



iCommons LAB REPORT

Your window on the Commons

September/October 2007



Pasha

Ah

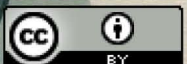


iCommons



loftwork

youko nakamura



From JHB with love...



Participants in the Open Sourcing Education: mapping, envisioning and building a movement meeting, by Shuttleworth Foundation on flickr.com, CC BY-NC-SA 2.0

Dear global commoners

Phew! Sometimes, when I sit down to write this letter, I wonder how it is we manage to keep up with the great momentum that is building around the world to find new and better ways of keeping our culture free and open. From the beginnings of a global Open Education Declaration, to two of the '50 parties' free culture events in Cape Town and New York; and from the kick-off meeting of the European Communia participants, to a campaign to make our heritage more open and accessible: the past month has been one of the most exciting for the global commons.

On recommendation from the participants of the Open Education Track at the Dubrovnik iSummit (don't forget to read the great report on the results by Philipp Schmidt and Mark Surman here: <http://tinyurl.com/299sdk>) the Open Society Institute, the Shuttleworth Foundation and Hewlett Foundation organised a meeting of around 30 of some of the world's pioneering figures in open education in Cape Town. The goal was clear: to develop a shared map of the global open education space and to discuss strategies that would lead to a 'Declaration on Open Education' for others in the world of education to follow.

It was a really exciting meeting – attended by education commoners from Australia to Chile, the United States to Uganda, and of course, the inimitable South Africans.

The group agreed on most 'long term' vision statements and goals, but an exercise to understand where people stood in the licence debate showed how divergent at least these opinions

are. We were asked to line up along an imaginary 'opinion line' from 100% "yes" on the one side and 100% "no" on the other, and respond to the statement: 'It's not an open education resource unless anyone can use it for any purpose, including commercial purposes'. The views, as you can imagine, were split almost 50/50 between 100% yes and 100% no.

This used to bother me. Surely the fact that people within the same movement had such divergent views on such an important issue was a problem?

Now this seems academic. The fact that the first, great draft of the 'Cape Town Open Education Declaration' has already been circulated, the fact that its impact was not 'watered down' by this "dispute", and the fact that this group has recognised that standing together in our shared vision of what education should look like in the future is more important than the (important but less important) differences of opinion about copyright licences. This is a conclusion that I had long ago but didn't know how to express: this movement has very little to do with people; it has very little to do with being free to share content and everything to do with sharing perspectives and fellowship.

The participants at this important meeting have recognised the importance of global unity on the issue. That doesn't mean we don't continue to disagree on the process – that disagreement, I think, is really important because it creates a healthy tension that will keep the practical implementation of these ideas fresh, relevant and real.

Yours,

Heather

heather@icommons.org

Content

- 3 Ask Gogo**
Here's a mental challenge from Gogo Helba: the Boss of iCommons Quiz. Do you get a top score?
- 4 My world through my camera phone**
Steve Vosloo reports on a project he's running with American and South African school kids. How is cellphone technology changing their lives?
- 5 A step towards web-scale open education**
Judy reports on a new initiative by the Hewlett Foundation, Google and cLearn.
- 6 Re-examining Patents: The case of Turmeric**
The revocation of the patent on turmeric signifies a successful attempt at reversing bio-pirating activities. Allison Fish recounts the tale.
- 7-9 Where the private and the public collide**
This month the Local Context, Global Commons team look into the public and the private in their countries of India, Brazil and South Africa,. They use fascinating case studies specific to their cultural contexts, to unpack a complex topic.
- 10 Afrikaans Wikipedia: A tiny giant**
This article interrogates why Afrikaans Wikipedia is, in terms of the world, very small, and why in terms of South Africa, it is so huge.
- 12 The Organisation Spotlight**
All we need to know about SELF.
- 13 Altruism, Waldtruism, Schmaltruism**
Schmatler and Waldhead get (selfless) help from Joi Ito on their ultimate quest for happiness.
- 14 Intellectual "Property"?!**
Our legal columnist, Tobias Schonwetter discusses the flawed philosophical foundation upon which intellectual property protection is based.

On the cover this month



This month's cover is designed by Youko Nakamura, courtesy of Loftwork. This cover illustrates the way that mobile technology enables us to document and share the events of our daily lives, as discussed in Steve Vosloo's article on page 4. Check it out!

The boss of iCommons Quiz

by *iCommons agony aunt, Gogo Hleba.*



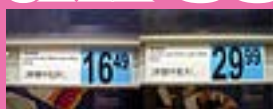
During a heated discussion at the iCommons head office (about what type of biscuit to have with morning tea), Gogo made sure that her opinion was heard. Someone (could it have been Daniela?) murmured that Gogo thinks she is the 'boss of iCommons'. Gogo knows that things should be 'simunye' and is throwing down the gauntlet to the iCommons community. If you know the correct answers to all the following questions, then Gogo will allow you to publicly answer to the title 'The Boss of iCommons' for the month of October:

one



What does Gogo's Xhosa name translate to?

three



Which node has the most participants?

five



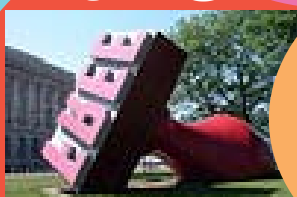
Who claimed that their English language policy is "Please Relax"?

seven



Who made the movie "Islands are Good"?

two



What licence does the iCommons Annual use?

four



Which of these people is not on the iCommons board: Joi Ito, Heather

Ford, Jonathan Zittrain, Tomislav Medak?

six



There were around 350 iCommoners at the '07 summit? How many attended the very first summit?

Gogo says:
Answers on page 14!

Node reports: an update on iCommons community projects this month

Media/events by Kerryn McKay

The media/ events node has had great activity on the [iHeritage](#) node, which was a content sprint held in a shopping centre in Johannesburg to see how many heritage objects could be gathered and uploaded onto Wikimedia Commons and Flickr. The event was held to coincide with Heritage Day, a South African public holiday. The result? 380 images were tagged and uploaded to Flickr, and 18 images and 15 audio memories were added to Wikimedia Commons.

iCommoners should keep their eyes on the [Summit 08](#) node because the iCommons team together with their Japanese counterparts and CCI colleagues are starting the planning phase of next year's summit. This is the ideal opportunity for the community to become involved from strategic planning through to implementation, so join this exciting node!

Business by Rebecca Kahn

There's a new kid on the business node block, and it needs your input. The [SMME TV Open Business Plan](#) node is a space where SMME TV (a South African multimedia publishing enterprise in development) have uploaded their business plan, and are asking Commoners around the globe to make suggestions on, and generally wikify the plan. It's a great opportunity to be involved in the emerging South African media

market, at a time when community input to ensure fairness and good practice has never been more important.

Culture by Daniela Faris

There were no new culture nodes established this month but the [Local Context](#), [Global Commons](#) node continues to be very active - you can read some of the articles produced by this nodes' participants in this newsletter. [Heather and Jimmy's 50 greatest parties](#) node saw two new parties in Cape Town and New York this month.

Education by Kerryn McKay

The latest education nodes this month are the [Open Content for teachers](#) node and [Titanic Radio content from the deep](#). Meanwhile, the [OER case study project](#) team have been hard at work completing the case study and have recently produced the first draft of the framework for the core team to evaluate before moving forward with this project. The next step will be to release the drafts to the community and also to begin work with separate OER project leaders who will 'self evaluate' their own projects with assistance from ISKME.

Science/Research by Rebecca Kahn

It's early days, but we're really happy to announce that, in the next few weeks, the very first science and technology node on [icommons.org](#) will go up. It's a reference list of Open Access publishers

of scientific scholarly literature, which will be a valuable resource for all Commoners with an interest in science and research. Here's hoping it will be the first of many.

