iCommons LAB REPORT

Your window on the Commons

March/April 2008

Contents

From the office of the ED

Dear global commoners

Being open is a positive principle on many levels: it improves quality, it provides the building blocks for innovation on top of current products and processes by understanding how they work, it builds security and trust because we know what is being done behind the veil, and it facilitates participation because we can see into the mechanics of a project and find a way to participate without needing a special invitation.

But how do you know when you're being "open"? Is it by using a Creative Commons licence to enable others to copy and remix the work that you publish? Is it by being transparent in the way that you work? Is it by sharing the methodology behind the work that you produce? Is it by inviting comment and suggestions before you publish, or is it by inviting people to create products with you?

I've just come back from a networking lunch at the Shuttleworth Foundation in Cape Town. The Foundation invited its grantees to meet one another and to learn about what the Foundation does as a whole, where they're going, and how all the projects that they support fit together.

As Helen King, executive director of the Shuttleworth Foundation said: "We're not perfect at this yet, but we really are trying to build openness into everything that we do – including letting our grantees in to developing new processes for reporting and review, and facilitating the sharing of information between our grantees."

I believe that this is a key insight – not to consider openness as something that the gifted few of us have already arrived at (by using a Creative Commons licence for everything that we publish, for example) but as a much larger process (that none of us have essentially arrived at yet) to develop open processes that stimulate participation and innovation, improve quality, and are wholly transparent, and then to make the documentation of those processes themselves available to all.

Instead of informing openness as simply a way of 'tagging' information and creative works, we're interested in how we share information about 'how' people share in ways that can lead to these positive outcomes. Only when we share the 'how' will be able to develop a movement that is inclusive, and that enables outsiders to understand and start to experiment with open principles and processes.

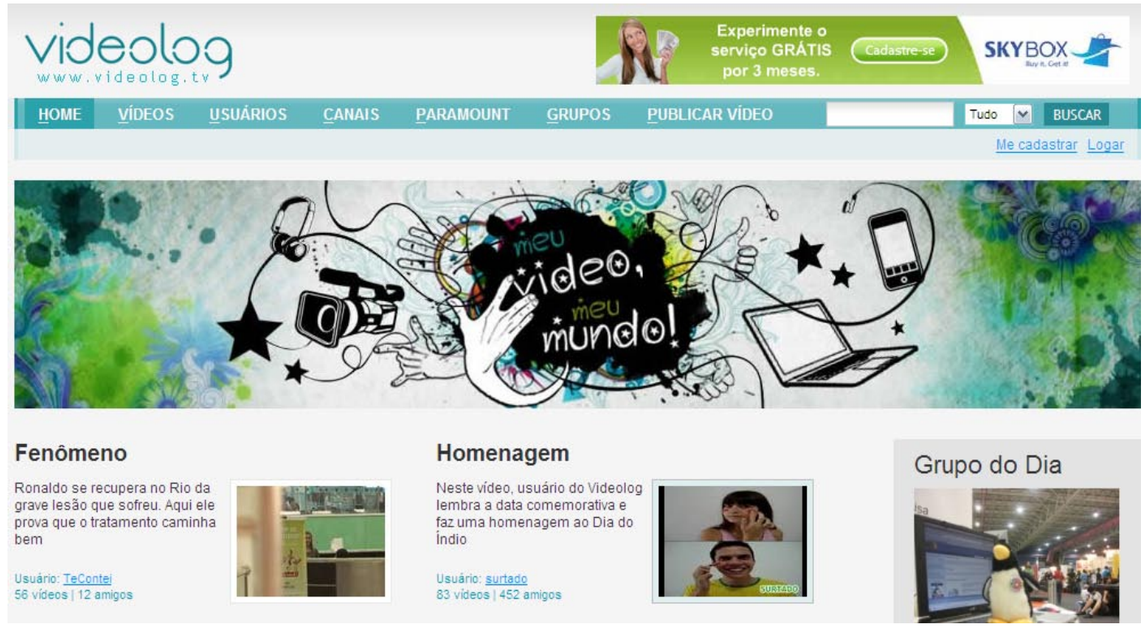
For this reason, we've decided to apply this philosophy to a global project that will be launched at the iCommons Summit in Sapporo this year to develop a tangible resource that will enable us to truly enable others by showing 'how to understand', 'how to help', and 'how to participate' in debates around openness.

What we're going to attempt to do is what many members of the environmental movement have begun to enable. When I asked Tom Chance the other day: "How do we do it?" (in relation to 'greening' the iSummit and making sure that it complies with what the experts believe is important and useful in keeping things sustainable), his answer was not just: "Buy carbon credits." His answer was to point me to a comprehensive checklist of practical and positive steps that I could take to understand and gauge the iSummit in relation to green issues.

And so, at this year's iSummit, instead of developing another declaration (not that declarations are not important – they have been instrumental in gathering momentum around the open access to research movement and the emerging open education movement) we aim to develop a practical checklist that will accompany existing declarations with a practical list of steps for the implementation of our agenda for open education, open business, open culture, open research and open environmentalism. This checklist will enable individuals, organisations, communities and companies to develop Action Plans for Openness and will, in the future, hopefully form an essential accompanying document for audits that determine one's capacity to enable participation, collaboration and remixing.

In the next few weeks, we'll be discussing this project within the iSummit track lists and getting feedback. Even if you can't make it to Sapporo, please make sure you add your voice to these debates to build Version 1.0 of this Action Plan for Openness. We believe that it will have a major positive impact on the world's understanding of the importance of the open sharing of intellectual property.

Heather



Social Networking Platforms in Brazil: **The Videolog Case**

by Paula Martini

Nine months before YouTube launched, another online video service was born: Videolog.tv, a Brazilian website that was built on an open business model. Mostly used by people connected to local youth urban cultures, like skaters, filmmakers and Parkour practitioners, Videolog is now increasing the bet it has always placed on community issues.

Actually, they do prefer to be taken as a social network website instead of a video publishing platform: the recently launched 3.0 version allows the creation of groups and building of video sharing communities: "Videlog speaks to less people (250,000 registered user), but is very specific regarding their niches," says Videolog's executive director Edson Mackeenzy. "Now I can finally say we're a social platform, we don't fit in YouTube's market segment anymore."

When publishing their works on the website, users can select one from a few Creative Commons licenses, with the Attribution-Noncommercial licence as the default option. There's no room for a full copyright licensing choice.

