laws that expand and tighten private control over who may access information, and how they may use it. For Bollier and others, “commons” is not just a buzzword; it provides a rhetorical and descriptive framework to reorient debates about intellectual property policy, which have been dominated by the limiting language of private property and markets.

In an encouraging development, a growing body of scholarly literature is offering increasingly nuanced and extensive analyses of the information commons. As with a physical commons, an information commons is not simply a self-enabling space where shared resources can be accessed by anyone, without cost, for any subsequent use (although some would argue that this definition could describe the related concept of the “public domain”). The “commons” is also a way of managing shared resources, and consequently describes a set of rules, values and norms for accessing and providing resources within a given community. In the emerging literature, some scholars are beginning to demonstrate how the rules that govern a commons may manage resources more efficiently and democratically than the rules of intellectual property, and how a well-managed commons might actually serve the stated goals of intellectual property better than its regime of private property rights.

The grant of exclusive intellectual property rights rests on the theory that these rights are necessary to promote innovation and creativity, or in commons language, to prevent under-investment in resource development. (Avoiding overuse is not an issue with intellectual resources because they generally cannot be overused or depleted- for example, the content of this newsletter is not ruined or diminished when more people read it.) However, the trade-off with exclusive rights is that, in promoting innovation, they also allow private entities to control access to necessary resources - a gene sequence, drug,

line of code, snippet of song - that others would use, improve and build upon. What if a commons could somehow promote innovation, without this trade-off of monopolistic control?

Consider the following two examples. Open source software for many an emblematic information commons is released under “copyleft” licenses that permit anyone to use, add to, or modify the underlying code, but only if their new program is covered by the same license, and therefore freely available for others to use. This licensing scheme preserves continued access to the necessary resource code and creates a commons, in the words of Eben Moglen, “to which anyone may add, but from which no one may subtract.” Outside of the framework of economic incentives and private control of property rights, the open source software movement has developed many successful innovations, including the Linux operating system.

Another type of commons, which is discussed much more extensively by scholars such as Jerome Reichman, allows anyone to access innovations, without having to secure permission from a rights holder, so long as they later pay a nondiscriminatory, flat-rate fee. This “take now, pay later” system promotes innovation by offering to innovators the incentive of payment; but, unlike the intellectual property system, it does not allow them to impede subsequent innovation by withholding permission, or setting prices prohibitively high.

In both of these examples, the information commons may be superior to a regime of exclusive property rights. The concept of the commons becomes not only rhetorical and descriptive, but also prescriptive: it may provide a better alternative.

If we are to sustain and develop information commons, we need to engage in more thorough studies of how innovation and creativity occur within them, and how they may best be managed to optimize productivity. This type of research is already underway: Elinor Ostrom and Charlotte Hess, for example, have applied the methods and tools used to study real commons to a comprehensive analysis of scholarly information, and Jerome Reichman and Paul Uhlir have done considerable work on structuring a commons for scientific information. Hopefully, the more we understand and advance these “comedies of the commons,” poised to flourish in the digital age, the better we can prevent intellectual property laws from “enclosing” them.

For Further Information:

A thorough review of this literature is well beyond the scope of this response, but those who are interested in this subject will wish to look at the articles from Duke Law School’s Conference on the Public Domain, which are available online at <http://www.law.duke.edu/pd>.)

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## RECENT PUBLICATIONS

Charlotte Hess

### Books

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*Can you guess what this might be? See page 13!*

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## ANNOUNCEMENTS

**Send Letters and Announcements** to Doug Wilson, Editor, CPR Digest, The Institute for Fisheries Management, North Sea Center, PO Box 104, DK-9850, Hirtshals, Denmark. [dw@ifm.dk](mailto:dw@ifm.dk) Tel: 45 98 94 28 55 Fax: 45 98 94 42 68

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### Upcoming IASCP Meetings

Meeting: The Commons in an Age of Global Transition: Challenges, Risks and Opportunities, The 10th Biennial Conference of the IASCP  
Dates: August, 2004

