

Rainer Rilling (RLS)

## Let`s talk about the commons

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On Wednesday last week the United States Supreme Court decided to uphold 1998 Copyright Term Extension Act (CTEA). Under that act the US-american copyright was extended for 20 years through 2018. In the U.S. as in the European Union or in Brazil copyright lasts for the life of an artist plus **70 years**. Copyrights owned by corporations run for 95 years.

If this act would not have been extended, books from authors like James Joyce, Sinclair Lewis, Mark Twain, George Orwell, George Bernard Shaw, Edgar Wallace or Virginia Woolf would have become part of the public domain in the United States. The act passed in 1998 after heavy lobbying by the Walt Disney Company, whose early Mickey Mouse movies were about to fall into the public domain too. The Supreme Court's decision handed a major victory to the entertainment and publishing industries, which stand to make billions of dollars by keeping control over lucrative properties for up to 95 years. They want us to believe that in a 21<sup>st</sup>-century environment we need a 95-year monopoly to promote the progress of science and the arts. In effect, the Supreme Court's decision makes it likely that we are seeing the birth of copyright perpetuity.

About three centuries ago the institute of copyright was born. In 1710 there was a statute in England which said that copyright should be limited for 14 years. This statute only controlled printing. How many people had printers? You could do what you wanted with these works. All

things protected were free code. You could take the works of Shakespeare and read the source--the source was the book. There was transparency. You didn't need the permission of someone else to take a product, to use it, to change it and build upon it in this way.

14 Years - this was 1710.

In 1790 it went to 28 years, then in 1831 it went to 42, then in 1909 it went to 56, and then since 1962, the [American](#) congress has [extended](#) copyright for existing works eleven times. In 1976 it went to 76 years and in 1998 this already mentioned Copyright Extension Act extended it to 95 years. Before 1978, U.S. law made non-copyright status the default for published creative works. Today, copyright status, rather than public domain status, is the default. We are witnessing an extension of private property rights nobody would have predicted a couple of decades ago. When copyrights and patents expire, innovations and creative works fall into the public domain which is a space where intellectual property protection does not apply. They may then be used by anyone without permission and without the payment of a licensing fee. It offers cheap content -- to be used, reformulated, and recast. It offered Disney the Brothers Grimm, Victor Hugo, Hans Christian Anderson, Kipling or classical mythology. Because of the extensions of the terms of both copyrights and patents little is now entering the public domain.

But this battle of ideas is not only about production or invention. It's about use. It is not about printing, but it is about reading. The Idea of this is: culture is nothing but proprietary code. If you want to use it, you get under control.

Let me give you an example for this, I borrowed it from a wonderful article of Lawrence Lessig. Here's my Adobe eBook Reader. Here's George Eliot`s (Mary Anne Evans) *Middle March*; this is a work in the public domain. Here are the "permissions" what you can do with this work in the public domain: You are allowed to copy ten selections into the clipboard every ten days and you can print ten pages of this 938 pages book every ten days, and you are allowed to feel free to use the read-aloud button to listen to this book. Now, Aristotle's *Politics*, another book in the public domain [that was] never really protected by copyright. But with this book, you can't copy any text into the selection, you can't print any pages, but feel free to listen to this book aloud. E-books deny readers the traditional freedoms they have always enjoyed for paper books.

The point is that control is built into the technology. The Digital Millennium Copyright Act, or DMCA, is a sweeping 1998 law that has given copyright owners unprecedented control over how works may be accessed and used, even after their purchase. The law makes it illegal to circumvent a technological control such as encryption or digital watermarks, for example, and makes it illegal even to communicate that knowledge to others. Never has culture been more controlled ever. Never in our history have fewer people controlled more of the evolution of our culture. Never. And this is one reason for me to talk about the commons.

## 2

Now, if you use the word “commons”, a word from the past, you evoke a baffled pause or even a puzzled silence. What does this guy mean? You mean the state? Public property? The public domain? Public goods? The common

people? Community ownership? Communism? The commonwealth or The House of Commons – or what else?

There is a political economy of the commons – but before we talk about the commons we must be determined in a certain way to put back or even ignore for a while the scholarly advice of this academic discipline “economics”.

This is quite difficult. We tend to become what we are [choose and are able](#) to see. We belong to a market-driven culture that prefers to see only the part of life transacted through money. Of course this has to do with the hegemonic interests prevailing in this culture. It has to do with visibility and invisibility.

