INFORMATION LAW INSTITUTE

In November, 2001, the Information Law Institute, in collaboration with the Berkeley Technology Law Center, and funded by the Center for the Public Domain, held a two day workshop designed to foster collaboration and exchange of ideas about information commons. The purpose was to explore the possibilities of commons as institutional mechanisms for the organization of information production and exchange in the digitally networked environment.

The basic intuition underlying the project is driven by an observation and a set of theoretical questions. The observation is that the past decade or so has seen the emergence of widespread production of information, knowledge, and culture on a voluntaristic model, without reliance on markets and outside of the managerial hierarchies usually involved in large scale production projects in other sectors of the economy. Free software is the most visible example, whereby tens of thousands of volunteers have found ways to collaborate, coordinate, and sustain production efforts that have resulted in the creation of thousands of pieces of software, many quite complex, many of which perform better than software offering similar functionalities produced using more traditional models. The World Wide Web at large is, in a sense, an even more visible instantiation of the force and efficacy of production by very large numbers of individuals and small groups, whether commercial or not, whereby thousands of small scale contributions combine into an immensely valuable source of knowledge, information, and culture.

The emergence of wide scale effective information production and exchange on a model that involves neither property-based markets nor managerial hierarchies opens up the possibility that in this sector a third model of production could emerge. This model, commons-based peer production, may enable individuals to live their productive life as makers of their information environment to a much greater extent than was possible in the old material economy, bound as it was to physical space and classic economic goods. Peer-production, or production among peers who interact neither through markets nor through managerial hierarchies, appears in some instances to be at least no less productive, and potentially more productive as well as more free and egalitarian than the now-dominant models.

Different participants in the workshop have expressed interests in different aspects of the commons problem. These differing interests may to some extent be described as questions regarding what is "broken" with property-based production that can be fixed by commons-based production — a question that can be taken to stand either for normative or positive inquiry. Concerns here include the ways in which intellectual property-based production tends to harm, rather than help, information production, as well as how it undermines long term access to and archiving and wide utilization of the universe of digitized human knowledge and culture. They also include the potential of property based production to eliminate the nascent emergence of peer production, and the concern for how peer production will affect authors and innovators who operate on the old, property-based model. Normative concerns relate to the questions of how property affects the power to control access to information and knowledge, and what are the implications of an information commons for freedom and equity in society. Another cluster of questions concerned long term institutional design of the framework necessary to enable the emergence of commons-based production and its sustainability alongside a property-based information production system. And finally, there were questions of transitional politics and economics — what needs to be done, and how rhetoric needs to be deployed, to effect the intellectual transition to enable others to see the value of commons-based production, and a political transition to support the institutional mechanisms necessary to permit the emergence of a production system that includes a robust sector of commons-based information production.

On a more detailed level, the primary questions that members of the group will attempt to study — both theoretically and through implementation projects — are:

1. What are the conditions under which commons-based production can emerge?
2. Under what conditions is it sustainable?
3. How do different instances of sustainable commons-based production differ from each other, and what do they share?
4. Are the experiences of successful examples transferable to other areas of information production where we have no working models?
5. What institutional, technical, or organizational parameters can permit commons-based production to coexist with property-based production?
6. Under what circumstances is commons based production more efficient than property based information production?
7. When, and why, is commons-based production normatively preferable to property-based production, whether primarily market-coordinated or hierarchically managed?
8. How can commons-based production or the institutional framework necessary to enable it be framed so as to attract widespread recognition of its feasibility and value?

Specifically, members of the working group have identified on the following projects as study areas of particular interest in the immediate futre.

- Teaching Materials: Considering how teachers can collaborate to be the producers of their own teaching materials
- Archiving ephemera: How can ephemera on the Net be archived and made available as part of the common cultural pool from which all can take in making their own expressions of the world
- Mapping the commons as an alternative institutional framework for information production: creating the basic theoretical framework for understanding the phenomenon of commons-based production
- Scientific production: A general case study of how scientific production operates as a mode of commons-based production
- The Los Alamos Archive: A detailed case study of how academic publication in one field emerged from dependence on copyright-based publishers towards a free user-based system
- A study of environmental conservancies, how they operate, what are their advantages and limitations, and what is the role of competition/plurality versus centralization in their organization: This study will provide a rich analogy from which to draw institutional lessons — from nature conservancies to information conservancies.

Participants in the workshop spanned mutiple institutions and disciplines.

Hal Abelson (MIT, computers)
Vicki Been (NYU, law)
Yochai Benkler (NYU, law)
Steve Berry (Chicago, chemistry)
Randy Davis (MIT, computers)
Brewster Kahle (Alexa Internet)
Herb Lin (National Academy of Sciences)
Clifford Lynch (Coalition for Networked Information)
Eben Moglen (Columbia, law)
Michael Piore (MIT, economics)
Margaret Jane Radin (Stanford, law)
Jerome Reichman (Duke, law)
Charles Sable (Columbia, law, organization theory)
Paul Uhlir (National Academy of Sciences)

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