Regarding their copyright infringement policy, the executive director says: "We're totally focused on displaying people's original expression. While for YouTube the proportion between the volume of community videos and TV extracts is 1 to 9, through an indoctrination policy we got to achieve 95% of community videos. And our team also removes inappropriate content as we're notified." The Videolog team is composed of seventeen employees, but the community is so active that some of them could also be counted in that number - as one can see in this user-produced Videolog institutional video here.

Community, interoperability, business

Last January, it was announced at the Campus Party Brasil 2008 that Videolog's APIs (Application Programming Interfaces) were being opened, so that anyone could use their remote resources in order to build widgets and applications.

From then on, some users, in partnership with the team, developed and released applications that integrate Videolog with Twitter and Flickr. Soon, they've announced, the team will also be launching a Wordpress plugin for publishing videos directly from a blog's admin interface.

Mackeenzy says he cannot imagine Videolog working in any other business model than an open one: "We adopted that philosophy from the very beginning and, in four years, we grew 400%. I don't believe that we could grow at such a rate if we chose a non-collaborative model, a model that didn't value our users' talent."

Though it seems that while investors are generally still attached to the traditional business model, this is not an easy choice: "Every proposal we received didn't cope with our open model, so that we're the only enterprise still run by its own investment, among all Brazilian start-up companies in the technology field. And I guess this won't change until the day we find someone that does understand and believes that sustainable businesses are positive, someone that thinks the way we do."

In the meanwhile, they keep moving their 30 million pageviews per month business through partnerships with companies. The biggest Brazilian Internet portal, UOL, provides Videolog with storage, transference and servers. Paramount Pictures has got an exclusive channel for publishing content like movie trailers – besides all rights being reserved in that section, one should stress that, there, the frame aspect ratio should be at least 1.78:1 (widescreen), not the standard 4:3 used for mpeg videos, which ends up distorting the trailer image.

But, for users' videos, one of the main Videolog 3.0 highlights is the image quality improvement. Even high definition videos can be published by people choosing a VideologPRO account. Mackeenzy ratifies: "When a video is in HD, for example, we keep it just the way it was. Videolog doesn't distort or cloud images, like other platforms do."

Why you must be legally licensed to host fun™ on the Internet

by Prashant Iyengar

In January this year, newspapers and slowly, much of the blogosphere was abuzz with rumours of an imminent suit by Mattel/Hasbro – current owners of the trademark in the popular word-game 'Scrabble' - against Scrabulous, a wildly popular website that offers the game to enthusiasts online for free. Mattel alleged that the creators of Scrabulous – Rajat and Jayant Agarwalla, two Indian hobbyist programmers based in Kolkata – were guilty of infringing their trademark and copyrights in the game. (Simultaneously, although this event is lesser known, Mattel also reportedly sent a Cease and Desist notice to the creator of Bogglific – an online version of another popular word game 'Boggle'. Bogglific has since changed its name to Prolific and continues operating as before)

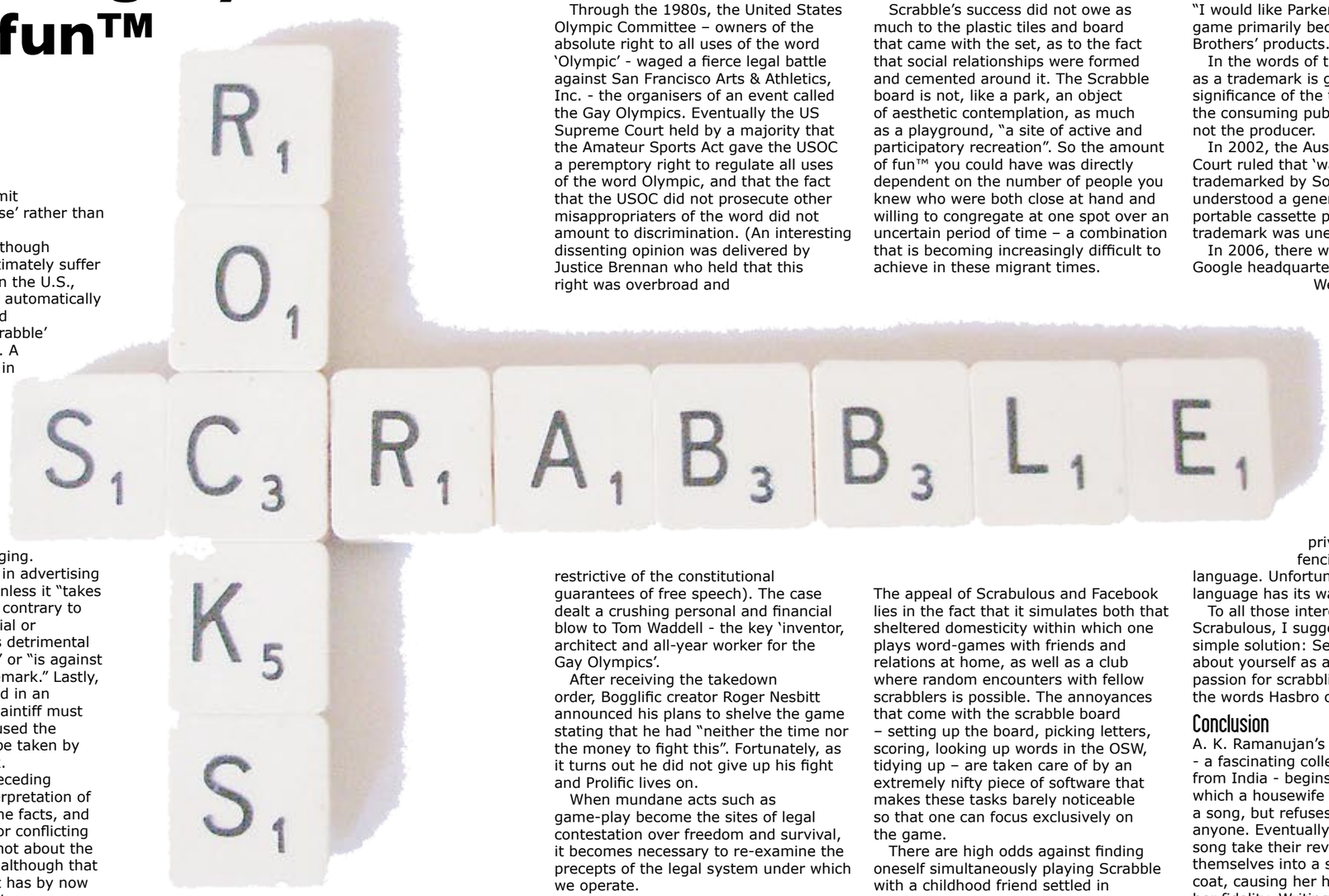
Not that long ago, Yochai Benkler in his *Wealth of Networks* cautioned that "the rise of... individual and co-operative non-market production of information and culture" would threaten the "incumbents of the industrial information economy" and that the outcome of the battles between them would determine the extent and forms in which "we will be able - as autonomous individuals, as citizens, and as participants in cultures and communities - to affect how we and others see the world as it is and as it might be." The battle over Scrabulous couldn't possibly get any more individual-versus-incumbent-ey.

