

Reclaiming the American Commons

Remarks by David Bollier

Sirsi SuperConference 2004

St. Louis, Missouri

April 18, 2004

It is a pleasure to be among so many librarians. I am an avid user of libraries – in particular, the Amherst College library and the Jones Library, in Amherst, Massachusetts. Also, I grew up in the household of a professional librarian. My father was for many years one of the librarian-administrators at Yale Divinity School, which means I learned a lot about the institutional life of libraries around the dinner table.

Much as I have been helped by librarians over the years to navigate obscure information resources, I would like to return the favor by offering some suggestions to you about my vision for libraries in the future.

If you walk through the main entrance of the James Madison Memorial Building of the Library of Congress, you will breeze right past an inscription above the doors to the right that reads: “What spectacle can be more edifying or more seasonable, than that of Liberty & Learning, each leaning on the other for their mutual & surest support?”

That may sound like a bland truism. In fact, the linkages between Learning and Liberty have never been more fragile, or more important, than today. But I fear that we’re all in such a rush that we just breeze right past such truths even though they are as plain as day.

I’d like to meditate on this thought in my remarks because I think it has a special urgency for libraries today. Learning and liberty are both under siege. If we are going to rescue both from an onslaught of misguided public policies,

technological controls, intrusive copyright laws and general budget cuts, the leadership of libraries will be indispensable.

For me, librarians have always embodied some of the most fundamental virtues of Western civilization. They are dedicated to the freedom to read and learn and share information. They are committed to the free flow of knowledge, which is indispensable in a democracy. Americans must not only have free access to knowledge and creative works, we must be able to re-use and share them in order to create still other works.

Once you put a pay-per-use meter on the act of reading and research, you turn a culture into a marketplace, which is something very different indeed. A marketplace serves an audience of consumers. But a library serves a nation of citizens. There is an overlap, to be sure, but there are also critical differences.

In these market-obsessed times, when virtually anything that can be legally defined as property and sold, libraries remain committed to the idea of *giving away* knowledge and creativity. Doesn't that seem hopelessly quaint, if not downright irresponsible?! I mean, why should we give away perfectly good knowledge and creativity when there's good money to be made by locking it up as marketable "product"?

Librarians know better, of course. Librarians realize that the free dissemination of knowledge is not only the highest calling of their profession, but a vital function in our democratic society. Because libraries "give away" information, they educate our children, help citizens make informed choices, and constantly reinvigorate our cultural heritage. Librarians realize that science and the humanities require that knowledge *not* be wholly locked up as property. If it is, free inquiry and open dialogue will suffer. Democracy will suffer.

Now I realize that such high-flown ideals do not pay the bills when the powers-that-be propose cuts in library staff or journal acquisitions. I'd like to respectfully suggest that the best way to counter the nickel-and-dime mentality in budget debates – and other political skirmishes at any level of government – is to put forward a strong, coherent vision about the value of libraries.

Today I would like to propose some approaches that might help. I am not suggesting new marketing campaigns with slickly produced materials and catchy taglines, though those are always welcome. What I would like to outline are some new ways to articulate the vital role of libraries in contemporary culture. I believe that what is needed, in a sense, is a new *philosophy* for libraries in the digital age. Libraries must be able to better showcase their missions and redefine their role in an age of ubiquitous information. They must show leadership in the community and our democratic culture.

Why do we really need libraries when so much information is available through the Internet? Now that there are so many media outlets in our society, why are libraries still important? Can't the marketplace take on most of the tasks that libraries have historically performed? Does democracy really need libraries?

What may seem painfully obvious to many librarians may not be so obvious to some segments of the public. In fact, I think the case for libraries needs a more muscular re-articulation. It is easy to hark back to Benjamin Franklin and Andrew Carnegie, each of whom showed their own leadership in forging a vision for libraries. But how do we make the case for generous support of libraries *today*? How can libraries institutionally position themselves as innovators and pioneers, and not simply as responders?

Adlai Stevenson once said, "We inherited freedom. We seem unaware that freedom has to be remade and re-earned in each generation of man." This idea applies to libraries as well. Libraries have a certain burden they must shoulder to remake and re-earn the values that make them indispensable to our nation.