Policy/law by Paul Jacobson

The nodes in this category saw renewed emphasis on the public domain with the creation of two new nodes focussed on the Commons in the public arena. Jessica Coates' node titled [Public Sector Commons](#) is designed to help facilitate the creation of a "knowledge sharing network centred on the provision of open access to government and public sector materials". This node builds on earlier articles Jessica published on [icommons.org](#), including a report on an initiative designed to help "evaluate understanding of and attitudes towards copyright, open content licensing (OCL) and the Creative Commons initiative within Australia". Unlocking the content that is often tied up under copyright can be an important step towards creating a more open society and healthier participation in the public sphere by private citizens.

Leon's node titled [e-Government and Creative Commons](#) has a similar goal for Mexican society, namely introducing Creative Commons licences into the realm of government publications. October is already proving to be an interesting month for law and policy content so be sure to visit the node and get involved.

My world through my camera phone

by Steve Vosloo

Today's teenagers are hooked on their cellphones. While for some, MySpace or FaceBook are essential elements of their communication tool set, the vast majority of youth around the world rely primarily on their cellphones for staying in touch. According to research from the MobilED (for "mobile education") initiative, the average South African teen cannot imagine life without a cellphone: "They sleep with it, eat with it, live with it, the teenagers see themselves and their cellphone as one." But although we are witnessing a "social revolution" in cellphone usage among teenagers, very little research has been done in this field. How do youth socially and communicatively interact with their phones? How can cellphones be used to document their lives? And in a world of global communications, can this mobile device be a conduit for increased cross-cultural awareness and sensitivity?

John Kuner and I, both Fellows at Stanford University (USA) are conducting research into digital storytelling for youth. We tried to answer these questions, along with South African-based Adele Botha, who is on the MobilED team. Over August and September we took a group of teenagers from San Francisco and Pretoria (a South African city near Johannesburg), from different social, economic and ethnic backgrounds, gave them a bunch of camera phones and told them to document their lives, put the material online and to engage each other around that.

The project spanned two media: the camera phones were used to capture visual content, and the web was used for presentation of, and communication about, the content. Every week John and I would meet with the San Franciscans to discuss a new task, based on a series of themed prompts, such as: tell us about the food you eat. The teens would sometimes conduct research online, shoot material at home or in their community, copy it to a PC, do some editing and then upload to the web as a post to their own blog. The group in San Francisco were interns on a summer programme at the Bay Area Video Coalition and had recently completed a course in video production, so they used Final Cut Pro for movie editing. We mostly used Nokia N90 handsets, and Vox as the blogging platform. Each teen created their own blog account, but were invited as members into a single, private group for the project. The broad themes for the self-documentation were: about me (where I come from; the story of my name; my favourite books, bands, things; the food I eat; and my room); my community (what it looks like; what I like about it, etc.); and a relevant issue in my community. We asked them to think about their own culture as a context for the project, to try to frame their lives, communities and issues within

their particular cultural milieu. "Mobiquote", acceptable etiquette when using camera phones, was also discussed beforehand.

Due to budget constraints, we could not have the teens upload content directly from their phones to Vox, which is a pity because the immediacy of cellphone communication is one of its greatest features. And because of differences in school calendars between the U.S. and South Africa, not all of the themed tasks were completed by both groups.

So, what did the teens come up with?

Ben grew up in the Haight Ashbury neighbourhood of San Francisco, the epicentre of the sixties hippie movement. He is a big fan of graffiti as a form of street art, which comes through in his neighbourhood video, appropriately set to a song by a busker on Haight Street, recorded with his cellphone.

Lupe lives in the Mission District of San Francisco, a traditionally Hispanic community with beautiful wall murals, which is clearly evident in her neighborhood video. She is Mexican American, named after the Virgin de Guadalupe and shows us her Rosary beads in her room tour.

"They sleep with it, eat with it, live with it, the teenagers see themselves and their cellphone as one."

Diem, who's family moved from Vietnam to the USA when she was three, spoke about her lunch from Starbucks, how the only thing it represented was convenience and that she knew nothing about the person who'd made the sandwich. The post about her that includes a video tour of her room tells us more about her culture, both Vietnamese and as a typical U.S. teen. Her neighborhood video encapsulates the cultural diversity of San Francisco.

Christian, a San Franciscan native, talks about his planned shoot to introduce his neighbourhood, including the new property development happening there, before heading out "into the field."

The South African postings included a video of someone bridge jumping, of a pet parrot, photos of hunting trips to game farms and a visit to the Rosebank flea market in Johannesburg. Instead of writing about what he did with his free time, Shane made a video. While the U.S. kids were more into hip hop and graffiti, the South Africans enjoyed heavy metal, fantasy books and braaing (barbecuing). As Brandon said: "[I love] a good piece of meat, just the right spicing and a little pink on the inside is



The Red Victorian, San Francisco, pic by Ben Dunning, CC BY 3.0

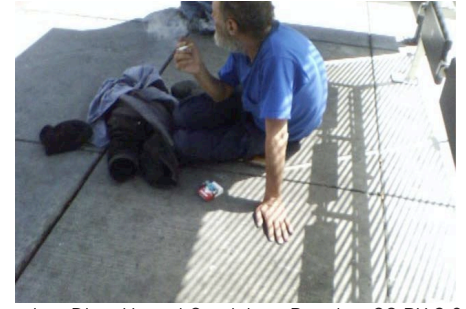
perfect!" In general the South Africans were good about explaining local slang and the meaning of Afrikaans words.

While much of the material was fairly high level, e.g. "I can't survive without my iPod," or a photo of a pet dog, there were moments of very personal disclosure, such as the resentment felt towards the U.S. government by one girl because her father had to spend 13 years in a re-education camp in Vietnam after being abandoned by the U.S. army after the war there. Or a boy's pain in working through his parents' divorce, even though they continued to live in the same house ("in different rooms, of course!"). All of the personal moments, including those that are not necessarily deep or painful, are endearing and alive with teenage honesty.

These moments became the essence of the project, and only began to appear when a certain degree of trust had developed between the teller and the listener. It is here that the cellphone could come into its own, for if there are stages of engagement (low trust, menial engagement moving to high trust, meaningful engagement) then using this device that is so entrenched in the lives of teens, this "trusted" device, could have a catalytic effect on "loosening up" the actors and fast tracking to a higher level of engagement.

For the "issue in your community" prompt, the San Franciscans decided to work as a group on homelessness, which is a big problem in the city. They first discussed the issue amongst themselves, conducted desktop research, compiled interview questions, and then headed out to take photos and conduct interviews. Ben's series of photos and Lupe's photos and interview with someone from the Coalition on Homelessness provided good insight into the issue. Here the theme was more about how one portrays an issue in your community to the world? How do you capture the essence of the problem? What do you show, what don't you show?

Of interest was the readiness of the teens to publicly publish their work. They could have made their blogs viewable



Pictures taken using mobile phone, by the children involved in the project, pics by Ben Dunning, Diem Vo and Guadalupe Paredes, CC BY 3.0

only to the members of our Vox group, but most of them chose not to limit access in any way.

We also had the U.S. group find videos on YouTube as part of their topic research. In a 2005 survey by Pew Internet, 75% of US teens that downloaded music off the web thought that this, along with file sharing, was so easy to do that it was unrealistic to expect people not to do it. Couple this attitude with the fact that now more than half (55%) of all online American youth ages 12-17 use online social networking sites that routinely allow widgets for including music, video and photos, the need for widespread education around licensing becomes very clear.