Steve Glista & etc. from the University of Oregon School of Law have an excellently researched piece on the plausibility of Hasbro's claims under U.S. Law. They conclude that although the makers of Scrabulous could escape liability on grounds of Copyright infringement (on account of Scrabulous being a sufficiently 'transformative work'), their ignorance about U.S. Trademark law may have exposed them to liability for Trademark infringement.

Unlike U.S. Law, Indian law is as yet undeveloped on the issue of copyrightability of games. The copyright of the author/owner under Indian law includes the exclusive right to adaptations ('any use of work involving its re-arrangement or alteration), and so the defence of a 'transformative act' as suggested above appears unavailable to the creators of Scrabulous in India. 'Fair dealing' exemptions are not of much use in this case either since they permit infringement for 'private use' rather than for 'non-commercial' use.

Under Trademark Law although Scrabulous are likely to ultimately suffer the same fate in India as in the U.S., infringement is not proved automatically by demonstrating scattered references to the word 'Scrabble' on the Scrabulous website. A trademark is not infringed in India if the use 'indicates the kind, quality, intended purpose... or other characteristics of goods or services' (Sec. 30(2)). In other words, if Scrabulous is using the word 'Scrabble' to show that it is Scrabble-like and not Scrabble® itself, the use is non-infringing. Further, a trademark used in advertising material is not infringing unless it "takes unfair advantage of and is contrary to honest practices in industrial or commercial matters" or "is detrimental to its distinctive character" or "is against the reputation of the trademark." Lastly, and importantly, to succeed in an infringement action, the plaintiff must prove that the defendant used the mark intending its use to be taken by consumers as a trademark.

The law stated in the preceding paragraphs is only my interpretation of Indian law in the light of the facts, and there is ample scope yet for conflicting viewpoints. This article is not about the (il)legality of Scrabulous - although that discussion is fascinating, it has by now been discussed to death. Very little remains unsaid these days after the blogosphere has had its say. I want to focus instead, on a few issues that have gone unexamined in this controversy so far:



1) They may take our word, but they'll never take our freedom.

An irate fan of Scrabulous received the following response to his complaint from Hasbro:

> "(…) We encourage fans to continue to lay down online tiles at sites that have legally licensed the interactive rights to host SCRABBLE fun."

In other words, either due to a mistake or megalomania, Hasbro actually believes that it owns not just the word, but the game Scrabble (and all the attendant fun you ever had. And your digital watch, because it's cool). It's a bit like FIFA claiming that they own football.

The use of the word 'fun' in this notice is unexpected and as a lawyer, one is not accustomed to encountering such words amidst such vast amounts of legalese. Just to be sure I wasn't missing anything, I fetched an edition of *The Law Lexicon* – an authoritative legal dictionary in India and checked if there had been any legal interpretations of the word 'fun'. I found fun exactly where I expected it – in the vacuum between 'fumes' – odious smell - and 'function' – employment. Fun in law exists only as an omission.

Through the 1980s, the United States Olympic Committee – owners of the absolute right to all uses of the word 'Olympic' - waged a fierce legal battle against San Francisco Arts & Athletics, Inc. - the organisers of an event called the Gay Olympics. Eventually the US Supreme Court held by a majority that the Amateur Sports Act gave the USOC a peremptory right to regulate all uses of the word Olympic, and that the fact that the USOC did not prosecute other misappropriaters of the word did not amount to discrimination. (An interesting dissenting opinion was delivered by Justice Brennan who held that this right was overbroad and restrictive of the constitutional guarantees of free speech). The case dealt a crushing personal and financial blow to Tom Waddell - the key 'inventor, architect and all-year worker for the Gay Olympics'.

After receiving the takedown order, Bogglific creator Roger Nesbitt announced his plans to shelve the game stating that he had "neither the time nor the money to fight this". Fortunately, as it turns out he did not give up his fight and Prolific lives on.

When mundane acts such as game-play become the sites of legal contestation over freedom and survival, it becomes necessary to re-examine the precepts of the legal system under which we operate.

2) When we ignore the legal case, we are left with newer and richer forms of social engagement.

I was about ten, the last time I played Scrabble. My grandmother, who was a Scrabble addict, had just suffered a stroke that left her mildly dyslexic. She passed away shortly afterwards. I remember her favourite word: QAT for 32 points with a triple letter score™. The enthusiasm for the game in the family waned after that. In the past month since I discovered it, I have played 27 games of Scrabulous (winning 18!) On the 'Save Scrabulous' group on Facebook, one comes across repeated references to similar testimonies – people who gave up playing the board version of the game years ago suddenly finding themselves addicted to it.

Scrabble's success did not owe as much to the plastic tiles and board that came with the set, as to the fact that social relationships were formed and cemented around it. The Scrabble board is not, like a park, an object of aesthetic contemplation, as much as a playground, "a site of active and participatory recreation". So the amount of fun™ you could have was directly dependent on the number of people you knew who were both close at hand and willing to congregate at one spot over an uncertain period of time – a combination that is becoming increasingly difficult to achieve in these migrant times.

The appeal of Scrabulous and Facebook lies in the fact that it simulates both that sheltered domesticity within which one plays word-games with friends and relations at home, as well as a club where random encounters with fellow scrabblers is possible. The annoyances that come with the scrabble board – setting up the board, picking letters, scoring, looking up words in the OSW, tidying up – are taken care of by an extremely nifty piece of software that makes these tasks barely noticeable so that one can focus exclusively on the game.