This is especially true today when a whole new wave of forces is changing the ecology of creative production and dissemination – and in the process laying siege to libraries and their traditional core mission. Libraries are in the business of making information available to everyone for free, or as cheaply as possible – yet an array of forces is now conspiring to *restrict* public access to information.

- New copyright treaties, laws and court rulings are radically curbing people's traditional fair use rights.

- ❑ New technological systems, such as digital rights management, are beginning to regulate public access to digital information, eroding the public's rights.
- ❑ The Justice Department seems to think that libraries should become a surveillance arm of the U.S. Government, and that we need to destroy the freedom to read in order to save it. I'm speaking about the Patriot Act, of course, and the dangers of government surveillance of people's research and reading.
- ❑ Meanwhile, an army of moralists believe that libraries should be in the business of censoring what patrons should be able to read on the Internet, via filtering software.
- ❑ Finally, as if these intrusions were not enough, public access to books and information is being restricted as library budgets are squeezed and staffs cut.

The crowing paradox may be that, in the face of all these restrictions on access to information, the Internet is democratizing access to information more radically than anyone could have ever dreamed. Inevitably, philistines are beginning to ask, Why do we need libraries when there's Google? Why do we need libraries when we have Amazon.com, Barnes and Noble, and those other innovators of the free market?

I realize that there are cogent responses to all of these issues. But I don't think they are being heard. What concerns me is that this tide may be causing some people to scratch their heads and wonder, "Well, maybe libraries are a bit obsolete in light of contemporary realities. Maybe it's OK to let libraries become book depositories and last-resort information resources – you know, the place where all those people who can't afford to buy computers or their own books go.

Why It's Useful to Talk About the Commons

How should libraries reassert their core values in light of new realities? I have a few ideas. I make the following suggestions with some modesty, because

I am not a card-carrying member of your guild. On the other hand, my very distance from your daily life may help me illuminate the challenge that I believe libraries must address. My experiences over the past thirty years have chiefly been as a policy activist, and in that capacity I am convinced that libraries could play a hugely influential leadership role in reclaiming the American commons.

That is the term that I use – *the commons*. For most people, it’s an old-fashioned term that brings to mind either English meadows or university dining halls. But in fact, the commons is increasingly being used to describe endangered public resources. The commons is not merely a descriptive term, it is a philosophical platform that may help libraries re-position themselves in today’s political and cultural climate. The commons may help libraries understand their relationship to their communities in a new light, and engage with public policy with a fresh orientation. My hope is that libraries will become enthusiastic champions of the commons.

Let me explain more about the commons. Politicians and economists have long assumed that there are really only two sectors for governing things – markets and the state. Markets are supposed to be the vehicle for economic progress while government is supposed to take care of everything else – including libraries.

Increasingly, however, it is becoming clear that there is another sector that is at least as important to our well-being. This sector is *the commons*. The commons is a generic term that refers to a wide array of creations of nature and society that we inherit freely, share and hold in trust for future generations.

Nature is comprised of countless commons -- the atmosphere, the human genome, agricultural seeds, fresh water supplies, wildlife and ecosystems. Some commons are social creations, like libraries, national parks and public spaces. While some commons are physical, others commons are intangible, like the information and creative works that constitute our culture.

The point of a commons is that it is “owned” by a defined community; it is managed with long-term goals for the good of all; and it is very careful about commodifying a resource, lest that lead to its degradation or social inequities.

What matters in a commons is not necessarily its “thingness,” but the social relationships that support the resource in question. The point about talking about the commons is to assert a basic point – that the resource belongs to we the people, not to investors or politicians or government agencies. While the government is often *a trustee* for our common resources, it is not the owner. The government may operate the national parks and regulate the uses of rivers and fresh water supplies -- but it does not “own” them. Those resources belong to *the people*.

This is not merely a rhetorical distinction, but an important legal and moral one, because as a trustee the government cannot do whatever it wants with *our* resources. Like any trustee, it must act in the best interests of its beneficiary, the people. A trustee must take care to preserve the capital stock for future generations, for example, and it cannot give private parties preferential access to a common resource, or give it away for free.