Location: Oaxaca, Mexico

Coordinator: Leticia Merino, [lmerino@servidor.unam.mx](mailto:lmerino@servidor.unam.mx)

Meeting: The Northern Commons

Location: Anchorage, Alaska USA

Dates: August, 17-21 2003

Coordinator: Mead Treadwell, [mal@gci.net](mailto:mal@gci.net)

Meeting: Politics of the Commons

Location: Chiang Mai, Thailand

Dates: July 11- July 14, 2003

Coordinator: Chusak Wittayapak, [chusak@soc.cmu.ac.th](mailto:chusak@soc.cmu.ac.th)

Meeting: Pacific Regional Meeting

Location: Brisbane, Australia

Dates: September, 7 - 9 2003

Coordinator: John Sheehan, [qld@propertyinstitute.com.au](mailto:qld@propertyinstitute.com.au)

### Politics of the Commons:

#### Articulating Development and Strengthening Local Practices

Chiang Mai, Thailand July 11-14, 2003

[rcsd-con@soc.cmu.ac.th](mailto:rcsd-con@soc.cmu.ac.th) [www.rcsd.soc.cmu.ac.th](http://www.rcsd.soc.cmu.ac.th)

The RCSD Politics of the Commons: Articulating Development and Strengthening Local Practices international conference aims to encourage discussion about political change and processes affecting the commons in South and Southeast Asia. Academics and social activists will engage in a dialogue on the situation of resource politics. The Regional Center for Social Science and Sustainable Development (RCSD), Faculty of Social Sciences, Chiang Mai University, Thailand, is the local host of the conference with organizational support from the Australian Mekong Resource Center (AMRC) and the York Center for Asian Research (YCAR), and the IASCP. Funding Organizations: Rockefeller Foundation; Rockefeller Brothers Fund; Heinrich Boell Foundation; Interchurch Organisation for Cooperation and Development.

Five themes shape the direction of the conference: **Theme One:** *Situating the Commons in Post-colonial and (Post)-socialist Thinking/Articulation.* **Theme Two:** *Trans-nationalizing the Commons and the Politics of Civil Society.* **Theme Three:** *Local Voices in the Globaliz-*

Continued on Page 16

ing Market: Cultural Diversity and Pluralism **Theme Four: Politics of Tenure Reform** **Theme Five: Crisis and Access: Critical Times for the Commons**

**Correspondence:** RCSD Conference Secretariat, Regional Center for Social Science and Sustainable Development (RCSD)

Faculty of Social Sciences, Chiang Mai University, Chiang Mai, 50200 THAILAND. Tel: 66-53-943595 Fax : 66-53- 943596

**August 2003 Sustainable Development Workshop**

**Anchorage, Alaska**

**The Northern Commons:  
Lessons for the world,  
Lessons from the world**

Hosted by The Institute of the North, a division of Alaska Pacific University and The Northern Forum in conjunction with IASCP

To follow upon the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa, the Institute of the North and the Northern Forum will host a 2003 academic and governmental workshop on methods for managing the vast, commonly-or publicly - owned lands, waters, wildlife, mineral and other natural resources of Northern reaches of North America, Europe and Asia. The workshop will be held in conjunction with a Regional Meeting of the **IASCP**. The workshop is scheduled May 19-26, 2003, and will offer field trips to Alaska parks, wildlife refuges, forests, mines, oil and gas facilities, Native communities, and fisheries.

**The Northern Forum**, founded in 1992, is a UN-recognized NGO made up of 25 regional governments that face similar opportunities and challenges throughout the North. It is a permanent observer to the **Arctic Council**. The Institute of the North, founded by Northern Forum Secretary General, former Alaska Governor and U.S. Interior Secretary Walter J. Hickel, conducts research and teaching in Northern regional, national and international strategy, focusing on the obligations of common ownership of resources, lands and seas. It works with the Northern Forum to counter the historic pattern of exploitation in the North so that the natural wealth at the top of the globe can sustain and benefit local regions and peoples. The 2003 workshop will gather academics and practitioners to compare successes and best practices in achieving **three of the goals of the WSSD – economic sustainability, environmental sustainability, and social equity**. Academic goals of this conference will be to identify and map common areas in Northern Forum regions, to understand legal regimes in place for management of resources on common lands, and to identify measures to track the economic, environmental and social impacts of management regimes.