And what about did they think about using cellphones to document their lives? "The camera phones were cool, different," said a participant. One teen said that she would never have considered using camera phones as a way to educate and influence others. But once they began the project, using the camera phones for this purpose became natural for all of them, although lighting and sound were noted as issues to watch with camera phones. These devices are different to digital or video

cameras because of their 'everydayness'. They are always on hand, are used many times a day and so are perfectly suited as the device to capture the moment, which is often when cultural nuances are revealed.

The teens learned much about each others' lives, and about their own, simply by having to think about all the things they like, don't like, eat, watch, say and do. When documenting their own lives the teens realised how much they are influenced by the many cultures surrounding them, from traditional family culture, to that of the community, their peers, or simply the times – living as a teenager in 2007 in San Francisco or Pretoria. A common theme was how they were proud of their heritage. As Ben said: "I think its important to show the many sides of San Francisco to the kids in South Africa because it is a place so full of culture and life."

While differences between the groups were noted and discussed (the South Africans hunt more than their US counterparts!), it was really the high level of similarities that surprised everyone. Diem said: "I learned how our cultures [US and South African] contrast, and also how they're similar. I think that was my favourite part." About the South

Africans, one US teen struggled for the right word and then said: "They were more 'civilised' than I expected. Their interests are European and Westernised."

One of the goals of this project was to explore the use of new forms of communication devices and media to foster cross-cultural awareness. Both cellphones and blogging, supported by in-person group discussions, proved to be successful tools for this purpose. Further, while computer access and broadband Internet connectivity is much more prevalent in developed countries, cellular infrastructure is good, and handset pervasiveness, or at least its growth rate, is often higher in developing countries. Cellphones are a common device to bridge these two worlds in much needed cross-cultural collaborative projects.

Much more research is needed in this space. John Kuner's Project VIEW and MobilED will continue to explore the boundaries to find the cross-cultural and educational value in cellphone usage. And much awareness needs to be raised around Creative Commons and licensing in general. For now, we have shown that cellphones have a place in the creation of meaningful user-generated content, and make for a fun ride!

A step toward web-scale open education

by Judy Breck

The Hewlett Foundation, Google and ccLearn have undertaken to build what they are calling an "open education web-scale search." For the Foundation, the project is part of their more than half-a-decade long initiative to support open educational resources (OER). The search "smarts" will come from Google and the project will be administered by ccLearn.

"Web-scale" is a commons concept: the scale reaches across the full universe of availability making it possible for anyone in that universe to connect to what that person is looking for. As mobile devices deliver the web universe more and more effectively, the intersecting of web-scale and individual student scale will typify the learning dynamic of the knowledge commons.

OER is a commons concept too: if educational resources are not open, they are locked away from the knowledge commons and can only be used by an elite who are allowed into the virtual vaults where the resources are stored.

When history looks back on the decade of explosive growth of the Internet now ending - 1997-2007 - there will be a

very puzzling question. That question will be: why didn't the Internet change the schools around the world the way it changed communication, entertainment, business and so many other things?

Why is the picture on the right of the boy using a handheld to learn, something that hasn't happened yet? His parents use Blackberries to do business. He uses his handheld to download music. But only a few in his generation use even their desktops and laptops as the primary tool of their education. It is easy to complain about education - about schools, and money problems, and cultural things. But several decades of complaining have not accomplished a lot toward making education better.

Whatever the reasons it has lagged in embracing online resources and networking, it is time to move education into the 21st Century. The new digital, connected world in which we find ourselves gives us a way to turn to new approaches for learning. The web-scale, commons approach can be a platform that will support a new enlightenment of global learning. The picture to the right represents something that can actually happen for kids worldwide within the next very few years.

Preparing for a new kind of education - in which a student with a mobile can learn on a web-scale - requires some important steps. These include for starters, getting mobiles better at interfacing with the Internet, getting smarter mobiles to more youngsters and opening up many more educational resources online.

The new partnership of the Hewlett Foundation, Google and ccLearn to build open education web-scale search is a strong step into the new learning commons. On the ccLearn page about the project are these invitations to participate: "If you are an OER provider (site, institution, individual): "We are collecting URLs for all existing OER sites and online materials, and we would be delighted to include your materials in the collection..."

"If you are interested in finding OER: "We are working with the Hewlett Foundation and Google to develop this open education web-scale search; the process has just begun..."



Re-examining Patents: The Case of Turmeric

by Allison Fish, ALF

Concerns over the exploitation of traditional knowledge through the use of intellectual property rights have received increasing attention over the past few decades. During this time indigenous groups, human rights organisations, and the governments of developing countries have invested significant resources in order to challenge individual private IP claims to cultural practices. Such challenges, however, are often limited to patent litigation, a costly pursuit in which standing may be difficult to show, or requests for patent reexamination. One of the earliest successful such attempts relied upon the latter process and involved a patent claim relating to the wound-healing properties of the turmeric plant. The revocation of this patent is widely cited as the first successful attempt to reverse bio-pirating activities and has had significant impacts on international trade and intellectual property laws.

The turmeric plant (scientific name *curcuma longa L.*, *Zingiberaceae*) is a flowering plant with a rhizomatic root structure that is thought to be indigenous to south and southeast Asia. Its root structure is typically ground into a powder and used either as a cooking spice and in traditional medical systems, such as Ayurveda, to prevent inflammation and infection. The patent for turmeric was based upon the research of two Indian-born faculty at the University of Mississippi Medical Center; Dr. Suman K. Das and Dr. Hari Har P. Cohly. In a discussion with Science published on 5 September 1997, Das admitted he had known of the traditional uses for turmeric in India and had decided to test its efficacy using biomedical metrics. His first research on turmeric was conducted with rats and showed promising results. The research then moved to the second stage in which Das and Cohly organised a clinical trial involving human patients. Upon the findings of the last study, which showed that the use of turmeric could be used to improve some previously untreatable conditions in humans, Das and Cohly decided to apply for patent protection. According to Das, "we felt that the compound should be popularized... and the only way to do that in [the USA] is by developing it and you cannot do that without a patent". Thus, in 1995 the United States Patent and Trademark Office (USPTO) granted a patent (Patent No. 5,401,504) to the University of Mississippi Medical Center for the use of turmeric in facilitating the healing of wounds. In the application Das and Cohly were identified as the inventors.

Knowledge of the grant of the turmeric patent soon reached both members of the media and bureaucrats in the Government of India (GOI) sparking confusion that such a claim was possible to a widely known practice that had existed for thousands of years. The confusion quickly turned to outrage and

India's Council for Scientific and Industrial Research (CSIR), with the backing of other government agencies, decided to mount a challenge to the turmeric patent. This challenge, often described in the press as a complex legal battle fought by the CSIR, provides an interesting insight into patent reexamination and revocation practices at the end of the twentieth Century.

Once CSIR decided to pursue the issue they contacted the GOI's private sector legal representatives to mount the challenge to the turmeric patent. At this time in the United States there were limited means available to an external party who wished to challenge the grant of a patent. The primary means, and the route chosen by the lawyers representing the GOI interests, was to file an *ex parte* request for reexamination with the USPTO. In this request an outside party asks the USPTO to reassess the validity of the patent claim and may introduce evidence that the patent was improperly given (i.e., that the patent failed to meet the standards of novelty, invention, and usefulness or that the subject of the patent fell into a subject category protected through legislation). From this point forward the reexamination process involves only a USPTO patent examiner, typically the one who initially approved the claim application, and the grantee of the patent. In other words, in the case of the turmeric patent reexamination, the GOI and its representatives were merely spectators to the legal proceedings.