Yet that is essentially what is happening today. Governments throughout the world are conspiring with – or acquiescing in – the market’s plunder of our common wealth. They are allowing private companies to take valuable resources from the commons and privatize them. Once the cash value has been harvested, those corporations then dump their wastes, social disruptions and other “market externalities” into the commons and declare, “It’s your problem.”

When companies privatize the commons, the process is often called *enclosure* – a term that was used in the 18th and 19th Centuries. The landed gentry of England decided that they could make a lot of money by seizing huge tracts of meadows, orchards, forests and other lands that the common people had customarily used. Villagers depended upon these commons for food and firewood and lots of other household needs, and the resources were typically managed through both formal and informal rules. But with the enclosure of the commons, suddenly these resources were privatized and commodified in order to make money in the marketplace.

Some anonymous writer of the time wrote a folk protest poem that described what enclosure consists of. It goes:

They hang the man and flog the woman

Who steal the goose from off the common.
 But let the greater villain loose,
 Who steals the common from the goose.

This is precisely the problem we are facing today. Too many commons are being converted into private property to sell in markets. Not only does this result in people having to pay for resources they previously got for free, or more cheaply, it also means that people need to ask for permission to use something. They don't control it themselves.

Enclosure shifts ownership and control from the American people to private companies. This, in turn, changes the *management* and *character* of the resource, because a market has very different standards of accountability and transparency than a commons.

As I describe in my book, *Silent Theft*, we are now in the midst of a modern enclosure movement, in which large corporations are privatizing dozens of resources that have long been considered the commons.

- ❑ Biotech companies are trying to patent segments of the human genome and other genetic information, so that they can “own” slices of life and in some cases, actual species.
- ❑ Multinational companies are starting to acquire contracts for freshwater supplies, especially in Canada and other northern countries, so that they can privatize water and sell it around the globe like any other commodity.
- ❑ The airwaves used by broadcasters are an incredibly valuable common asset that belongs to the American people – but commercial TV and radio companies now use this resource worth hundreds of billions of dollars for free. The commons has essentially been appropriated in order to subsidize their industry.
- ❑ Federally financed drug research is responsible for some of the most important and most lucrative drugs on the market today. But our own government gives away many of these compounds to the pharmaceutical industry for free or bargain-basement fees – and then

we pay a second time, as consumers, for the drugs that we already financed as taxpayers.

I could enumerate a lot of other market enclosures now underway, but I want to focus on the one that most affects libraries – the enclosure of the information and cultural commons.

The Enclosure of the Cultural Commons

Lots of information and creative works that were once part of the commons – free to all to use – are being claimed as private property, mostly under copyright law. To most film studios, record labels and book publishers, the very idea of “sharing” has become almost synonymous with “piracy.” If you share a digital document with a friend, or copy a CD to play on a car stereo, or post an image on a website, it traditionally would be regarded as “fair use.” Fair use is the way that a culture can carry on a conversation with itself, and a way that creators can create new things.

But nowadays, lots of creative acts that were once regarded as fair use are being blasted as “piracy” simply because those uses could – with the right technological controls or copyright enforcement – generate revenues for the copyright holder. If a meter could somehow be placed on singing in the shower, you can be sure that it would no longer be considered fair use, but an instance of piracy.

In fact, that’s almost exactly what happened to the Girl Scouts in 1996 – the performance licensing body known as ASCAP decided that singing around the campfire at summer camps should be regarded as a “public performance,” and that the operators of summer camps should therefore pay a license fee for the privilege of singing *Puff the Magic Dragon* and *This Land is Your Land*. ASCAP backed off after a storm of negative publicity.

I should add, this is the subject of my next book, due out in December. It’s called *Brand-Name Bullies and Their Quest to Own and Control Culture*, and it’s about the use and abuse of intellectual property law to stifle normal creativity and culture. It contains stories about Mattel invoking trademark law to eliminate unflattering portrayals of Barbie dolls on websites; about the estate of Margaret Mitchell trying to prevent a re-telling of *Gone With the Wind* from

a slave's perspective in a novel by Alice Randall; and how the estate of Martin Luther King Jr. claims a copyright in the "I Have a Dream Speech," which means that legally you must obtain permission before publishing or performing the speech.