When we breathe fresh air, walk in a park or surf in the internet it rarely occurs to us that we are using a commons. It has become functionally invisible. There are no news reports on the condition of the commons today. The newspapers have many pages of stock market reports, but there is no daily report on the actual state of the local, regional or global commons. This invisibility arises first from the interests that dominate the media and politics. The hegemonic belief system regards the commons as not worthy of mention. We already have a familiar and sophisticated language for talking about economic exchange, focused on market efficiency. We need to develop a similarly rich body of knowledge about the commons.

In the 1950s and 1960s, when industrial air and water pollution started to become a serious problem, the idea of “the environment” literally didn’t exist. It had to be culturally invented. To talk about the environment means using a narrative, that helped to make sense of things. There was a new language, making sense of the intertwining of social and natural world. We are experiencing a similar

cultural challenge today. We need a coherent paradigm for explaining why certain realms of life should not be available for commodification and sale and that should not be governed by market norms. [We must challenge to market-speak and the market \*über alles\* nonsense.](#) We need a new language of the commons to describe the non-market universe of nature and society, arts and culture, public schools and libraries. We need it in our everyday life. Today you can read on a cigarette box the sentence “Smoking is hazardous for your health”. We need sentences like: “Pollution is hazardous for your health and a violation of the commons”. Today you can find terms and combinations of expressions that did not exist a decade ago, for example: “Open content”, “Open archives initiative”, “Open knowledge” and “open courseware” “Free scientific publishing organisation”, “Public Knowledge Initiative”, “Information commons”, “Free access”, “Open” or “Free software” and “digital commons”.

### 3

"The" commons is actually the sum of many separate commons, just as "the" market is the sum of many markets. Thus, "the" commons (like "the" market) is a concept rather than a thing or place, including values like openness, access, social equity, shared commitment, participation, reciprocity and diversity.

By contrast, the many separate commons are not concepts. They consist of real things, spaces and systems, that are not divided into individual bits of property but rather are jointly held so that anyone may use them without special permission. Think of public streets, parks, ecosystems like oceans, atmosphere and outer space, waterways and airwaves, the genetic code and languages and cultures and creative works in the public domain and the

information commons -- all of these things are, in a way, part of the commons, which had no formal recognition in law and no historic role as a market commodity, which were often features of the natural world that have historically been too large, too small, or too elusive for any market regime to capture. It creates a sense of identity, connectedness, even belonging and it is often a noncompetitive cooperative and collaborative social setting. It is often linked to basic life support systems. We can imagine life without a commerce department or coca cola, but not without language and air fit to breathe. It is often a social and cultural constructed artefact – a historical place like Stonehenge, antiquities, art, documents, historical buildings like the Empire State Building – which is private property but at the same time a medium of social and cultural identity of the people. It is everything we inherit together, as part of a community, as distinct from things we inherit individually. It is often but by no means always something what is open for access by everyone. It has often the form of common property. But common property has not the same legal status as private property. It is an asset, which is often given away for free or almost free. It is wealth, that is often destroyed without our knowledge or concern. It is something formerly collectively owned what is shrinking and enclosed and converted into market resources via private appropriation.

#### 4

When formal state institutions and formal public assets become de facto privatized – “common on the outside, private on the inside” we must go beyond the old contradiction between privat and public. To counter the hegemonic and very diverse and differentiated discourse and practise of private property, we need a conceptual far-reaching and political strong term.

It is time to reclaim the Commons.

- That means: reclaiming the *public affairs*, depending on a discourse and reasoning of private owners or of the commoners
- That means: refounding the *res publica*.
- That means: expanding and protecting the *public domain* and re-conceptualizing what should be public and shared.
- That means: *public space*, everyone has the same right to access and is entitled to use for individual purposes.
- That means: *public goods* and / or *common resources* on a local, regional or global level,
- That means: accepting marketable property that is allowed to function internally among recognized members as a commons – “*property on the outside, commons on the inside*” (Carol Rose).
- That means: the goal is not exclusion beyond everything else, but the *preservation* of the social and moral integrity of a given resource or social community and forms of common governance, use or appropriation
- That means: a culture and economy of *communi-care*, of sharing and communicating and common concern

If rhetoric works, it works by moving us. To move us, it must be about a relation between forces, it must be about conflict, it must be about power, it must move us to take sides, it must develop a vision and tools of change. An idea is not diminished when more people use it. We must cultivate a commons in which people can feel free to use and reuse not only ideas, but also words, images, and music without asking permission -- because permission

has already been granted to everyone and ideas can transform into a commons.

Rainer Rilling Rosa Luxemburg Stiftung, FRG [rilling@rosalux.de](mailto:rilling@rosalux.de)  
[www.rainer-rilling.de](http://www.rainer-rilling.de)