This is not to say, however, that India, as a government or as a people, were wholly helpless in the reexamination matter. Firstly, several activists, such as Vandana Shiva, and international media outlets decried the continued biopiracy of the developing world by countries such as the United States. Secondly, the GOI's lawyers conducted a prior art search of Indian texts to demonstrate that the use of turmeric in wound healing had in fact been well known prior to the approval of the patent application in 1995. These

documents ranged in age from several decades to more than a century and were in several languages native to the South Asian subcontinent, such as Hindi, Sanskrit, and Urdu, and not understood by the typical USPTO patent examiner. In order to make these documents accessible the GOI's lawyers spent significant funds, in fact the majority of the entire cost of the challenge, obtaining certified English translations of thirty-two instances of prior art. These translations, along with copies of the original texts, were submitted to the USPTO at the same time of the reexamination claim. Finally, the outrage provoked by the turmeric patent and the media attention it drew caused the USPTO to take the reexamination process seriously. In doing this, the USPTO assigned a new patent examiner to the reexamination proceedings, an unusual event, who was of Indian origin.

Though the turmeric patent was eventually revoked in 1997 the legislatively defined process did not allow for the full participation of the GOI or its legal representatives. As an *ex parte* entity the GOI could simply request that the reexamination take place. It was only through extra-judicial and extra-legal avenues - such as international relationships, media scrutiny, and outspoken activists - that the USPTO was required to take the process seriously. Unfortunately, not every indigenous group or developing country suffering instances of bio-piracy can hope to replicate this type of pressure on the USPTO. Instead, they must rely upon taking a more active role in the patent reexamination process.

An option was made available in 1999 with legislation permitting inter partes participation in which a third party may directly challenge the grant of a patent. Though this option is not ideal, and typically involves the investment of more resources than *ex parte* proceedings, it can be seen as an improvement over the previous regime.



Turmeric man, pic by bengal*foam on flickr.com, CC BY-ND 2.0

Where the private and the public collide

This month the Local Context, Global Commons project team look into the meaning of the public and the private in their countries: Brazil, India and South Africa. They ask the questions: how is 'the public' legally constructed in my country? What is the public's perception? What is the public domain? How has my country's history defined these perception? And what is the private: how is this understood in my country? Using case studies specific to their countries, Prashant, Paul and Paula uncover a variety of views on a complex topic.



by Prashant Iyengar, ALF

What is the public domain? What is private? And do these questions have any bearing on the growing information commons that we on this site are trying, in our own various ways to promote?

Consistent with the style of my previous articles, I would like to embark on a heuristic examination of these questions – by supplying illustrations of the manner in which “public” has been deployed and interpreted in India, I hope to converge on a few (hopefully interesting) observations. The object of this exercise is to see if, and in what manner, our understanding of the public domain may be enriched by reading the phrase as a subset of other prevalent discourses on the “public”.

Three Conceptions of the Public Domain

At the outset, one might observe three popular conceptions of the information “public domain”:

Firstly, “public domain” is ascribed a rather technical meaning either as information that is not owned or as information that has been released from the cycle of ownership into a state of ownerless “*moksha*”. The conception is evident, say, in statements of the following sort by the Indian Supreme Court: “The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which, after the expiry of the fixed period of the monopoly, **passes into the public domain.**”

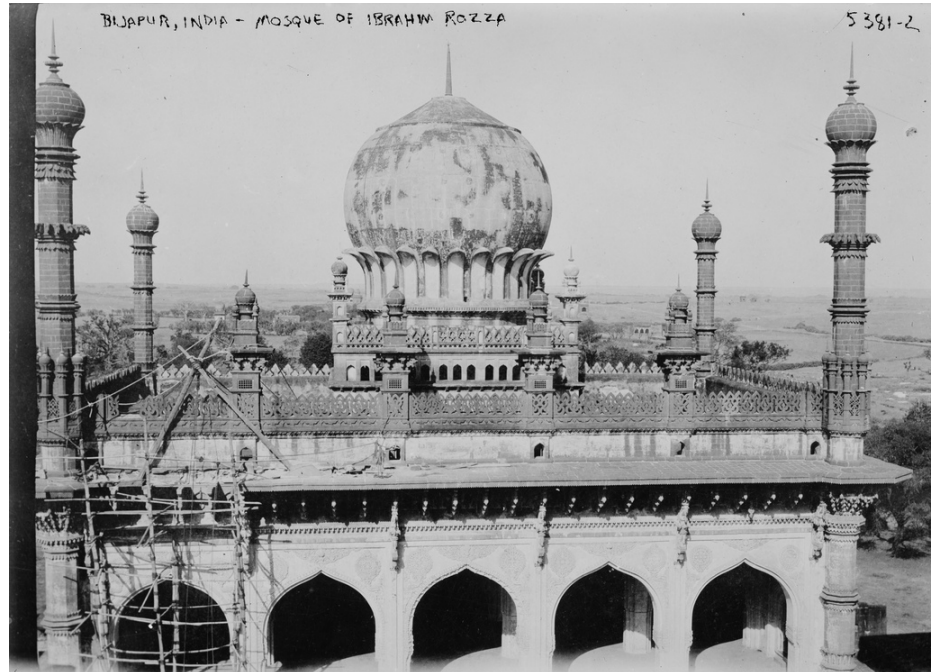
Here “public domain” is seen as the afterlife or the spirit world of owned information. To continue the life-cycle metaphor, the “public domain” refers to a state of “permanent disappearance of all evidence of ownership at any time after live-birth has taken place”.

In the second conception, the “public domain” is a sphere where the public may gain access, notionally rather than actually, to information. One may observe this conception in statements such as this one, again, by the Supreme Court:

“We are not concerned here with what kind of gains .. those persons made as had conceived ... the sting operations leading to the material being **brought into public domain through electronic media.**”

Here the Supreme Court is not commenting on the copyright status of the information but only signaling the fact that the information has been consigned to a realm where the public’s attention may be drawn to it.

A third conception of the public



Mosque of Ibrahim Roza in Bijapur, India. Library of Congress via pingnews.com on flickr.com, CC BY-SA 2.0

domain refers to all information that is issued from a “public” source – the state. Accordingly, as the UNESCO in its Governmental Public Domain Information Guidelines states, “public domain information” refers to “certain types of information that are produced by public authorities (‘government’ in the broad sense) in the course of their duties, and that are seen as a public good”.

This conception of public domain corresponds roughly to the definition of “public documents” contained in Section 74 of the Indian Evidence Act which includes all “documents forming the acts or records” of the sovereign authority, or of official bodies and tribunals, or public officers, legislative and executive in India or a foreign country.

Other ‘publics’

Apart from these three conceptions of the “public domain”, there exists in India a supplementary lexicon of the “public” which includes phrases such as “public interest”, “public information”, “communication to the public” and “public space”. Interpretations of each of these phrases have tended sometimes to confirm the conceptions of the public domain just described above, and at other times embody hybrid conceptions of their own.

In the remainder of this article I will briefly dwell on how each of these phrases have been deployed or inter-

preted in India. These interpretations, even if they do not directly contribute to our reading of the “public domain” together constitute the ecology of meaning within which it is interpreted, and so provide a useful catalogue of interpretative techniques that may be applied to it.

“Public Interest”

The phrase “public interest” is used in India in various contexts: for instance, as one of the justifications for the acquisition of private land by the state, or in the context of “Public Interest litigation”, or more recently in the context of public interest broadcasting.

In his innovative reading of a landmark case decided by the Supreme Court declaring airwaves to be “public property”, Ashish Rajadhayksha argues that there are at least four differing and competing ideas of the “public” that emerge in the debate on air waves and public interest. These are:

1. Being “in the public interest” ;
2. Being accessible to the public;
3. Being in the service of what the public wants;
4. Being provided as a public service.

There is no seamless web that ties these four different ideas together, and depending on the context in which they are discussed, the differing ideas of the public could itself lead to a very different understanding of public interest.