One of the more worrisome trends is the rise of a new "copyright police state" dedicated to stamping out the un-metered transfer and use of information. Content industries are convincing Congress and the courts to bring the full force of law down on 12-year-olds who are sharing, borrowing and re-using information. Some of these acts are clearly illegal and should stop. But lots of the sharing and re-use of digital information are the natural acts of a free people in an open, healthy and creative society.

I'd like to review some of the ways in which copyright law is enclosing our cultural commons – and how this is directly affecting libraries.

Copyright term extension. Copyright was originally a 14 year monopoly right. Over the past 40 years, it's been extended 11 times, so that it is now a lifetime plus 70 years for individuals. Congress in 1998 extended the term of copyright by another 20 years to "keep private" thousands of works copyrighted in the 1920s: poems by Robert Frost, novels by Sherwood Anderson, films and musicals such as *The Jazz Singer* and *Show Boat*, and – especially – Mickey Mouse. Disney had mounted a major lobbying campaign to win the twenty-year extension.

Now the funny thing is, copyright is supposed to be an incentive to get authors to create things.... but in this case, the twenty-year incentive, worth billions of dollars, was going almost entirely to *dead authors*. The parties who benefited most were large corporations and the estates of deceased authors. No matter. In 2002, the Supreme Court ruled in *Eldred v. Ashcroft* that the twenty-year retroactive extension of copyright terms to a lifetime plus 70 years was constitutional. This speech, for example, won't enter the public domain until the year 2100 – because I supposedly needed that sort of property rights protection as an incentive to write this!

One of the most controversial laws that encloses the cultural commons is the **Digital Millennium Copyright Act, or DMCA**. The DMCA is a draconian law that gives copyright owners unprecedented control over how

works may be accessed and used, even after their purchase. The law makes it illegal to circumvent a technological control such as encryption or digital watermarks, and makes it illegal even to communicate that knowledge to others.

The DMCA is so troubling because it empowers copyright owners to simply suspend the historic fair use rights that consumers have enjoyed. In the context of CDs, DVDs and other digital media, people may no longer enjoy the right to excerpt and use portions of a work for personal, non-commercial purposes.

This has some rather serious First Amendment implications. The most famous case involved Professor Ed Felten, a Princeton professor who took up the recording industry's open challenge of trying to defeat its CD encryption system. When Felten tried to deliver a conference paper about his findings, the industry threatened legal action, and he refused to expose himself to that risk. The RIAA later backed off, but the DMCA is still invoked with great frequency to intimidate people from publishing or posting material.

Now Disney, the News Corporation and others are now seeking to force hardware makers to install copy-protection technologies in consumer electronics. They want television broadcasts to contain a "broadcast flag" so that equipment won't copy over-the-air broadcasts. This would essentially use technology to override a public right that the the Supreme Court upheld in its 1984 *Sony Betamax* ruling. The large film and recording companies are also trying to disable peer-to-peer networks even though this technology has many valuable legal uses.

Another serious threat is **the use of contract law to limit the public domain**. Shrink-wrap/click-through licenses are being used by sellers to dictate the terms of consumer transactions and how software may be used. Essentially, the licenses override the public's fair use rights and consumer protection rights.

Still another tool to limit how information may be used is **digital rights management, or DRM**, a vehicle that many content industries plan to use to dictate how people may access and use a given work. DRM is particularly important for the future of electronic books and how they may be used. Through DRM, for example, you can have textbooks that "disappear" after the

year's licensing agreement ends, or books that can be read only a set number of times. Public Knowledge has recently issued an excellent guidebook to this complex topic.