There are high odds against finding oneself simultaneously playing Scrabble with a childhood friend settled in Australia and some random person named Juliette whom you've never met. Except for Scrabulous.

3) Genericide - how to reclaim our wor(l)d

Far back in 1982, the Ninth Circuit Court of Appeals in the US declared that "as applied to a board game, the word 'Monopoly' ha[d] become 'generic,' and the registration of it as a trademark [was] no longer valid."

The court relied on a survey in which people who said that they had purchased the game within the last couple of years or would purchase it in the near future were then given a choice of two statements and were asked which best expressed their reasons. Sixty-five percent chose: "I want a 'Monopoly' game primarily because I am interested in playing 'Monopoly,' I don't much care who makes it." Thirty-two percent chose: "I would like Parker Brothers' 'Monopoly' game primarily because I like Parker Brothers' products."

In the words of the Court, a word used as a trademark is generic if the primary significance of the term in the minds of the consuming public is the product and not the producer.

In 2002, the Austrian Supreme Court ruled that 'walkman' – originally trademarked by Sony was generally understood a generic term to describe portable cassette players and so the trademark was unenforceable.

In 2006, there was mild panic at the Google headquarters when Merriam Webster included 'to google' as a verb in the newest edition of its dictionary. In reply Google sent out a note to newspapers advising people and journalists against using Google as a verb and suggesting alternative terms.

Trademark allows corporations to create private empires by fencing off units of language. Unfortunately for them language has its ways of striking back.

To all those interested in saving Scrabulous, I suggest the following simple solution: Set up a blog and write about yourself as a scrabbler and your passion for scrabbling. Never mention the words Hasbro or Mattel.

Conclusion

A. K. Ramanujan's *A Flowering Tree* - a fascinating collection of oral tales from India - begins with a story in which a housewife knows a story and a song, but refuses to narrate them to anyone. Eventually, the story and the song take their revenge by transforming themselves into a stranger's shoes and coat, causing her husband to suspect her fidelity. Writing about the story, Ramanujan says:

> "This story is a story about why stories should be told. They are told because they cry out to be told. If they are not, they rankle and take revenge."

In this worldview nothing is ever lost, only transformed. Untold stories and unsung songs become shoes and coats, and take revenge against the non-tellers. Material and nonmaterial things are all made of one substance, according to a familiar Hindu point of view some are *sthula*, "gross," others are *suksma*, "subtle." Nothing is truly destroyed—things are displaced, converted, transformed, according to a belief in the "conservation of matter."

Games must be played. If not they rankle and take revenge – Jumanji-like.

You can't share **what you don't have**

A closer look at South Africa's social media construction capacity.

by Rebecca Kahn

South Africans have been watching a lot of YouTube lately. And for all the wrong reasons. In February of this year, a story broke about a group of white male students at the University of the Free State, (a traditionally conservative Afrikaans campus in the town of Bloemfontein, the judicial capital of the country) who had filmed themselves abusing older black cleaning staff in their hall of residence. The video was loaded up onto YouTube at the end of February and viewed by over 34,000 people, sparking arguments and debates on blogs and websites around the world.

That the video is offensive is without doubt. But, as a South African, what I found so upsetting, and interesting, is the fact that, when you do a tag search for "South Africa" on YouTube, this video comes out near the top. On the South African video sharing site Zoopy, a search for the tag South Africa brings up the video of a recent advert for a local chain of coffee shops. And the most popular videos on Zoopy have been viewed 5,000 times.

On other media sharing and social networking sites, South Africans are a small, but visible group. On Flickr, the South African group has 1444 members (not an entirely accurate figure, it's true, but a good starting point). 21 of us use BookMooch. On FaceBook, we're a veritable army – we're the tenth largest group of FaceBook users, and that's just the people who have listed themselves as being part of the South African network.

Which begs the question: Why aren't South Africans building their own social platforms?

South Africans have always been happy consumers of international media in the form of television, music, films and publishing. Local quota systems have gone some way to encouraging growth in local industries, but the overwhelming majority of media consumed is still American and British, and the same can be said for our consumption of social media online. If it comes from overseas, and somebody tells us it's cool, we'll use it. And, as the middle class in South Africa grows as a result of our improving economy, the number of active consumers of social media, and users of social networking grows too.

If You Build It, Will They Come?

So why aren't South Africans creating and using their own social networking platforms? I asked Simon Dingle, a South African tech journalist what he thought might be a contributing factor to this lack of local development. Risk, he says, is one reason why South Africans tend to follow international trends, and use international sites, rather than creating our own platforms that may not be as popular: "Building a competent social networking application is a huge job. And might not work out. Our users seem more inclined to let the rest of the world do the work, watch the chips fall and then use whichever network turns out to be the flavour of the month. A social network is also only as good as its user-base. A service can be the best thing since ever, but if your friends and countrymen aren't using it, then there isn't much point."

If we leave social networking aside for a moment, and just look at the way South Africans use the Internet, we see that there are not enough applicable tools for people to use on a day-to-day basis. For example, South Africa has 11 official languages, however, most people who use email and the Internet are forced to do so in English, even if it isn't their first language. Help files, FAQs and tutorials are in English, which limits users.

Translate.org.za, a South African non-profit focused on the localisation, or translation, of Open Source software into South Africa's 11 official languages has gone some way to addressing this issue. According to their website: "Translate intervenes wherever computers fail their users, thus we have created fonts for Venda and a South African keyboard on top of our localisations of GNOME, KDE, OpenOffice.org, Firefox and Thunderbird." It's a start, but there is still a long way to go.

continued >>>

Ain't Got The Skillz...

Another possible reason is that we simply don't have enough people in South Africa who have the skills to build these projects. According to research conducted by the Human Sciences Research Council (the main research body in South Africa) on behalf of the South African Government's Department of Science and Technology, in 2006, South Africa only spent about R14 billion (about U$1.7 billion) or 0.92% of the GDP on research and development. Of this amount, the lion's share went to the natural sciences, followed by engineering sciences, and finally, the medical and health sciences. This should be compared with other developing nations like China, who spend 1.34% of GDP on R&D and the Russian Federation, who spend 1.07%.

The funding of this research is also worth considering: 58% of it is financed and conducted by the corporate and commercial sector, which means that the results of this research belong to the corporate entities who commissioned it.