Public Place

In the Indian legal imaginary, the public place is invariably a site of perpetual illegality. Thus, a public space is a place where drug offenders peddle narcotics, and "fallen women" proposition customers for their trade. Thus public place means "any place intended for use by, or accessible to the public and includes any public convenience. It is not necessary that it must be public property. Even if it is a private property, it is sufficient that the place is accessible to the public. It must be a place to which the public, in fact, resorts or frequents."

Discernable in this definition is the familiar "access" register of the public, even as the "state-as-public" paradigm is being specifically rejected.

Communication to the public under the Indian Copyright Act, a "communication to the public" occurs when a person makes any work "available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work". Such communication occurs "regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available."

So a work is deemed to be communicated simply by virtue of its being made available to be seen or heard by the public – which public could be entirely absent during the course of the event. (The Courts however, adopt a somewhat more qualitative understanding of "communication" in the context of Contract Law where for instance, the mere acceptance of a document is not sufficient to signify cognisance of its terms.)

The "public" in this sense is deemed to be an always seeing or always hearing or otherwise-always-enjoying public, which may or may not, in fact, be the case.

Conclusions

The Indian Supreme Court has over many years arrived at a highly evolved understanding of "public spirited" or "public minded" persons as those who are not a) wayfarers; b) officious inter-veners; c) busybodies; and d) acting for "personal gain, or private profit or out of political motivation or other oblique consideration". A "public spirited" person then is one who will "seek judicial redress for the benefit of persons who have suffered a legal wrong ... but who by reason of their poverty or disadvantage are unable to approach the court for relief" themselves." Curious as this description may sound, I think it adds an important dimension to our understanding of the "public" in that it identifies the ideal subjects of "public" process – those who are denied access either due to impoverishment or other disadvantages.

While we need not abide by the specific prescriptions of any of these definitions, I think they are useful to bear in mind as so many answers to the range of questions that may be posed about what the "public" comprises, and who constitutes it, who it may be activated by and on behalf of whom.

Public and private in South Africa



by Paul Jacobson, iCommons

Traditionally there has been a gulf between the public and private spheres. The public sphere has been the realm of government and The Man which has overseen and has meddled in the private sphere; the domain of private individuals and private business. Freedom of expression was an ideal. It was certainly not guaranteed by any measure and private forms of expression were constantly held to a moral standard developed and imposed by a small minority. Censorship was commonplace and, at its worst, was evident in numerous blacked out passages and words deemed by government censors to be against public policy or perhaps just the politics of the day.

For the most part the Apartheid government's censorship efforts had a political motivation and were intended to preserve the ideology of white, Afrikaans conservatism and root out any seditious content, notably of the communist variety (even the term "communist" had a pretty wide definition). The dominant ideology was the State's ideology informed strongly by conservative Christian values promoted by a legislature dominated by the National Party also responsible for the introduction of Apartheid. It was also protected by sympathetic judges whose decisions guided the enforcement of the dictates from above. That being said, there were a number of judges who worked within the parameters of the law in force to mitigate the harsh effects of those laws. Both groups of judges played their roles in the freedom of expression debate in Apartheid South Africa.

The bottom line is that any form of liberal expression was regarded with considerable suspicion and this was hardly conducive to an open exchange of ideas among equals. The private sphere of the day was virtually underground, certainly the more radical forms of expression. All this began to change with the unbanning of organisations like the African National Congress and the adoption of one of the most liberal Constitutions of the time in 1994. Even then there was a clear distinction between the public and private spheres. The Bill of Rights, arguably the central feature of the new Constitution, didn't apply to both the public and private spheres in all respects. The interim Constitution (the 1994 Constitution was designed to be an interim Constitution until the 1996 Constitution was finalised and ratified) tended towards a vertical application in many respects, that is it applied as between the State and private persons. It was only with the adoption of the 1996 Constitution, which had greater horizontal application (between private persons), that South Africans found

considerably more freedom to express themselves in ways that were simply not permissible in our dark past.

The right to freedom of expression in the 1996 Constitution goes beyond the traditional freedoms of speech and the press and encompasses artistic expression, academic freedom and the simple freedom to exchange ideas. In short, it is a fertile ground for the development of the Commons in the private sphere and it is protected by the public sphere. It is a stark contrast to the old days when the public sphere did anything but protect the expressive rights of the inhabitants of the private sphere. What is particularly exciting is the opportunity for collaboration between the public and the private for the cultivation of our collective heritage and a wonderful example of this is Constitution Hill and the Constitutional Court building in particular which contains a number of pieces of art hand picked by the judges and placed on public display.

Censorship is not acceptable and freedom of expression should be jealously guarded both by the public and private spheres if the Commons is to develop...

In the face of such tremendous potential there is a growing spectre of State censorship in the guise of initiatives to guard against child pornography and hate speech as well as growing intolerance in government to opposing views. One example of these initiatives is the proposed amendment to the Film and Publications Act which purports to introduce measures to guard against child pornography. The problem with this proposed amendment is that it ignores the nature of the social web and will introduce a series of mechanisms that are impossible to enforce. For example, the draft amendment potentially requires that a range of user-created content on the web be approved only after payment of hefty fees (content affected by the draft amendment would have to be rated by the Film and Publications Board and a fee is payable for all content submitted for approval and rating) but which also constitute an unreasonable limitation on the freedom of expression. Granted, child pornography is something that should be fought against but there are less restrictive measures to achieve this. These initiatives are still in their early stages but it is more important than ever to be vigilant and fanatical about the protection of these rights.

Censorship is not acceptable and freedom of expression should be jealously guarded both by the public and private spheres if the Commons is to develop even further into a vibrant marketplace of ideas and artistic expression.

My Privacy is Bigger than Yours: The Cicarelli vs. YouTube case



by Paula Martini, FGV

January 9, 2007 was a curious day for the Internet. At the same time that “net neutrality” was reintroduced in the US Congress with the Internet Freedom Preservation Act, in Brazil, the São Paulo State Court of Appeals (TJ-SP) was blocking YouTube, issuing an injunction requiring all the ISPs in the country to block the video website. During those days, more than 5 million people (25% of Brazilians connected to the Internet) had their access to YouTube shut down. Naturally, they were not really happy with famous model Daniela Cicarelli, a former wife of Brazil’s soccer star Ronaldo, the plaintiff in the lawsuit against YouTube.

A few months before, the Brazilian model and MTV host was surprised by a paparazzo in a romantic encounter with her boyfriend, Renato Malzoni Jr., on a beach in Cadiz, Spain. The video shows the couple, in a public space, performing some really “caliente” scenes, which were quickly disseminated on YouTube. The result: lawsuits filed not only against YouTube, but also against broadcast company Organizacoes Globo and the Internet service provider known as IG (Internet Group). The claim: indemnification for the “moral damages” for disseminating the video, as well as a request for the court to take all measures to prevent the dissemination of the video.

This would be just another torts case for the violation of privacy rights, but the court decided to take it seriously. The Court of Appeals injunction ordered all the backbones to filter any content coming from YouTube. Unlike other similar cases such as in Turkey, in which highly controversial political issues were involved regarding YouTube’s blocking, the Brazilian decision was clearly disproportionate. The issue was one person’s privacy rights (mitigated by the fact that it was a public space, and also because a celebrity was involved) against the rights of all Internet users in Brazil.

Naturally, the issue quickly spread over the net and other media. All eyes in Brazil and worldwide turned to Cicarelli, causing the video to spread not only on YouTube, but also through other video sites, blogs and porn sites.

Proportionality: two different rights on the scale
Sometimes privacy/image rights often conflict with freedom of speech and information. In the last decades, the law in Brazil drew a limit between unlawful curiosity (that harms personal intimacy) and a certain permissive voyeurism that characterises the cult of celebrities in the country. In the Cicarelli case, those limits were once again shaken.