**The Second Pacific Regional Meeting  
of the International Association  
for the Study of Common Property**

The International Association for the Study of Common Property (IASCP) in association with the Australian Property Institute (Queensland Division) is holding its Second Pacific Regional Meeting on September 7-9, 2003 in Brisbane, Australia at the 1886 historic Customs House in the Brisbane CBD.

The purpose of this Second Pacific Regional Meeting is to provide a focus on the following theme:

**Traditional and Indigenous Land uses and Economies**

The pivotal discourse to be canvassed is how the skill sets of researchers and practitioners in the area of common property resources can be marshalled to rectify the untenable position of indigenous and traditional societies. The pressure upon biodiversity in the south created by

the demands of the north, has a parallel manifestation in the social, economic and physical dispossession of traditional and indigenous peoples throughout the world. In the IASCP Pacific Region the astounding diversity of marine and terrestrial biota is matched only by the diversity of the cultures of the traditional and Pacific peoples.

The program will enable delegates to hear a wide range of views on critical issues for CPRs in the Pacific Region, with papers presented by leading practitioners and academics over two days (8-9 September). A welcome reception will be held on the evening of 7 September at which the Second Pacific Regional Meeting will be formally opened. There will be ample opportunity for delegates to share their experiences, or to act as Session Chairs or discussants.

Additional details regarding this meeting can be found at [www.iascp.org](http://www.iascp.org).

Contact Information: IASCP Regional Pacific Meeting Secretariat

C/-Australian Property Institute, (Queensland Division) PO Box 106, Spring Hill QLD Australia Phone: +61 7 3832 3139 Fax: +61 7 3839 0438 Email: [qld@propertyinstitute.com.au](mailto:qld@propertyinstitute.com.au), ABN: 49 007 505 866

**The Commons in an Age of  
Global Transition: Challenges,  
Risks and Opportunities**

**The 10th Biennial Meeting of the IASCP  
Oaxaca, Mexico, August 9 – 13, 2004**

**Hosted by the Universidad Nacional Autónoma de México**



**1. The Theme**

The theme and title for the conference is “*The Commons in an Age of Global Transition: Challenges, Risks and Opportunities*”. As such, IASCP 2004 seeks to stimulate further discussion upon many of the themes that were raised during the 2002 conference in Zimbabwe, where “Globalisation” was the central focus.

Ten sub-themes for the conference have been suggested below. The goal is to foster deeper discussions across all themes, including the analysis of institutional frameworks, the importance and influence of markets and public policy-making, and the interrelationships between policies and institutions at local, regional, national and international levels within the context of global transition.

Please note that broader papers covering topics that cut across more than one of the ten conference sub-themes are also welcome.

**Sub-Themes**

**2.1 Indigenous Peoples and Common Resources.**

Indigenous and other local peoples control a large portion of the world’s common resources. Yet the historical struggle of indigenous peoples to retain, recover and develop rights to their territories, resources, and knowledge continues in the present. While some indigenous groups have obtained legal recognition of their territorial and intellectual property rights,

these rights are typically defined with terms and conditions established by and for the dominant culture. Indigenous peoples groups face constant challenges to affirm their cultures and resource rights while negotiating the problems and potentials of interrelationships with the market and dominant external groups. How are indigenous groups confronting these challenges? What changes are occurring in the relationships between indigenous groups and their traditional resources, territories and knowledge? What are the impacts of external forces? What kind of strategies and policies best help indigenous groups gain and regain control over their patrimonies?

In some cases, indigenous knowledge includes common resource management institutions and patterns of natural resource use that have proven sustainable for generations, and merit greater scrutiny and respect by researchers and policy-makers. At the same time, these institutions face internal and external pressures that may compel transformations or deterioration as indigenous groups adapt to changed circumstances. What are the historical and modern processes by which this occurs and effective common property institutions are created, maintained, transformed or lost?

