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Introduction

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Introduction

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In a context of extension of copyright duration and scope, the public domain is at risk, and with it, the vibrant expression of our culture and democracies. A group of academic and think-tank researchers, librarians, government representatives, museum curators, copyright and human rights activists, information technology entrepreneurs and non-profits worked between 2007 and 2011 to understand the notion of the public domain. Often lacking a positive definition, this concept has been poorly represented in the public debate. The political scene, since the expansion of the Internet in the last couple of decades, has been giving a larger space to concepts of piracy, cybercriminality, technical protection, lawsuits and internet filtering, forgetting that lawful and peaceful creative activities can only take place if an unregulated space remains available around copyright protection.

A reason for the public domain to be forgotten is that copyright—initially developed in the eighteenth century as a temporary and limited monopoly granting exclusive rights to authors in order to provide them an incentive to create and disseminate their work within society—has been increasing and undermining the potential of members of the public, who can also be creators and inventors, to produce cultural wealth and economic value for the society as a whole when reusing works.

The project around this book intended to revert the definition and put back the public domain at its original position: “the public domain is the rule, copyright protection is the exception”. The foreword of this book by Charles Nesson recalls the simple yet powerful idea that the public domain belongs to the public and that no private interest should undermine it.

The citations in this introduction have been extracted from *The Public Domain Manifesto*, which is reproduced in full later in this volume. The Manifesto was produced within the context of Communia, the European Thematic Network, which was funded by the European Commission.¹ The Communia project had several developments that were not initially planned in the grant agreement. At its beginning, neither the coordinators nor the members could have imagined the number and the nature of the activities, many of which went well beyond the scope of organizing conferences and publishing papers. As the project progressed, partners decided to work on a voluntary basis between conferences to perform public outreach.

The most emblematic output of the Communia project is *The Public Domain Manifesto*, which was translated in over twenty languages. In particular, it takes a broad definition of the public domain:

The public domain, as we understand it, is the wealth of information that is free from the barriers to access or reuse usually associated with copyright protection, either because it is free from any copyright protection or because the right holders have decided to remove these barriers. It is the basis of our self-understanding as expressed by our shared knowledge and culture. It is the raw material from which new knowledge is derived and new cultural works are created. The public domain acts as a protective mechanism that ensures that this raw material is available at its cost of reproduction—close to zero—and that all members of society can build upon it.

The Manifesto defines the public domain as including not only works for which copyright restrictions have expired, but also the space where copyright does not apply because the law foresees some exceptions and limitations. It also includes resources which are part of the commons, either because they were not subjected to copyright (such as facts, ideas, information and data) or because their authors decided to freely share them by publishing them under free and open licenses, such as Creative Commons licenses.

Another outcome of the project is that legal scholars changed their mind during the course of the almost four years of common work to define the nature of the public domain and how it could and should be protected. Librarians self-organized activities for the annual Public Domain Day which celebrates the books which have joined the public domain because copyright restrictions have ended (more or less seventy years after the

1 Communia's project website is available at <http://www.communia-project.eu>; *The Public Domain Manifesto* is also available at <http://www.publicdomainmanifesto.org>.

death of their authors).² The copyright term is difficult to calculate due to complex and unharmonized legislation varying among jurisdictions. Therefore, researchers and developers of the network gathered to produce Public Domain Calculators, partnering with major actors of the field, namely the Open Knowledge Foundation and Europeana, the European Digital Library Portal.³ These simple web-based applications are designed to allow the public to evaluate whether a work is in the public domain. After almost four years of activity, many members willing to pursue the activities of the network decided to form an international association based in Brussels in order to continue to educate about, advocate for, offer expertise and lead research on the public domain in the digital age.⁴ As a network, Communia has published hundreds of news posts and publication items on its website. Another academic book was also initiated during the course of the project, as most of its editors and authors were members of the consortium.⁵

This book does not intend to constitute the proceedings of a European project. On the contrary, it aims to present how a vision has been built internationally along the course of four years of meetings and collaboration among interdisciplinary experts. Starting with *The Public Domain Manifesto*, Communia defends a European vision of the public domain and presents concrete policy proposals to protect the public interest. Most of the subsequent chapters had a first version which was published on the project website. Some have been updated, and others have been kept in their original version, mostly from 2007 or 2008, as a testimony of the project as a process which reached the conclusion presented as the starting point of the book. Chapters were selected to support and justify the Manifesto and its policy recommendations. They demonstrate how the project developed and outline the most valuable lessons that were learned along the way. The book attempts to capture the most structured part of the output of Communia in the hope that it will represent the foundations for a new awareness in Europe and elsewhere of the role of the public domain for cultural, civic and economic development in the twenty-first century.

2 See the Public Domain Day website: <http://www.publicdomainday.org>.

3 Background at http://wiki.okfn.org/Public_Domain_Calculators; application at <http://www.publicdomainworks.net/api>; see also <http://outofcopyright.eu>.

4 See <http://www.communia-association.org/home>.

5 *Intelligent Multimedia: Sharing Creative Works in a Digital World*, ed. by Danièle Bourcier, Pompeu Casanovas, Melanie Dulong de Rosnay and Catharina Maracke (Florence: European Press, 2010), available at http://creativecommons.fr/wordpress/wp-content/uploads/2011/05/CCiBook_printedversion_IntelligentMultimedia1.pdf.

The first chapter by Giancarlo Frosio investigates the state of the digital public domain in Europe, and recommends policy strategies for enhancing a healthy public domain and making digital content in Europe more accessible and usable. The second chapter also contains academic articles building the legal framework of the public domain. With his Copyright 2.0 proposal, Marco Ricolfi makes concrete proposals for changes in copyright legislation to fit the digital environment in the context of the i2010 strategy. Lucie Guibault presents an evaluation of the Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the digital information society in the light of the recommendation on digitization and accessibility of material preserved by libraries, archives and museums. Giuseppe Mazziotti seeks to explore how the implementation of open access licences onto recordings and other forms of digital performance of creative works which have entered the public domain, complements the notion of digital commons.

The third section gathers developments and case studies. The first two papers of this section analyse the research commons in biological sciences. Enrico Bertacchini surveys the main economic issues concerning the emergence of contractually-constructed research commons, with a particular attention to the field of biological/genetic resources and biotechnologies. Tom Dedeurwaerdere, Per M. Stromberg and Unai Pascual study the social motivations and incentives in *ex situ* conservation of microbial genetic resources.

The three next chapters describe the founding principles of key institutions and projects engaged in promoting the digital public domain within research and society. Rufus Pollock and Jo Walsh present some of the concepts underlying the work led by the Open Knowledge Foundation, while Kaitlin Thaney introduces how Science Commons helps building the “Research Web”. Karen Van Godtsenhoven presents the European DRIVER project (Digital Repository Infrastructure Vision for European Research), a portal for open access scientific communication. The last two chapters present technical developments implementing the digital public domain. Hal Abelson, Ben Adida, Mike Linksvayer and Nathan Yergler developed Creative Commons Rights Expression Language (CC REL), the standard recommended by Creative Commons to the W3C for machine-readable expression of copyright licensing terms and related information. Roland Alton Scheidl, Joe Benso and Martin Springer describe good practices for online registration services of creative works.