Is it a balanced decision to block the

access of millions to a website in order to prevent access to one single video?

Professor Carlos Affonso Souza, a professor of civil law at FGV Law School, says the decision was wrong: “By blocking the entire site because of one video, the courts undermined the collective interest in favor of a personal interest”.

The reaction to the lawsuit decision created havoc among Brazilian Internet users. The case became famous even internationally, and numerous media and blogs echoed the case. Comparisons between Brazil and other countries that actively filter content became frequent. (On content filtering, please see [this document](#) developed by the Berkman Center for Internet & Society at Harvard University, that shows very interesting data on content blocking in Saudi Arabia and China. In Saudi Arabia, for example, thousands of websites have been blocked, including websites containing information on health, education, women, humour, entertainment, etc.)

...creating a collaborative, web 2.0-style, website in Brazil ... is a legal adventure in the country...

A consensus quickly emerged: the case could even get some sort of remedy from the courts, but Internet content filtering was certainly the worst option.

The discussion reached even more technical grounds. Criticism to the court decision claimed that it was ineffective, unlawful and a bad precedent for net neutrality. Ineffectiveness was obvious. The video was quickly spread to many other websites beyond YouTube. Also, a simple proxy server could avoid the blocking imposed by the courts. The case also raised important net neutrality discussions. If filtering was clearly absurd in the Cicarelli case, could the courts then use it as a remedy in more “serious” cases?

Reactions, Reactions, Reactions

The injunction was revoked five days after it had been issued, thanks to the uproar all over the country. One curious reaction was a protest organised by young Internet users in front of MTV, where Cicarelli was working as a TV host. The youngsters were demanding that MTV should fire Cicarelli immediately, because she took their much loved YouTube away. The response from MTV was interesting. The music television channel quickly sided with Cicarelli against YouTube, accusing the young protesters of being “authoritarian”, and stating that they were sharing the same “discriminatory”



Daniela Cicarelli plaintiff in the lawsuit against Youtube, with Renato Malzoni Jr.

ideals as the court decision they were criticising. No wonder MTV in Brazil and elsewhere is facing a loss of its audience, as they dash to sites like YouTube.

After the storm, one important issue remains. The reason for all the turmoil is that there are absolutely no legal standards in Brazil allowing judges to deal with similar issues. In other words, unlike the United States and many other countries that have regulated the liability of Internet Service Providers (ISPs) and Online Service Providers (OSPs, such as YouTube), the Brazilian law remains silent about it. The practical consequence is that basically the judges are free to decide the cases as they deem fit, justifying the decisions as if they were based on “general principles of law” and other legalese.

For the near future, the case made it clear that Brazil still has to do its homework to create legal safeguard for ISPs and OSPs, establishing the situations in which they should be considered liable and those in which they should not. Without such rules, creating a collaborative, web 2.0-style website in Brazil, or any other website in which the content is generated by the users, is a legal adventure in the country, because their creators are literally navigating uncharted legal waters – but that has not prevented a myriad of entrepreneurs from creating collaborative sites in the country. In the meantime, sit down, relax, and enjoy Daniela Cicarelli and her boyfriend in the hot waters of Cadiz in Spain, at any computer plugged to the Internet near to you.

Epilogue

In late June the Court ruled that Daniela Cicarelli and Renato Malzoni Jr. would have to pay R\$ 10,000 (approximately US\$ 5,000) to YouTube, Globo and IG, as attorney fees, due to the loss of the lawsuit.

Afrikaans Wikipedia - A Tiny Giant



pic by Meepocity on flickr.com, CC BY 2.0

by Rebecca Kahn, *iCommons*

Of the three most widely-spoken languages in South Africa (isiZulu, isiXhosa and Afrikaans) only Afrikaans has a relatively strong presence on Wikipedia. And compared to other languages, with smaller communities, like Welsh or Basque, Afrikaans Wikipedia is very small.

This article tries to interrogate why Afrikaans Wikipedia is, in terms of the world, very small, and why in terms of South Africa, it is so huge.

Historical Background

Afrikaans is a relatively young language – it developed out of the Dutch that was spoken by the colonists who arrived in South Africa in the 1600s. Considered a dialect of Dutch, it wasn't until the late 19th Century when it began to be recognised as a distinct language in its own right. It gained equal status with Dutch and English as an official language in South Africa in 1925, although Dutch remained an official language until the 1961 Constitution finally stipulated the two official languages in South Africa to be Afrikaans and English. It is the only

Indo-European language of significance that underwent distinct development on the African continent.

Historically, language has been a volatile issue in South Africa – in 1976 the Apartheid government declared that all black South African students had to be taught in Afrikaans (the language of the government at the time). This sparked the famous June 16 protests in which the South African police fired on crowds of protesting high school students, killing 20 children. Since then, language has been closely associated with the struggle for freedom in South Africa, and with a diverse population's emerging identity. In 1996, when the Constitution of South Africa was adopted, much importance was placed on the fact that, for the first time in the country's history, all languages were given equal importance.

South Africa is second only to India in terms of the number of languages spoken. Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu are the official languages of the country, as enshrined in the Constitution. IsiZulu is the most widely spoken as a first

language with 9.2 million speakers. It's followed by isiXhosa (7.2 million) and Afrikaans (5.8 million). Most South Africans speak English (not always as a first language) and at least one other language, and many South Africans speak at least three.

Looking At The Numbers

The number of South African languages with articles on Wikipedia can be roughly broken down as follows:

Afrikaans: 8,300
 IsiZulu: 107
 Tshivenda: 74
 IsiXhosa: 66
 siSwati: 56
 Setswana: 40
 Sesotho: 38
 Xitsonga: 10

While the gap between Afrikaans and isiZulu is huge, if you were to look at a language with a similar number of speakers, like Finnish (6 million speakers, 133,000 articles) or Danish (6 millions speakers, 70,000 articles) it suddenly seems very small.

The View From The Frontline

There is a multiplicity of reasons for this. One of them, which is cited most often

when the relative lack of all African content on the Internet is being discussed, is the relatively low level of Internet penetration in South Africa. Access to the Internet is limited, and expensive, and many South Africans who do have Internet access only have it at work, where their time is constrained. They simply don't have the disposable Internet time that is necessary to contribute to Wikipedia.

There are, however, more complex reasons. In order to understand them, I spoke with Gebruiker:Laurens; an admin on Afrikaans Wikipedia, and asked him why he thinks Afrikaans Wikipedia is so much smaller, relatively, to other languages.

"Awareness of Wikipedia in South Africa is low in comparison to European countries," says Laurens. "I know, for example, that in the Netherlands and Germany Wikipedia has had a high profile in conventional media such as newspapers and television. In South Africa, I am only aware of a single programme that was aired on the pay-TV channel - which did not even mention the existence of the Afrikaans or other indigenous language Wikipedias."

Multilingualism may also be one of the contributing factors that Laurens highlights. Many South Africans, including almost all Afrikaans speakers are essentially bilingual and use English as their medium of communication every day. "Perhaps they don't see the need for creating content in Afrikaans as it is felt that you may as well read things in English, especially technical content such as encyclopaedic material," he says.

A third, and very important issue that Laurens raises is that of the language of technology in South Africa. "Computers and the Internet are largely seen as an English medium issue. Until recently, Microsoft Windows was not available in Afrikaans or any other indigenous language and very few commercial software programs are available in local languages. Even basic issues such as support for special characters in local languages such as Afrikaans and Venda are not supported and Microsoft Word does not ship with an Afrikaans dictionary/spell checker. It is only since open source products such as FireFox and OpenOffice have become available that the situation is starting to change."