### 2.2 Environmental Services and Common Resources.

Until recently, environmental services (water maintenance and production, carbon sequestration, biodiversity conservation, disaster mitigation/protection), provided by natural resources managed as common property, were not recognized or were accorded little value. Due to increasing levels of environmental degradation and associated problems, experienced at both the local and global level, however, the true value of these services has become apparent and is becoming increasingly recognized.

Under this theme, we welcome papers that examine the link between CPRs and environmental services, their conservation, associated market opportunities, and the development of governance and payment schemes in which communities rights are or can be recognized and protected. Can communities be stewards with a key role in the production and preservation of environmental services? To what extent could the achievement of commercial returns from environmental services fundamentally change the landscape of commons management? What kind of mechanisms will need to be in place for communities to realize commercial benefits in return for conserving their common-pool natural resources? What examples already exist of contracts between national or international conservation and environmental? What kind of laws and policies are needed?

### 2.3 Governance, Conflict and Institutional Reform

Effective and sustainable governance of socially valued, common-pool resource systems represents an ongoing challenge for the world's societies. The challenge is multi-faceted, because vast differences exist from place to place in socio-cultural, political, economic, infrastructural and context contexts. The challenge is multi-leveled, because most common-pool resource systems cross political boundaries, whether local, regional, national or international.

Given the multi-faceted, multi-leveled challenges to effective governance of such natural resource systems, what approaches for CPR governance are most promising in our increasingly interconnected world? What are the major concerns that (should) occupy users, governments, and analysts as they try to understand how common resources can best be used, allocated, and managed? What are the major causes of the conflicts and tensions that are producing a reconfiguration of governance structures and how can they be best understood and addressed? Is there a real shift in the involvement of different institutions and constituencies? What roles do international bilateral and multilateral organizations and NGOs play?

### 2.4 Conservation Policy and Commons Management.

The "Protected Area (PA)" approach has been the mainstream strategy within the environmental movement guiding the conservation of biodiversity, wildlife and habitat. The approach is based on the assumption that certain areas of habitat are 'pristine' and PA management is necessary to safeguard these areas from people living in, and around them. For urban, industrialized societies the PA approach remains the paramount model for the use of nature, and it is still held out as a paradigm for the developing world. Across Africa, Asia and the Americas, its impact on natural resource use has been

profound. However, in response to such protectionist attitudes and amid increasing conflict between local communities and state officials, there has in recent years been a discernible shift towards more participatory approaches.

Papers to be submitted under this sub-theme will link globalization with local-level issues and concerns regarding conservation. They will identify and analyze the linkages between PAs and other conservation programs and indigenous and local communities, especially in light of changes being experienced in this age of global transition. We also welcome papers that offer insights into many of the contemporary problems experienced by PAs and suggestions of how law and policy could be better designed to promote and balance the needs of conservation and local communities.

### 2.5 Contemporary Analytical Tools and Theoretical Questions

Over the past two decades, analyses of CPRs have begun to use comparative case method, and in rarer cases, game theoretic and statistical tools. The use of network analysis, Boolean algebra, decision theory, and agent-based models can also provide potentially new insights into structures, processes, and functions of commons arrangements.

More widespread use of multiple analytical tools is crucial to the continuing vitality of the field of commons studies. Under this theme, we welcome paper and panel proposals that move away from the traditional reliance of commons scholars upon case study description, but rather include studies that illustrate the use of contemporary analytical tools, and inferences that are based on such use. In particular, panels that bring together several studies under a common idea or argument, will be especially welcome.

### 2.6 The Impacts of Geographic Information Technologies and Environmental Information on the Commons

Advances in the technology of gathering, analyzing, and displaying spatial information create several new arenas for improved theory building in commons management. Satellite remote sensing, global positioning systems, and geographic information systems, for example, are all increasingly available to actors from government, academia, NGOs, grassroots groups, and even some individuals. These geographic information technologies change the way people understand and make claim to the commons in many ways.