This lack of development is not something that the South African government is unaware of. In a National Strategy Document published in 2002, the government acknowledged that:

> "...it is clear that the vast majority of ICT investment is in imported technologies (to the level of some 98%). South Africa does not have a strong R&D capacity in ICT and where there is significant innovation potential results have been patchy. It is therefore necessary to invest in a number of ICT domains that have unique characteristics that would favour local development and globalisation..."

While access to the Internet is improving, however, we have yet to see the fruits of this investment by government in the actual development of platforms, software and applications in the governmental sector at least.

And We Care Because...?

Of course, there is the question of why this matters at all. In a global Internet, why do we need to encourage and develop local platforms? After all, isn't the World Wide Web the new, global nation, where everyone can participate equally?

The answer to that question is just that – that on the Internet countries that are consumers of content and passive users of platforms and software run the risk of becoming homogenous, uniform and unilateral; losing sight of individual culture and national identity. Already the North outdoes the global South in terms of the amount of material it produces on the Internet, and the much-touted democracy of the Internet is undermined by this imbalance.

The solution to this imbalance, at least in the South African context, would be increased investment by government in areas that enhance our ability to build and use technology that is appropriate to the average Internet-using South African.

All there is to know about:

safecreative BETA

A few years ago Juan Palacio, a Spanish software expert, wrote a book and wanted to share it on the Internet as a PDF document. This got him wondering whether it is possible to register the file's original creator, and after some research he found that in his native country this was not possible unless he printed the book out on paper first. The lack of facilities to register digital works indicated a gap in the market for easy online registration of creative works, not only under full copyright, but also under copyleft and Creative Commons licences too. Subsequently, SafeCreative was born, with Juan as CIO.

SafeCreative is an intellectual property registry that allows creators to leave proof of their work by means of a digital signature, and supplies the registrant with a certificate that proves authorship. It is free, open to all from around the world, easy to use, and globally accessible.

Daniela Faris and ***Rebecca Kahn*** spoke to Mario Pena, the community Coordinator at SafeCreative to find out more.

In your opinion, why is it important for authors to protect their intellectual property?

Over the last few years, the ways people produce and consume creative works have changed a lot. The ease with which we can produce, obtain and distribute works makes it more important now than ever to develop new ways to protect intellectual property. This protection must be as easy to obtain and use as the content is to distribute around the world. It must also be as understandable to ordinary people as it is for professional authors.

Are you sure that SafeCreative will really prevent people from plagiarising? I mean generally plagiarisers just do so, they do not check or look around for permission...

There's no perfect formula to avoid piracy, but there are tools that partly dissuade this kind of behaviour. SafeCreative is one of them. What we find important about it is that it can be used for free, for any licence and any kind of work, and could be implemented by default with other projects to automatically register works as a prior step before publicly showing the work. If people get used to registering and visibly stating with our "stamp" that their work is protected, this might make it easier for potential plagiarists to either contact the author or simply not use that work. We understand that this will not stop plagiarism, but making the process of asking for permission very easy might make them think twice.

Can you tell us a bit more about the legal advice and consultancy aspect of Safe Creative? Can people contact you for advice on how to best protect their rights? What service do you offer in this regard?

We have legal experience and are building a group of Intellectual Property experts to develop strong mechanisms to give solid advice on these issues. Most of the problems are pretty similar and we are building a lot of literature around these issues to make it more understandable to everybody who might need it. Also we are evaluating more practical ways to help our users to find the best lawyers for specific situations.

What is the difference between Safe Creative and Registered Commons?

The most notable difference is that SafeCreative allows any kind of licence. It's neutral, which means that anybody can use a full copyright license for one work and a CC BY-SA for another. They can also change the licence of any work and leave a track of any change. It also has a secure and digital signed deposit of the work. It's important to understand that SafeCreative is a neutral point and is willing to add value to interesting and innovative projects like Registered Commons. With our powerful infrastructure we can help to complement any project in symbiotic ways.

According to the SafeCreative site: "You can request a certificate signed by Safe Creative which indicates the date and time of registry to credit registries of author, registrations of licenses as well as the rights of work from Safe Creative at any time." Tell us more about how this certificate works.

You can mark your work as registered - we have logos that generate with every registered work and special codes that embed or apply to the works depending on their nature.

Five of the best places to learn something new about the world

by Rebecca Kahn

Commoners are, on the whole, a thoughtful bunch, and we like to read and think about important stuff, like intellectual property and democracy and the global commons and global policy and beer and, you know, stuff. So this month, we've decided to give you a list of five websites, which offer new, challenging and interesting perspectives on these issues.

IP Watch

Intellectual Property Watch describes itself as a place where readers can find: "Original, open-access and subscriber-based news and analysis on international IP policy making." That's a pretty tame way of describing the enormous amount of IP-related information that's available on the IP Watch site, even for non-subscribers. Based in Geneva, IP Watch reports on developments in themes such as Access to Knowledge, Broadcasting, Human Rights, Public Health and Traditional & Indigenous Knowledge, and from arenas such as the WHO, WIPO, WTO/TRIPS and Bilateral and Regional Negotiations. All of the content on the site is licensed under a CC BY-NC-ND 2.5 licence, and many of the articles are available in English, French and Spanish. A subscription to IP Watch will also get you their monthly edition, a bumper round-up of a month's happenings, which appears in print and electronically. In terms of style, many of the articles assume that readers have some degree of understanding and familiarity with IP issues an terminology, but don't let this put you off. This is an amazing resource, with fascinating, well-written articles on a myriad of interesting and important issues.

Open Democracy

There was a time when discussion and debate, the cornerstones of a democratic society, took place in the physical public sphere: the coffee shops, bars, meeting houses and forums that philosophers like Adorno and Habermas described. In our rapidly digitising world, though, this has changed. The public sphere has moved online, and Open Democracy is one of the best examples of the digital public sphere. This site, with it's commitment to democracy, debate and making marginalised voices heard, is a great place to go to read up on any subject, from global security to net neutrality to the role of the banana in free trade. Although they're based in London, Open Democracy has a truly global vision, and their extensive list of authors includes writers from every continent, with every perspective. Articles are available as PDFs as well we on the site, and you can buy a subscription to their quarterly journal, which delves deeper into themes like 'Life After Katrina' and 'Visions of Europe'. Most of the content is published on the site with a CC BY-NC-ND 2.0 licence, and most importantly, registered members can comment on stories, which keeps debates fresh and dynamic.