He also highlights the complicated issue of how Afrikaans is perceived by South Africans, both Afrikaans speakers and non-speakers. "Before 1994, Afrikaans and English enjoyed very similar statuses, the introduction of eleven official languages and the impracticality of implementing such a language policy has led to a *de facto* English as official language situation. The indigenous languages are therefore seen as "kitchen languages" to be used at home, in the lounge, and with friends. 'Business' is conducted in English. English is seen as the language of economic opportunity, both locally and abroad."

There is also a political angle to this



June 16th protest graffiti stored at the Apartheid Museum, Johannesburg, pic by the Travelling Beaver on flickr.com, CC BY-NC-ND 2.0

argument. Since 1948, Afrikaans has been inextricably associated with Apartheid, both linguistically and culturally, and this, says Laurens, has several implications. "Before 1994, white Afrikaans speakers were shielded from this knowledge through the ways information was controlled and the separation of the different race groups under the Apartheid regime. Afrikaans speakers have historically always reverted to English even when in conversations with English first language speakers who can speak Afrikaans. The burden of Apartheid may now provide an additional reason to switch to English, especially amongst upper middle class and intellectuals who one might expect to be more active Internet and Wikipedia users."

The Flipside

The irony, however, is that in South Africa, Afrikaans Wikipedia is by far the biggest and most dynamic local language Wikipedia project, even though isiZulu and isiXhosa have many more speakers. What is also interesting and important to note is that, although language does define many South Africans' identity, it also transcends racial boundaries. Not all Afrikaans speakers in South Africa are white, and many non-white South Africans grow up speaking Afrikaans as a mother tongue.

Afrikaans is probably one of the more intellectualised of all the indigenous South African languages. As Laurens says: "Afrikaans was used at all educational levels, it was used as a technical and scientific language, has a rich literature and even had encyclopaedias produced (*Kennis & Afrikaanse Kinder Ensiklopedie*)."

At South African schools and universities, children learning Afrikaans have learnt in the language from basic elementary to PhD level. As a result, Afrikaans is a language that is totally appropriate and capable of providing a vocabulary for any formal academic or encyclopaedic writing, which may be one reason why it has been more successful – the words are there.

Secondly, even though Apartheid ended over 13 years ago, there are more Afrikaans speakers with the disposable income and the time needed to be Wikipedia contributors than, for example, isiZulu or isiXhosa speakers. So it's more likely that they will build a successful Afrikaans Wikipedia.

Thirdly, according to Laurens, the mountain had, relatively early on, come to Mohammed: "At some point one or two people became interested and started working on the project. That meant that there was enough there for newcomers who didn't have high demands in terms of the project's readiness to also start contributing. I think this is essential to get any sort of community going. I have seen other very small Wikipedia suddenly exploding (Swahili and Luxembourgian for instance) after a small number of people initiated the content development."

According to Laurens, the content that was generated was a combination of original and translated material. He says that it isn't unusual for newcomers to the project to 'chase article counts' by translating many articles at first and then settle into improving the quality of the content, which includes creating original content. The translations weren't just from the English Wikipedia either – material from the Dutch and German versions was also translated.

Subject-wise there is also a mix of material on the Afrikaans Wikipedia. From very South African subjects, like small towns and current events, to less South African themed material, like articles about the geography of France. This spread of articles seems to follow the spread of the interests of the most active contributors, rather than any set agenda, or perceived need to create and preserve Afrikaans cultural knowledge.

What this model can tell us is that, with a little bit of seeding, and initial activity, it was possible to develop and build a dynamic and growing wiki in Afrikaans. And if it can be done in one language, then it's entirely possible that it can be done in others

“Be SELFish, share your knowledge!”

by Daniela Faris

There’s a new kid on the block in the education commons movement. It’s called **SELF**, a project dedicated to developing premium training and educational materials about Free Software and Open Standards.

“There is growing consensus on the idea that the lack of educational materials is one of the main causes that hold back the massive adoption of Free Software and Open Standards in many organisations, and specifically in educational institutions,” said project founder and project coordinator, Wouter Tebbens.

SELF has launched a web-based platform that enthusiasts can use to both locate, and collaborate on building or translating educational materials around the topic of Open Standards and Free Software.

The SELF platform was officially launched on 5 September at events in the Netherlands, Sweden, Bulgaria, Argentina, Mexico and India, as well as most recently in Spain on 6 October. Based on an ‘early release’ policy that is often used in Free Software projects, these events saw the launch of a beta version of the SELF platform. Check out the beta version [here](#) and feel free to [provide feedback](#) to the development team.

Apart from collecting currently available learning materials, ensuring the openness of the content and maintaining high e-learning standards, building a community around the project has also been of importance from the inception of the project. And its international flair is showing - SELF has partners in India and Argentina, and the team is constantly working on establishing connections with several organisations and individuals around the world.

“The involvement of these individuals and organisations is of paramount importance for SELF, said Wouter, “We aim to become the reference platform for the production and sharing of Learning Materials on Free Software and Open Standards, and to accomplish such an ambitious goal one cannot rely on the community of a single country or language. In the area of ICT, and specifically in Free Software, the most innovative and original initiatives do not necessarily come from the most developed regions of the world, and SELF wants to be wherever creative people are, helping them share their knowledge with the rest of the world.”

According to Wouter, the platform is especially aimed at serving the needs of educators, who can directly share this knowledge with their students, who in turn, can pass it on, resulting in a multiplier effect that will benefit the adoption of FOSS. But anyone who is interested in Free Software and Open Standards can participate in SELF, as there is a



Scenes from the Barcelona, Mumbai and Amsterdam SELF launches. Top: Wouter Tebbens presenting SELF at the Barcelona launch, pic by Thomas Vilhelm, CC BY 3.0, middle: Scenes from the Mumbai launch, with audience (inset), pics by the SELF India team, CC BY-SA 3.0, and bottom: The keynote address at the Amsterdam launch by Prof Masayuki Ida, pic by the SELF team, CC BY-SA 3.0

need to improve existing materials and collaborate on creating new materials. As Wouter points out: “Together we can make the content in SELF grow in quality and quantity and translate it into our own languages.”

Wouter recommended the following ways in which [you can get involved](#) in building SELF in its early stage of development:

- join one or more of the SELFish mailing lists;
- visit the beta platform and provide

- feedback to the development team;
- contribute materials and collaborate with the Learning Materials team by harvesting and translating existing materials;
- spread the word about SELF on blogs, forums, newspapers and among your friends and colleagues.

And the final word from Wouter is to quote the SELF slogan, “Be SELFish, share your knowledge!”

Who would have thought that being SELFish would be more rewarding?

iCommons.org Highlights



On Sputnik's 50th birthday remembering it inspired education

by Judy Breck

Judy highlights the importance of this aeronautical wonder and how it relates to the education commons.

<http://icommons.org/articles/on-sputniks-50th-birthday-remembering-it-inspired-education>



Over the Top: The New (and Bigger) Cultural Industry in Brazil

by Paula Martini

Find out about the most popular artist in Brazil, who is not signed by a record label. How does Calypso's open business model work? Answers here!

<http://icommons.org/articles/over-the-top-the-new-and-bigger-cultural-industry-in-brazil>



Cultural Heritage is Influenced by Transport Planning

by Rory Williams

Ever thought of the way that transportation and the built environment affect cultural production? In this article Rory elaborates on just this concept.

<http://icommons.org/articles/cultural-heritage-is-influenced-by-transport-planning>



COMMUNIA: public domain & alternative licensing experts convene in Europe

by Michelle Thorne

Michelle provides an update on the kick-off meeting of COMMUNIA, held in Torino, Italy recently.

<http://icommons.org/articles/communia-public-domain-alternative-licensing-experts-convene-in-europe>



Star Wreck in Unwired Magazine (South Africa)

by Stephen Lee

Read this brief update on the latest happenings in the world of Star Wreck.