There are still other attempts to enclose the information commons: **Database legislation** that would authorize companies to “own” facts. The **Federal Trademark Dilution Act**, a 1996 law that greatly empowers the largest companies to go after uses of trade names that might “blur” or “dilute” theirs. For example, Ralph Lauren, the clothing line, went after *Polo* magazine, run by an equestrian organization, claiming it was a trademark infringement for the polo players to use the word “polo”! Victoria's Secret, famous for their salacious fashion shows, went after a mom-and-pop lingerie and sex toy store in Kentucky that called itself “Victor's Little Secret,” claiming that the name diluted its trademark and tarnished its image. (The U.S. Supreme Court last year ruled that Victoria's Secret had to demonstrate that it had suffered some economic harm.) McDonald's routinely goes after small restaurants like McSushi and McVegan and McMuffins. The San Diego-based company claims a monopoly over the Scottish prefix “Mc,” at least as it is applied to food establishments.

The many enclosures of the information commons that I've outlined pose some serious questions for the future of democracy, creativity and culture. Will our culture simply become a marketplace in which a handful of major “content providers” sell proprietary “cultural product” to consumers while selling consumers' attention to advertisers? Will citizens and artists be able to create new works and communicate freely without first obtaining corporate permission? Will creativity that is local, authentic and homegrown be eclipsed by a commercial monoculture?

The Void in Our Cultural Vocabulary

So long as the market paradigm is the only framework for thinking about the future legal environment for information and creativity, such questions will not even be asked. Talking about the commons, however, helps us initiate a new kind of dialogue. It helps us see that the intellectual categories provided by copyright law and market economics are too narrow.

While the market focuses on individuals making rational economic exchanges to maximize their utility (at least, that's always how economists describe it), the commons is about the ways in which communities manage shared resources over the long term. The market is about generating maximum economic gain for individuals and companies, and somehow the Invisible Hand will take care of the common good. But the commons rejects the Invisible Hand as a false promise, or at least a limited promise. The commons instead offers other mechanisms for advancing the common good. Libraries are one of them.

Unfortunately, libraries seeking to combat the various attacks I just mentioned do not really have a language for asserting an alternative vision for managing access to creative works and information. The content industries have their own ideology to describe how markets generate and distribute new creativity. It's called intellectual property law. It assumes that property rights are indispensable incentives to the production of creative work, and that copyrights are equivalent to property, so that "my copyright" is the same as "my house" or "my car." In short, a whole universe of "property speak" dominates discussions about how creativity, information, books, databases and other cultural products should flow in our society.

But not only are many of these "property explanations" empirically untrue, they sometimes do not serve the purposes of an open, democratic society. The traditional copyright doctrines that have helped libraries make works accessible to everyone are fair use, limited copyright terms, the first-sale doctrine and the public domain. But not only are each of these legal doctrines rather vulnerable and sometimes ambiguous, each is also under siege. Now each of these is under siege. The net result is that the public's rights to use, share and re-use information are being radically curtailed.

The problem is, we do not really have our own language to get beyond the "property categories" of copyright law. We do not have our own sovereign discourse for asserting the value of free, un-metered exchanges of information. Copyright law assumes that the only valuable knowledge is propertized knowledge traded in markets – and that "free" exchanges of information, of the sort that we see on the Internet, or in science, are worthless, because no money has changed hands.

This void in our vocabulary resembles the one that faced Americans in the late 1950s and early 1960s, when it became apparent that air and water pollution was growing worse. The idea of “the environment” literally didn’t exist. It had to be invented. There was no shared language for talking about toxic chemicals and polluted rivers and birth defects and how they might all be logically connected in something we now know as “the environment.”

But once the idea of the environment took root, people could begin to make mental connections among diverse phenomena. The language of the environment offered an overarching narrative to explain conceptually confusing things. No one had realized that bird *hunters* and bird *watchers* might actually share the same interests – until “the environment” helped clarify their shared interests. Moreover, the very term “the environment” helped galvanize popular understanding and action. A cultural movement was facilitated by the concept.

We are at a similar moment now in terms of the ecology of digital content. We are experiencing confusing phenomena – and we don’t really have the language for making sense of how digital content actually is created and diffuses in our society. As a result, it is harder to defend our own distinct interests as citizens and consumers.