KEI Online

KEI (Knowledge Ecology International) is an organisation devoted to undertaking and publishing research and new ideas, engaging in global public interest advocacy, providing technical advice to governments, NGOs and firms, enhancing transparency of policy making, monitoring actions of key actors, and providing forums for interested persons to discuss and debate Knowledge Ecology topics. What this means, for you and me and the Commons is that KEI is a great place to read up about pretty much everything from drug patents to indigenous IP, nuclear proliferation and WIPO. Blogs, research papers and current publications are all there to either read online or download as PDFs. In the blog section of their site, they also have a Policy Archive, in which articles from the old cptech.org blogs are stored. This is an amazing resource, full of information from years gone by. KEI have also launched an online journal called Knowledge Ecology Studies; a multidisciplinary journal that draws on a number of specialities: sciences, technologies, public policies, the laws of intellectual property, business, free speech and privacy, telecommunications and other related knowledge disciplines.

Spicy IP India

As any IP enthusiast in the know will tell you, India is a country where fascinating developments in IP, patents and compulsory licensing take place on what seems like an almost daily basis. It can all seem a little overwhelming. Spicy IP is the place to go if you're interested in any IP developments that have anything to do with India. In their own words, Spicy IP aims to: "…increase transparency in Indian intellectual property policy/institutions. We also stand for fair, objective and accurate reporting/review of intellectual property and innovation policy news from India." Their dedicated team of bloggers are students, academics and consultants who have particular expertise in IP, traditional knowledge and patents and all write really well (which is often a rarity in the IP world). Spicy IP is seriously 'low-fi', hosted on the free Blogger platform, which makes it really easy to navigate, and proves that you don't need a lot of bells and whistles to have a useful, well-written site.

Global Voices

Are you interested in finding out about the current state of public debate in Kazakhstan? How about the best place to find a decent cup of coffee in the Sudan, or cyber-activism in Bolivia? No matter what the topic, or how far away the region, GlobalVoices Online is the place where you'll find out what people are saying and thinking. Global Voices is an online citizen media project that aims to "…aggregate, curate, and amplify the global conversation online - shining light on places and people other media often ignore. We work to develop tools, institutions and relationships that will help all voices, everywhere, to be heard." What this means, practically, is that a group of dedicated international volunteer editors, authors and translators filter the vast number of blogs by language, region and topic, and provide updates from blogs, photo and video blogs, podcasts and wikis from various regions around the world. At the moment, updates and summaries are translated into Bangla, Chinese, Farsi, French, Spanish and Portuguese, with German, Hindi, Japanese, Arabic and Malagasy to follow soon, ensuring that the material has as wide a reach as possible. Global Voices also runs several advocacy projects: they've created guides to anonymous blogging for bloggers who operate in countries where it's not safe to reveal their identities, and worked with Reporters Without Borders to create a blogger and cyber-dissident's handbook. The Voices Without Votes project gives an international take on the current U.S. election, and Rising Voices aims to extend the benefits and reach of citizen media by connecting online media activists around the world.

Superman – caught in a cage called copyright!

*This month, iCommons' resident copyright columnist, **Tobias Schonwetter**, offers his view on a recent US court decision which reassigned the copyright in Superman-related works to the family of one of the original creators.*

At the end of March 2008, United States District Judge Stephen G. Larson issued a decision which in the eyes of many provided a long overdue vindication for one of the late creators of Superman, Jerome "Jerry" Siegel, and his heirs. The judge essentially ruled that the heirs successfully terminated the transfer of copyright in Superman material to which Siegel and his co-creator Joseph Schuster had agreed way back in 1938 in return for the payment of U.S.$130. However, the decision is limited to the territory of the United States and only applies to works created after 1999. Moreover, numerous details need still be clarified and the decision is subject to a legal challenge by the other party.

The sum originally paid to Siegel and Shuster is, of course, ridiculous given the huge profits made with Superman books, movies and other merchandise over the years. One could therefore easily concur with the outcome of the case. Yet, the case leaves me wondering. On the one hand, there is no doubt that District Judge Larson delivered a thoughtful and diligent decision in which he applied a section of the U.S. Copyright Act (section 304 (c)) that specifically allows for such a termination if certain requirements are met.

From what I understand (although this is beyond the scope of this article), this provision has historic roots which relate to the former renewal right of copyright holders under U.S. copyright law as well as a decision of the Supreme Court in 1943 which was in conflict with some of the lawmaker's intentions for such a renewal right.

Furthermore, I tend to prefer copyright ownership by the creator of a work rather than ownership by a large multinational corporation like Warner Bros, the defendant in the Superman case. However, it is not that simple. First of all, Siegel and Shuster initially signed away their rights, without coercion, in a clear and simple manner by assigning to (the then) Detective Comics "all good will attached […] and exclusive right[s] […] to have and hold forever". Years later, this agreement was re-affirmed. In light of one of the most fundamental legal principles, *pacta sunt servanda* ("agreements must be kept"), the termination is indeed a surprise. Moreover, Warner Bros, and previous right holders, were in fact not as inconsiderate as it appears at first. Rather, they paid moderate sums of money to both creators and their immediate families over the years, including annual amounts between U.S.$20,000 and U.S.$50,000 plus bonuses, health insurances and the like. Admittedly, however, these amounts of money were dwarfed by the huge income that was generated by Superman-related works.

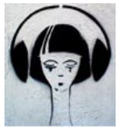
Superman should after such a long time not be copyright protected any more!

The main point I want to make here is this: I actually don't care whether Warner Bros or the Siegel heirs won the recent case.

For both, the outcomes are flawed. Superman should after such a long time not be copyright protected any more! Copyright protection is primarily meant to incentivise the creation of new works, or, if you follow a more author-centric approach as is favoured in many continental European countries, to honour a natural right of a creator in his or her creations. Yet, what purpose other than pecuniary enrichment of either the family of Siegel or Warner Bros does copyright protection serve here? I doubt that the money Siegel's heirs, not Siegel himself, are about to get will result in an increased creative output.

One could of course argue that, following the aforementioned natural rights approach of copyright protection, the heirs have just inherited the (natural) rights in the Superman-works that Jerome Siegel deserved for his creation. Fair enough; but if a creator decides in his lifetime to sell his rights, regardless of whether it is "real" property or intellectual property, why should the heirs be able to rescind this deal. From my point of view, copyright law is once again abused here to satisfy greed and nothing else. Unfortunately not even Superman seems to be able to stop this from happening.