<http://icommons.org/articles/star-wreck-in-unwired-magazine-south-africa>



How Flickr is Helping Create Awareness About Creative Commons in India

by Kiruba Shankar

Kiruba updates us on Indian trends, and points us to a simple 'Dummies' guide which uses Flickr as an example to explain Creative Commons licences.

<http://icommons.org/articles/how-flickr-is-helping-create-awareness-about-creative-commons-in-india>

Altruism Waldtruism Schmaltruism

Schmatler and Waldhead get (selfless) help from Joi Ito on their ultimate quest for happiness...

Yes, we know it has been a while since you heard from the geriatric pairing of Schmatler and Waldhead but we've been under house arrest at the old age home due to an incident involving a toaster, Schmatler's false teeth and one of the young nurses. Today our Internet connection and false teeth were returned so we have been champing at the bit to get back onto the commons with all you lovely young people (Schmatler is still waiting for his teeth). As part of this seemingly never-ending series of articles on "why people share" this episode on altruism turned out to be surprisingly hard for us to write. If you have been following our ramblings, you know that we don't have a single good bone in our old (Schmatler) or ageing (Waldhead) bodies. Don't be fooled by the *last episode's* incense clouded love fest.

Turns out, we even had to look the term up in the dictionary.

"Altruism - the belief in or practice of disinterested and selfless concern for the well-being of others." First, that is interesting because it shows that Waldhead has been creative with the truth when he told his grandchildren (figuratively speaking) that they could look the term up and find a picture of himself. Secondly it is more than interesting, because who on earth would put the well-being of others above one's own?

So, as usual, we turned to the open source software developers in hope of some answers. But to our surprise, this time, the software world turned out to be a less fruitful starting point than expected. After an extensive literature review (Waldhead dutifully re-read all his MAD Magazines) we realised that very few of the serious academics who are studying open source software look at altruism. Most studies consider things like signalling effects (which are important before turning in case of oncoming traffic, if we understand it correctly), getting *paid for your contributions*, or "*scratching an itch*". But we had some hope for the "*cooking-pot*" model. It argues that developers add their vegetables to the commons cooking pot, partly because they know the end result will be a lovely stew, for everybody. During an empirical study of this model, the researchers asked developers if they felt that the value of what they are getting out (soup) is higher than that of the resources (vegetables) they are putting in - and most said yes they do. Even the developers themselves consider this selfish because they invest less than they get out. So, no altruism there. Our search for altruism in open source software had led us down a dead end

Schmatler & Waldhead



street, and we only had a few hundred words left to rescue this article.

Finally, we admitted to ourselves that for the first time ever, we needed help. And in a case like this, who better to turn to, than a man who used to let friends store *computer equipment in his shower*. We made some room on our little couch for an audio interview with Joi Ito.

Download [this file](#) to listen to Joi discuss altruism, the economic man, the difference between happiness and pleasure, carriers of compassion, and that being a happy sharer yourself is the best way to get others to share as well. The conversation starts off with an overview of Marcel Mauss' *The Gift*, and the Dalai Lama's *The Art of Happiness*, which address the issue of sharing from very different directions. *The Gift* provides a historical framework for sharing that is non-financial, and sets out a clear process of sharing that runs counter to our economies' urge to commoditise. The Dalai Lama develops a theory of happiness that is grounded on compassion, and the ability of human people to learn happiness. Why is it that we learn Maths and Sciences in school, but don't seem interested in learning and teaching how to be happy?

Unfazed by interruptions from Japanese speaking appliances and Schmatler's hacking cough, Joi then sets out a profoundly optimistic model for collaborative citizenry that will help us identify, and ultimately address, global challenges like climate change. He makes a convincing argument that happiness comes from things like community and a well functioning family, where more is not necessarily better (everyone who has met Waldhead's family will agree to that), and that the best way to bring others into this movement is to let them participate in our functional communities of sharing, and to be happy. Happiness Hooray!

Intellectual “Property”?!

This month, legal columnist, **Tobias Schonwetter**, discusses the flawed philosophical foundation upon which intellectual property protection is based.

A friend recently told me about his plan to eventually set up a blog in order to keep people updated about his progress in his mountain bike racing career. Within minutes of the discussion, he furrowed his brow and asked me: “But the content of my blog remains my property, right?” As usual, as opposed to answering him directly, I replied with a counter-question – “Why?” Of course there was a long moment of stunned silence. Subsequently, it was a matter of seconds, and Creative Commons had a new supporter. Yet, such discussions always leave me contemplative and (quite honestly) a bit irritated. Why is it that nowadays the question regarding property rights seems to be an almost inevitable knee-jerk reaction when a new intellectual work is created – even if no commercial revenue from such a work is in sight?

The answer to this question is arguably twofold: First of all, the issues of “intellectual work” and “property” have impressively been linked by the content industries; especially through the constant suggestion that the unauthorised use of someone else’s intellectual creation is just as much a theft as the actual seizure of tangible property. The annoying and somewhat aggressive anti-piracy briefing at the beginning of almost every DVD these days is but one example of this successful strategy. Secondly (and from a more fundamental angle), we have to acknowledge that we undoubtedly live in an era of ever increasing individualisation within our society. This phenomenon goes all the way back to the Enlightenment period during the 18th Century in Europe and America. Against this backdrop, most people currently strive to accumulate as much individual property as possible – to the apparent detriment and definitely without enough consideration of the Commons.

However, I think that it is very important to mention that the philosophy on which the idea of the Enlightenment is based does by no means provide a solid foundation for such individualistic ambitions in the field of intellectual property in general and copyright law in particular. This needs further explanation:

One of the most influential figures during the Enlightenment period was English philosopher John Locke, and his work is often cited as the theoretical underpinning for the justification of intellectual property protection as some kind of a natural law. In essence, Locke claimed that people have a natural right of property in their



bodies and consequently in their labour, as well as in the fruits of such labour. However, upon closer examination, what sounds comprehensible at first for both tangible and intangible goods might not be very convincing for intellectual goods. Locke had physical property in mind when formulating his labour-based theory and one of the reasons for the recognition of (private) property rights was the scarcity of such tangible resources. Scarcity is, in every sense, always potentially problematic. Yet, it has been put forward that it has the potential to cause even greater conflicts within a society if unambiguous property rights are not awarded in respect of the scarce goods. Moreover, it was and probably still is believed that private property ensures the most diligent handling of these scarce resources. Whether or not all this is true is beyond the scope of this argument. But, even if it is true, an essential difference between physical resources and intellectual resources seems to be (deliberately) overlooked: Intellectual resources are not scarce; they are, at the very most, unjustly spread. On the contrary, the more we share and copy intellectual material the more we get. This unique characteristic of intellectual “property” is referred to as ‘non-rivalrousness’. Thomas Jefferson, America’s third president, put it more poetically and said that intellectual property is like a candle - when one candle lights another it does not diminish from the light of the first. Therefore, it can very well be argued that it is actually the regime of legal intellectual property protection that creates an artificial scarcity by means of a limited monopoly.

Why do I mention all this? Well, in my last column, I criticised the aggressive attitude of some in our movement and argued that we should rather revert to our better arguments to convince others. Surely, one of our best arguments is that the very theoretical, as well as philosophical foundation on which intellectual property protection is based is so seriously flawed. I just felt like “sharing” this with you!

Answers to the Boss of iCommons Quiz

Brought to you by Gogo Hleba
(questions on page three)



1. Granny Gossip
2. CC BY-SA 3.0
3. Heather and Jimmy’s 50 greatest parties node
4. Heather Ford
5. Jimmy Wales (Wikipedia)
6. 80
7. David Evan Harris

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global commons front by collaborating with open content, access to knowledge, open access publishing and free culture communities around the world.

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