We do have the language of copyright law and the public domain. But I believe this language doesn’t recognize how the sharing that goes on in a cultural commons – *outside* of the marketplace – is a powerful creative force in its own right. But the language of markets doesn’t see it this way. If there is no exchange of money in the marketplace, if a bit of creativity or information is not turned into property and bought and sold, then nothing of value has occurred. At least, that’s how copyright theory sees it.

That’s why the public domain has generally been regarded as a vast wasteland. There is no perceived value there without the vivifying touch of market exchange. Property law figuratively turns information into ice – fixed and solid and harder to move. But libraries are in the business of making information flow like water – free to go where it is needed, free for everyone to use.

Copyright law and economists do not really understand “information as water” – a common resource. But that’s what libraries are all about. Sure, they

buy books and information, but their real value to American society comes in their role in helping to *circulate* books and information like water. The mission of libraries, in short, is not adequately explained by copyright law.

We're in the midst of a struggle between two different worldviews about how creativity and knowledge occur. Neither is entirely right. But one version insists that *it* is the only legitimate worldview and that the other is bogus.

One side emphasizes the need for strict controls – chiefly copyright law and encryption, or digital rights management – to allow companies to capture value from creativity. The other side sees creativity as something that should circulate freely through libraries, the Internet and the public domain.

What's really interesting is that many commons are beginning to refute some of the basic philosophical premises of copyright law. For example, one reason the Internet is so robust and creative is precisely because it is a commons where property norms are not strictly applied. Peer-to-peer file sharing, open source software, instant messaging, social networking software like Friendster – all these are so popular and fast-growing precisely because they function as commons, not as markets.

Markets require money in order to participate in them, and so they are certain barriers that limit their growth. Centralized media has huge overhead costs – marketing, distribution, anti-piracy enforcement, etc. But the Internet commons has very low barriers to participation, and is tremendously efficient because it leverages people's natural inclinations to share. That's one reason that online commons are growing at such phenomenal rates.

If you strip away the mythology of copyright law, none of this should come as a surprise. Creativity has always been based on communities that share and build on each other's works. The great art movements of the 20th Century “borrowed” from others, Dada, Surrealism, Pop Art.

This whole process is encapsulated in Isaac Newton's famous remark: “If I can see farther, it is because I stand on the shoulder of giants.” Creativity is never wholly original, as copyright law assumes. It almost always relies upon creative borrowing. The competing visions of the information society suggest

to me that we need to forge some new mental maps to describe the new digital landscape

The Strategic Value of the Commons to Libraries

Here again, I return to the commons as a useful template. I believe that the idea of the commons can not only help counteract some of the specious premises of copyright law in the digital age, it can position libraries as leaders in the coming age of Open Media.

Although Centralized Media may seem the 800-pound gorilla in today's culture, the economics of cultural production are beginning to shift in favor of what I call Open Media. Centralized Media can thrive only by controlling critical "choke points" of product development and distribution, and by the high concentrations of capital needed to participate in this market sector. But the scale and costs of Centralized Media are very large. It costs a lot to nurture a brand identity; to sell product lines based on risky blockbusters; to maintain an expensive marketing apparatus to find and retain customers; and to deploy a complicated legal and technological system to prosecute piracy.

All of these costs are being dramatically squeezed by the superior economics of Open Media – creativity that is openly available and shareable. We are seeing a proliferation of information commons that are able to produce and distribute information and creative works *more efficiently* than Centralized Media.

To get a sense of how many new ventures have been launched, I recommend a new report called "The Information Commons," by Nancy Kranich, a former President of the ALA. Issued under the auspices of the Free Expression Policy Project at the Brennan Center at NYU, her report documents the scores of information commons now arising.

There are hundreds of software commons of the sort exemplified by Linux and various open source and free software programs. There is a whole new wave of open access journals that have been started by scientific disciplines and libraries. Some of these, like BioMed Central and the Public Library of Science, are enabling researchers to keep their copyrights, bypass the huge

subscription rises that commercial journals are charging, and reach larger readerships – all at less cost.

