Creative Commons Presentation
January 14th 2010

A Documentary History

There isn't time, and this is not meant to be a complete collection of documents vital to the founding of the Creative Commons, rather, these are meant hopefully provide some historical visions and definitions of the issues the Creative Commons has arisen to meet—will hopefully provide some of the formative ways of thinking about sharing scholarly publications. One of the principals in making the Creative Commons a reality, Lawrence Lessig, very much sees the "remix"—the underlying principal of the Creative Commons—has very much having a history:

> …remix is free. It is free. In our tradition it has always been free, free in the sense of unregulated by the law. You need no permission to engage in this act of recreating your culture by commenting or transforming or criticising or praising…there need to be limits on the power of entities, whether government or corporate, to control us. It needs to be free if we are to avoid infantilising our culture. It needs to be free as an expression of a basic human right: the right to engage in this act of producing who we are. It needs to be free in all the ordinary ways in which we engage in this practice of remixing our culture, the ordinary ways in which we write. This is the idea. We 'write' our culture by what we say or praise or criticise; this act of writing needs to be free.[1]

Looking backward from the Creative Commons I'd propose these documents as setting the context for the mission of the Creative Commons, by anticipating and defining sharing scholarly materials in digital environments.

"As We May Think" by Vannevar Bush. First written in 1939, and finally published in Atlantic Magazine in 1945, Bush's article is, firstly a recognition of what we'd now call information overload, as he defines the problem as:

> …summation of human experience is being expanded at a prodigious rate, and the means we use for threading through the consequent maze to the momentarily important item is the same as was used in the days of square-rigged ships.[2]

His answer is a weird and wonderful analog machine called the memex, through which he envisions hypertext, or what hypertext does, and in doing so gets to associative indexing. What Bush describes is a process where as each scholar makes connections from one thing to another, does their *remix* of the available scholarship, they create a tangible record that Bush calls a

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[1] Lessig, Lawrence. "The Vision for the Creative Commons: What Are We and Where Are We Headed? Free Culture." *Open Content Licensing: Cultivating the Creative Commons*. Ed. Brian Fitzgerald, Jessica Coates, and Suzanee Lewis Sydney: Sydney UP, 2007.

[2] Bush, Vannevar. "As We May Think." *The Atlantic.com.* Atlantic Monthly Group. July 1945. Web. 5 Dec 2010.

"trail." What is relevant is that Bush envisions an ability and need for scholars to freely share these "trails":

> Thus he builds a trail of his interest through the maze of materials available to him…and his trails do not fade. Several years later, his talk with a friend turns to the queer ways in which a people resist innovations, even of vital interest…tapping a few keys projects the head of the trail. A lever runs through it at will, stopping at interesting items, going off on side excursions. It is an interesting trail, pertinent to the discussion. So he sets a reproducer in action, photographs the whole trail out, and passes it to his friend for insertion in his own memex, there to be linked into the more general trail.[3]

This was a fundamental document to many of the people who developed the technologies whose sum total is The Internet, and right at the fore is this ability to share scholarly materials.

Selling Wine Without the Bottles by John Perry Barlow John Perry Barlow wrote this essay in 1993 largely to argue that cyberspace was going to lead to the demise of copyright. Barlow's argument is that in the physical, that is in the print, world what we buy is the bottle, the book, but what we want is the wine, the content. The case he makes is that the Internet frees the wine. Now there is a great deal of early nineties Internet utopianism in the piece, but what it does well is explicate just how pliant genres are and are bound to become in digital spaces. Two quotes that nicely summarize his work:

> Freed of its containers, information is obviously not a thing. In fact, it is something which happens in the field of interaction between minds or objects or other pieces of information.
>
> The economy of the future will be based on relationship rather than possession. It will be continuous rather than sequential.[4]

For all of Barlow's misplaced idealism, both of those sound exactly like how the Creative Commons articulates user relation to content.

The Subversive Proposal by Stephen Harnad. Originally a post of an e-mail discussion in 1994, Stephen Harnad basically argues that it is time scholars take matters into their own hands:

> If every esoteric author in the world this very day established a globally accessible local ftp archive for every piece of esoteric writing from this day forward, the long-heralded

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[3] Ibid.

[4] Barlow, John Perry. "Selling Wine Without the Bottles: The Economy of the Mind on the Global Net." *Virtualschool.edu.* 1993. Web. 5 Dec. 2010.

transition from paper publication to purely electronic publication (of esoteric research) would follow suit almost immediately.[5]

While there are some very robust preprint services, Harnad's proposal hasn't subverted problematic models of academic publishing, but, he did succinctly make the point that the digital day for *remixing* scholarship had arrived.