Pic: Superman is dead by c-reel.com on flickr.com, CC BY-NC-SA 2.0



Listen to this month's podcast featuring interviews with James, the iSummit programme coordinator and Kerryn who will give more information on registration.

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Mad Science - Schmatler and Waldhead take on the World of Scientific Publishing

Open Access - feasting on knowledge like manna

Yes, yes, we know it's been a while since Schmatler and Waldhead graced these pages with our sagely words of wisdom, but after the last series of articles we needed to take some time out to smell the roses and think about the next big topics to tackle next.

We actually had a great escape plan in place to get us out of the old age home, but then Waldhead tripped on the catheter tube, and the plan, but thankfully not us, went out the window. Some think he did it on purpose, because he felt guilty about leaving the lovely iConvent ladies without anyone to keep an eye on them to ensure they don't get into too much mischief. Well, okay, so maybe we didn't want to be left out of the mischief either. Anyway, we have decided that the next topic to come under our bespectacled scrutiny is the wild world of academic and scientific publishing and the term "Open Access."

Now we realise that many other people in the Commons movement (especially the long beards in the Science Commons who are possibly even more eccentric than ourselves) are actively involved in this field but we couldn't understand anything they were saying (e=mc square and so on) and decided to put things into plain and simple (and delightfully obscene) language. We are relying on the lab coats to jump in and comment should we miss something important in the translation.

Before we get into what exactly open access is, let's sit back in our rocking chairs, light up cigars and reflect on the sorry state of affairs that much of academic publishing is in these days. We were given an overview of all this by a lovely Dutch scientist who will remain nameless. She explained that basically scientists do all the work but then pay someone else to get access to the published results. This had us gawping incredulously that such an arrangement exists and is accepted by the people publishing within it. It also made us wonder why we did not come up with this ourselves. Last but not least, it left us feeling embittered at the thought of how our tax money ends up flowing in some very strange directions. So, in a nutshell, here is how the current publishing system "works" for publicly funded research.

It starts off with the government getting a wad of money in the form of taxes, some of which it decides to spend on research by funding academic institutions (usually universities), research councils (which may in turn fund universities) and the like. These institutions then spend the money on the research itself as well as various related overhead costs (like athletic teams and cheerleaders). Years pass and the researchers beaver away and do all their impressive data gathering and analysis and eventually reach a point where they want to publish their findings to the world.

This leads to the bizarre situation where a university has to pay in order to read the published results of its own research.

Bearing in mind that the research was funded by the public, one would expect that the findings would be easily and freely available to all so that it could be used by governments to formulate policy, by other researchers to improve their knowledge and so on. But no - far from it! What happens next is that the researcher submits their work to a journal (which is just another name for a magazine but scientists invented a different word for it so as not to be confused with *Cosmo*). The journal then makes sure that the work undergoes peer review - this involves other scientists reading over the work and offering criticism.

Here things start to look a bit strange as these "peers" are normally not paid for the reviews and often end up doing this during "work time", and as most of them are themselves researchers being funded by grant money, this is another avenue down which the tax money trickles. The peer review step is vital to ensure the quality of the work so we are not suggesting it should be skipped, but we are pointing out that it introduces further costs into this system which aren't often explicitly taken into account.

So the journal has now received an article for which they have paid nothing, they have got a bunch of other people to review the article and perform quality control on it for free, and now for the cherry on top - they put the article in their journal and then charge a whole lot of money to anybody who wants to read it. This leads to the bizarre situation where a university has to pay in order to read the published results of its own research. This is where Schmatler, who had nearly nodded off, woke up with an indignant grunt and demanded to know whether he would also have to pay seeing as his tax money helped fund it. The answer is again, yes, the general public also have to pay to read the results of the research they indirectly funded.

If you draw this situation out on a piece of paper and follow all the money flows, an awful lot of arrows end up pointing in the direction of the journal so it's quite easy to work out where in this system there is room for improvement. Obviously journals have their own costs to cover (printing, distribution, staff and so on) but surely there has to be a better way to do this?

The implications of these inefficiencies are not just theoretical, but keep relevant research out of the hands of those that need it. There are now so many journals and they are so expensive (with prices increasing faster than

continued >>>

inflation) that many university libraries can simply not afford to subscribe to even just the ones they are most interested in. As a result, more and more people are realising something is wrong and are lobbying for "open access", and coming up with ideas on how to use technology and those nifty Creative Commons type licences to provide alternative models.

The Internet has emerged as a publishing medium which by its very nature lowers the barrier to entry for would-be-publishers and reduces costs, while delivering a potentially huge global audience. In our next pamphlet, we will look at some examples of innovation in publishing and dissemination of research. We are not the only ones who would like to see some change, we'll talk others next time - let's round things off with an example from an EU petition for "guaranteed public access to publicly-funded research results". One of the petition's signatories, Richard J Roberts (a past Nobel Prize winner) sums it all up nicely when he says:

"Open access to the published scientific literature is one of the most desirable goals of our current scientific enterprise. Since most science is supported by taxpayers it is unreasonable that they should not have immediate and free access to the results of that research. Furthermore, for the research community the literature is our lifeblood. By impeding access through subscriptions and then fragmenting the literature among many different publishers, with no central source, we have allowed the commercial sector to impede progress. It is high time that we rethought the model and made sure that everyone has equal and unimpeded access to the whole literature. How can we do cutting edge research if we don't know where the cutting edge is?"

Lab Coat Vendor, by audrey_sel on flickr.com, CC BY-SA 2.0

Quite. Here ends our whirlwind tour of the sorry state of scientific publishing in 2008, obviously we have had to make some sweeping generalisations and have undoubtedly left out factors and issues, and this has hopefully offended at least a few people and the odd small nation (like France). Please feel free to voice your concerns by commenting on this article on icommons.org, safe in the knowledge that your words will be publicly available and we won't charge you a cent for it (until we find out how to do that). Check in next time when we will be looking at the Open Access movement in more detail, and how up-and-coming publishing models are moving online to offer some light at the end of tunnel for researchers and those wanting access to the fruits of their labour.

ABOUT ICOMMONS

Incubated by Creative Commons, iCommons is an organisation with a broad vision to develop a united global commons front by collaborating with open content, access to knowledge, open access publishing and free culture communities around the world.