Many universities are creating digital institutional repositories to help archive and disseminate scholarship. Moving beyond their historically passive role in simply buying materials from publishers, universities are taking proactive steps to create their own digital commons such as MIT's DSpace, the French-language repository Erudit, and the Digital Library of the Commons at Indiana University.

There are also many irregular online libraries such as Ibiblio at the University of North Carolina-Chapel Hill, the Internet Archive, the Baen Free library which makes novels available online for free, among many others.

By seeing themselves not just as consumers of copyrighted works, but as hosts of a cultural commons, libraries can begin to develop new strategies to strengthen their ties with the communities they serve. In fact, once you start to talk about the commons, you open up a whole new vector of discussion. You begin to differentiate the role of the library from that of what the market provides. A market may serve consumers, but a commons serves a community. A community is not just people trucking and bartering in the marketplace. It is a group of people with a shared, specific history and shared ideals and commitments.

From the vantage point of the commons, one can more confidently critique the limitations of intellectual property law. One can argue more effectively for a “free culture” – the title of Professor Lawrence Lessig's excellent new book. Instead of regarding fair use, the first-sale doctrine and the public domain as broom closets in the grand palace of copyright law, we can put forward a coherent analytic model that has its own explanatory powers. Instead of copyright law being the default norm for all discussions of creative and scholarly production, a commons rhetoric helps us pro-actively demand legislation that enhances the public domain -- or the term I prefer, the cultural commons.

Here are some other reasons why the commons has important strategic value for libraries:

The commons helps underscore the fact that we the American people collectively own certain public resources, such as the airwaves, the Internet and public spaces. By identifying these resources as ours, we have greater moral and political leverage to reclaim them and manage them in our own interest.

The commons brings into focus cultural phenomena and values that are otherwise vague and diffuse. It helps us see that a variety of different policy debates -- about spectrum use and Internet access, for example -- are related to debates about copyright and digital rights management. The framework of the commons lets us see that there is a common thread to many of these debates, namely, the right of the people to control the assets they own.

*The commons is not just a reactive critique, but a positive vision. Instead of just ragging about how market forces are overstepping their boundaries and companies are ripping off public assets, the commons helps us affirm a *positive vision* of how our society's information flows should be structured instead to benefit everyone. Libraries are that positive vision. The commons helps us reassert the positive values that libraries stand for – like openness, public access, social equity and diversity – values that copyright law, as currently applied, gives only lip service to.*

The commons helps open up a new vector of discussion that focuses on democratic and social values. This is important because increasingly, some industry leaders assert that the interests of Centralized Media are identical with those of our democracy and culture. That may or may not be so. But unless we have a language to critique market language – to show why libraries are not havens of “piracy,” as some publishers suggest – we will not be able to defend those values.

Finally, the commons allows us to seize the high moral ground in fighting market excesses. In this respect, the commons helps us reassert the public's stake in the “cultural bargain” that is copyright law. It helps us expose the empirically questionable premises of copyright law in the digital environment. It gives us a solid explanatory model for describing the hydraulics of information flow and creativity in a networked environment.

The commons is still a rudimentary framework. It needs to be developed and refined. But this sort of new thinking is precisely what is needed if we are going to reassert the role of libraries as champions of the “public interest.”

Let me close with another text from James Madison. This wisdom, too, is inscribed above the Library of Congress building named for him. It reads: “A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

Whether they like it or not, libraries are in the vanguard of the grand American experiment in self-government. Ecologists often speak about “keystone” species; if they die off or go extinct, a whole arc of other species will suffer or die as well. I regard libraries as a “keystone” institution of American democracy. Take it away and many other institutions and traditions of our democracy will suffer.

If we are to fortify the role that libraries play in reinvigorating American democracy, we need a new language for asserting the critical functions that libraries, and only libraries, play. I believe the notion of the commons gives us some new analytic tools and new polemical language for reclaiming the common wealth. The folk poem I mentioned earlier has a final stanza that lays out the challenge we face:

They hang the man and flog the woman
Who steal the goose from off the common.
And geese will still a common lack
Till they go out and steal it back.

Thank you.

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