Free Software Definition by Richard Stallman Richard Stallman developed GNU—that is to say he wrote it—and for those not familiar GNU was the first open source operating system. It's fair to say that the whole concept of open source software is Stallman's, perfected perhaps by Linux, but started with Stallman. Stallman's manifesto now exists as the somewhat prosaically named "Free Software Definition." The most famous line in the piece is the first:

> Free software is a matter of liberty, not price. To understand the concept, you should think of free as in free speech, not as in free beer. [6]

That important contrast is further defined a bit down in the definition:

> In this freedom, it is the *user's* purpose that matters, not the *developer's* purpose; you as a user are free to run the program for your purposes, and if you distribute it to someone else, she is then free to run it for her purposes, but you are not entitled to impose your purposes on her.[7]

Lawrence Lessig certainly points to this definition, first written in the late eighties, as an important precursor to the work of the Creative Commons, and something that has been effectively integrated into their rationale and mission. Like Stallman, the Creative Commons is working from a premise that access to digital spaces is a matter of civil liberty.

Code and the Commons by Lawrence Lessig An interesting earlier version of his vision and one that fuels the Creative Commons, this was a lecture given at Fordham University in 1999. What Lessig does, in largely attempting to rebut the "Tragedy of the Commons" argument, is argue that Open Source seeks to establish a balance, a neutral public space within private enterprise wherein anyone can operate:

> Open source software is a commons: the source code of at least part of Linux, for example, lies open for the taking on any number of servers. Anyone can download the

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[5] Harnad, Stephen. "The Subversive Proposal." *Scholarly Journals at the Crossroads: A Subversive Proposal for Electronic Publishing*. Ed. Ann Shumelda Okerson and James J. O'Donnell. Washington: Association of Research Libaries, 1995. Web. 5 Dec 2010.

[6] Stallman, Richard. "Free Software Definition." *GNU.org* 30 December 2009. Web. 5 Dec 2010.

[7] Ibid.

code; anyone can try her hand at improving it. No permission is necessary; no authorization may be required.[8]

His analog is Central Park in New York, where one walk in a use without any kind of permission. The importance of maintain the commons is that, there is an insidious issue of control aligned with the Internet's Infrastructure. That is, as Lessig puts it, the evolution of code to precedent, to law:

> What defines the experience that cyberspace is is a set of instructions written into code that we, or more precisely, code writers, have authored. This code sets the rules of this space; it regulates behavior in this space; it determines what's possible here, and what's not possible. And as we look to this code maturing, Reidenberg rightly saw that this code would become its own type of law. That we could define life in cyberspace as we wanted — with privacy, or without; with anonymity or without; with universal access, or without; with the freedom to speak and publish, or without — and then write what we wanted into the code. The code would then regulate life there. And that regulation through code Reidenberg called Lex Informatica….we are just on the cusp of a time when others can begin to get the point he saw then. For as the code of cyberspace is maturing, we are beginning to see just how radically different the world can be. And we are beginning to see how important it will be for us to take a hand in this construction. For there is any number of worlds that this great convergence could create; and we should be certain that the world it creates is a world that we want.[9]

What he's talking about of course is everything one agrees to when one agrees to a license for proprietary software. This is an interesting foretelling of the code level concerns the Creative Commons has, and how it sees content and the digital spaces wherein that content is published, in the same light.

The Public Domain: Enclosing the Commons of the Mind by James Boyle Mr. Boyle's synopsis of what the Creative Commons is and does:

> Creative Commons was conceived as a private "hack" to produce a more fine-tuned copyright structure, to replace "all rights reserved" with "some rights reserved" for those who wished to do so. It tried to do for culture what the General Public License had done for software. It made use of the same technologies that had created the issue: the technologies that made fixation of expressive content and its distribution to the world something that people, as well as large concentrations of capital, could do…these licenses

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[8] Lessig, Lawrence. "Code and the Commons." Conference on Media Convergence. Fordham University, 9 Feb 1999. Address.

[9] Ibid.

were not a choice forced on anyone…the result was the creation of a global "commons" of material that was open to all, provided they adhered to the terms of the license.[10]

He's thinking of *hack* in the old sense of the word, the sense of the word back when ARPANET was being developed, which was a new piece of code which elegantly solved an existing problem or eliminated repetitive work.

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[10] Boyle, James. *The Public Domain: Enclosing the Commons of the Mind.* New Haven: Yale University Press, 2008.