CONTRIBUTE!

Interested in being a **columnist/blogger/contributor/translator** of the iCommons Lab Report? Contact iCommons Lab Report Editor, Daniela Faris at daniela@icommons.org

Evolution Online

by Rebecca Kahn

There's good news for scientists, researchers, students and fans of evolution all over the world - the Darwin Online project, run by Cambridge University and the Charles Darwin Trust are working on putting copies of all of Darwin's published notes, letters and manuscripts into a free online repository, open to anyone who is interested.

At the moment 43,000 pages of searchable text and 150,000 electronic images are up, and it's just mind-bendingly cool. You can page through his notes from various trips and scientific expeditions and see his spidery writing and ink splodges for yourself.

There are also audio versions of his notes available as free MP3s for the blind, vision impaired and audio book readers.

At a time when it sometimes feels like rationality and science are under attack, a resource like this is both inspiring and invaluable.

Professional Open Documentaries Projects

by Camille Harang

A professional team of film-makers recently came back from India to shoot a set of documentaries about non-violent movements in the country. From the 70's to "Janadesh," the largest non-violent struggle (after Gandhi's) that took place in October 2007.

The movies are currently being edited, but at the same time the team opened a website to free the documentary's copyright, and to experiment with funding and licensing models to apply Creative Commons licences. The idea is that the more people donate to the project, the more freedom the movies achieve, moving along a scale with the CC BY-NC-ND 3.0 and the CC BY-SA 3.0 licences at the two extremes.

Donations are growing day-by-day, Lawrence Lessig supported the project by being the first online donor and there has been interest from the Free Culture arena in general. For more information, take a look at the illustrated document *Will the World depend on Free Culture?*, which tells more about this project. You can donate here.

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iSummit 08 logo - old meets new in Sapporo City

Inspired by Japanese innovation and hosted in Sapporo, the iSummit '08 logo was carefully crafted to reflect the traditional culture of its host country, as well as the energy and spirit of the meeting of Internet activists from around the world. The logo incorporates the traditional Ainu design element of *morew* (pronounced mo-le-oo) a swirl pattern used frequently in Ainu wood carvings. The colours flow from the bottom left to top right corner, symbolising the four key iSummit themes: Learn, Create, Show and Play.

A Brief Introduction to the Ainu People

The Ainu (or Utari, as they sometimes prefer to be called) are an ethnic group who are indigenous to Hokkaido, the Kuril Islands (which lie between Japan and Russia) and Sakhalin island, between Hokkaido and Russia. It is estimated that around 150 000 people with Ainu heritage are currently in Japan, although these numbers are not totally reliable, since many Ainu people have, historically, hidden their heritage to avoid discrimination.

Although the origins of the Ainu people remain unclear, they have often been considered Jomon-jin, or natives to Japan from the Jomon period. According to Ainu legend (known, collectively, as Yukar Upopo), "...the Ainu lived in this place a hundred thousand years before the Children of the Sun came." Research shows that Ainu culture has been in existence since around 1200AD. Their economy was based on fishing, hunting and farming.

From the 1400s onward, the Ainu came into contact with the Yamato people (the dominant ethnic native group in Japan) who were expanding their territory northwards. After Shakushain's Revolt in the late 1600s and the Menashi-Kunashir Rebellion in 1789, the Ainu and their lands came under the control of the Japanese. During the Meiji period (1868 to 1912) they were further marginalised as their language was outlawed, and they were forced to farm land allocated to them by the government.

Since then, the Ainu have worked hard to protect their culture to ensure that it is passed down to each generation.

Spiritual Culture

One of the severest consequences of the restrictions placed on the Ainu since the Meiji era, has been the loss of their religious freedom. The Ainu are traditionally animists, believing that everything in nature has a 'kamuy' (spirit or god) on the inside. The ceremony to send back bear spirits, the most important and most grand Ainu ceremony, was banned. The ceremony of receiving new salmon became difficult to perform in the wake of salmon fishing prohibitions. In the decade from 1975 to 1984 a restoration of ceremonies was called for. These ceremonies have subsequently been carried out in many places since the early 80s. The practice of offering prayers for the Ainu ancestors is also being practised once again.

Preservation of Ainu Culture

Since the enactment of the 1977 Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture, cultural, oral traditional and conservation activities by the Ainu have become more significant. In addition to the restoration of spiritual culture, the restoration of lifestyle elements, such as the construction of houses, building of boats and sewing of clothes, has been carried out by the Ainu throughout Hokkaido as well as by those living on Honshu, particularly in the Kanto area.

The Role of Design in Ainu Culture

Clothes and other articles had Ainu motifs that were embroidered or made from patched cloth. These motifs included whirlpool and parenthetical patterns. The Ainu believed that patterns on the cuffs and hems of clothes prevented evil spirits from entering through those openings. These patterns are similar to those on clothes worn by other ethnic groups living in coastal areas and on Skahalin, indicating the extent to which their mutual exchanges influenced each other.

This text was adapted from Together with the Ainu - History and Culture *from The Foundation for Research and Promotion of Ainu Culture (FRPAC)*

Free, as in Free Sushi

by Rebecca Kahn

Every iSummit automatically takes on some of the flavour of the host country - iSummit '06 had the distinctly caipirinha-tinged taste of Brazil, and iSummit '07 was marked by the flavours of burek and beer, the tastes of Croatia. So, it's fitting that attendees at iSummit '08 will be treated to the taste of sushi, a typically Japanese delicacy, and very particular to our host city, Sapporo.

But this is not any old sushi - this is free culture sushi; remixed, reworked and re-imagined by the Commons. Sushi culture has spread in popularity all over the world, and in the spirit of sharing and developing this culture, the City of Sapporo has launched the Sushi Project, which enables them to showcase one of Sapporo's sources of pride - sushi - while allowing people from around the world to freely create new sushi without limits.

In the spirit of open knowledge sharing, the city will also make the winning recipes and designs freely accessible to everyone by licencing them under a Creative Commons Licence.

Entries are being accepted in the Sushi Roll, Nigiri Sushi Category, Creative Sushi and Design categories, and the competition is open to any sushi fans and fundis all over the world.

For more information, please visit the Sushi Project website, where you can download an entry form, find out about the categories and the prizes, and check the deadline for entries.