However, these tools reveal only certain kinds of environmental change in the commons, conceal others, and necessarily privilege certain actors and specific ways of perceiving environmental change in the commons. Under this sub-theme we would welcome work that clarifies the effects of geographic information technologies on commons perception, the differential power of various actors in commons situations, the evolution of institutions for commons management, and innovative work that integrates environmental data and analysis with social data and analysis.

### 2.7 Markets and Commons Resources.

Changes in supply, demand and governance offer new opportunities for indigenous and other local communities, many of which are low-income, to earn more from the natural resources they manage as CPRs. Whereas most appropriation of the resources from CPRs have ultimately been individual, under collective rules, new market opportunities are driving the emergence of community-based enterprises (CBEs) organized around production from CPRs.

What are the new forms of formal collective action around CPRs that are emerging in relationship to market opportunities? What can be learnt from the frequent occurrence of specifically market-oriented commons management, such as small-scale fisheries? Are CBEs viable market institutions or are the transaction costs too high for indigenous and other local communities? Can CBEs be competitive in markets that demand efficient, high quality production?

### 2.8 The New Global Commons.

Global conventions are still relatively new, and as experience grows the relationships between global actors, government institutions, and natural resource owners and managers are being modified. Within this complexity, there are innovative examples of policy and legal frameworks and alternative institutions for resource management that enable partnerships among communities, governments, the private sector, and civil society. Some of these use market opportunities for sustainable resource use and clean production.

Under this theme, emerging institutional arrangements will be explored and promising and problematic examples identified. What are the most promising agreements, contract arrangements, institutional mechanisms, and structure of partnerships, including those between global and national actors which are most promising? What are some of the basic conditions for success? What are the roles of different players in enforcing rules and assuming management authority? What is a realistic balance between market-driven adjustments and government and/or international regulation?

**2.9 Globalization, Culture, Identity and the Commons**

There exist two opposing views regarding the influence of Globalization over culture and cultural identity. On the one hand, it is argued that globalization generates greater diversity, whilst on the other it is asserted that globalization encourages cultural homogeneity. The evidence suggests that perhaps a combination of the above is taking place. Analysis of CPR management schemes and institutions should be undertaken with both tendencies in mind.

If cultural diversity can survive the pressures of globalisation it is vital to consider how the participation of indigenous and other local communities can be increased and strengthened, through institutions that can adjust to the characteristics of this new social configuration. On the other hand, if focusing on cultural standardization as a product of globalization it is necessary to ask ourselves in what way CPR management institutions, predominantly created under a singularly cultural context, respond to external changes generated by globalization. For example, how can one incorporate global elements or interests within local identities, and how are traditional practices and institutions being questioned or modified as individuals assume greater prominence with CPR management institutions?

**2.10 Demographic Change and Commons Management**

Rural-urban and international migration has been a powerful force for change in rural areas throughout the world. Local communities are being stripped of young men, young people in general, or of whole families as they migrate in search of better economic opportunities. Local institutions most impacted by migratory process include common property regimes and common pool resources. Collective work arrangements and CPRs may dissolve or be neglected as few able-bodied people are around to maintain them. Conversely, the role of remittance income and of returned migrants themselves, whether occasionally or permanently, will also impact CPRs. New cultural

influences brought by remittance incomes or the migrants themselves can generate new attitudes towards natural resources and CPRs.

What is the impact of the globalization process on local governance in general and the governance of CPRs in particular? Do urban influences drive changes in community fertility patterns and what is the impact of this on local labour arrangements for CPRs? Are there emerging conflicts between migrants and stay-at-homes over the governance of CPRs?

**Submission Guidelines**

We invite anyone interested in the new and the long-standing commons to participate in the conference.

**Individual paper, panel and poster proposals should be submitted to the Conference Committee** [iascp04@indiana.edu](mailto:iascp04@indiana.edu) **by October 30<sup>th</sup>, 2003**

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