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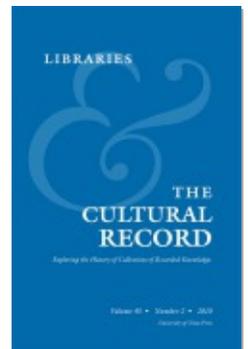
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Terms of Use: Negotiating the Jungle of the Intellectual Commons

Philip Doty

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Windscheffel's vivid descriptions of Gladstone's libraries would be of great interest to cultural historians, bibliophiles, and students of the Victorian period. This book can be recommended for any college or university library, particularly those with strong collections in British history.

Joseph E. Straw, Marietta College, Ohio

Terms of Use: Negotiating the Jungle of the Intellectual Commons. By Eva Hemmungs Wirtén. Toronto: University of Toronto Press, 2008. ix, 223 pp. \$27.95. ISBN 978-0-8020-9378-3.

This book is a well-written and welcome addition to the growing literature about copyright and cultural expression. Author Eva Hemmungs Wirtén is a professor at Uppsala University, Sweden, in the Department of Archival Science, Library and Information Science, and the book will appeal to a wide variety of audiences. Of special interest to readers of this journal are Wirtén's international perspective, her emphasis on the value of history for understanding social categories such as cultural expression and so-called intellectual property, and her wide-ranging view of what constitutes knowledge. Administrators and practitioners in institutions of memory such as libraries, archives, and museums will find suggestions for their professional practice based in historical and theoretically informed arguments; cultural scholars and theorists will find arguments of value to their work, especially because of her deep and comparative understanding of copyright and other "intellectual property" regimes; and copyright and information policy scholars will find *Terms of Use* useful because of Wirtén's expertise in cultural theory, comparative politics, and cultural history.

Using the increasingly valuable trope of the intellectual commons, the author might be called a copyright minimalist as against copyright maximalists, who assert that the purpose of copyright and other regimes that protect cultural expression (patents and trademarks) is to maximize the economic value of the expression to the rights holder, whether the rights holder be the creator or some person or organization to which the creator has ceded rights.¹ Maximalists assert the identification of cultural creation as property, with the assumption that such property deserves protection from theft and misappropriation in the same way we prevent others from taking our houses, cars, and wallets—forms of "natural" property. Thus maximalists tend to emphasize the use of the term "intellectual property," a term of recent vintage, in discussing such legal regimes. Minimalists, on the other hand, assert that rights in cultural expression spring from public grants of protection, not "natural" rights. While minimalists recognize creators' and other rights holders' interests, especially shared interests in creative expression, minimalists hold them as secondary to the public interest in the constant creation and sharing of cultural expression.

In concert with scholars such as Jessica Litman, Lawrence Lessig, and Pamela Samuelson, Wirtén asserts the shared interest in copyright and other forms of protection for cultural expression; that is, such protections are granted primarily to encourage the creation and sharing of culture, not to protect the economic interests of rights holders. It is this position that leads her, cleverly, to adopt the

image of the jungle as a metaphor for the intellectual commons, tying the image to the story of European expansion.

Amplly illustrating her argument with major themes in European colonialist history, Wirtén shows that European culture has regarded the jungle as a waste, a place that is full of “natural resources” ripe for exploitation but allowed to lie fallow by the jungle’s savage inhabitants. The book is characterized by many specific and clear examples of the colonial characterization of the jungle in this negative light. The book’s three central chapters (2–4) address, respectively, plants as part of the global and scientific commons and as invaluable pharmaceuticals; animals as they evolved from exhibitions in zoos and museums to digital beings; and literary expression as an expressive form of the trope of the jungle (including Wirtén’s use of documentalist Suzanne Briet’s now famous discussion of how an antelope becomes a document by its inclusion in a zoo [146–47]).² The first chapter is a useful historical exploration of the commons as a cultural and legal category in the Western tradition, from its early roots to the concept of the digital commons; the introduction and conclusions frame the argument of the three central chapters.

Wirtén uses conflicts over what the concept of the commons meant over centuries of cultural, economic, and political history to clarify how copyright maximalists draw a parallel between the jungle and the public domain: like the jungle, the public domain, which exists in contradistinction to copyrighted works, and the rest of the intellectual commons are fallow, underutilized, and in need of exploitation. In fact, she says the book as a whole can be read as a search for an understanding of the public domain as an “‘affirmative entity’ in its own right” (4), and *Terms of Use* succeeds admirably in this goal. As Wirtén notes, perhaps the most cited foundation of the necessity of exploiting the “resources in the public domain” is the work of Garrett Hardin and his argument about the so-called tragedy of the commons.³ Written in 1968 in the context of global concerns about overpopulation and ecological destruction, “The Tragedy of the Commons” is a classic argument for the presumed necessity to allow the appropriation of the commons, that is, to make the public property into private property so that the owners will, according to this view, care for the property and maximize its value to them and thereby maximize its value to society as a whole.

Like other copyright minimalists, Wirtén, using the work of Jamie Boyle on the enclosure movement, argues that the tragedy presumption ignores the centuries’ worth of experience that communities around the world have in the management and long-term care of shared resources.⁴ Elinor Ostrom’s award of the Nobel Prize in economics for her decades-long empirical work in documenting these strategies for sharing and nurturing shared resources is another way to recognize the importance of Wirtén’s work to our policy and cultural discussions.⁵

Terms of Use concludes with a thoughtful and vivid argument defending the public domain as a form of the intellectual commons that must be protected from exploitation and cultural philistinism, just as the jungle must be protected from “the imperial quest, the logic of enclosure . . . [and] intellectual property expansionism” (143). Her three “modest suggestions” (156–59) for further research and for professional and political practice merit specific mention: 1) the need to use international and transnational critiques of “intellectual property” more frequently, especially beyond the Anglo-American and U.S. constitutional focus of much of that critique, 2) recognition of the stifling of creativity shared by the humanities and arts, on the one hand, and the physical and natural sciences,

on the other (symbolized, respectively, by the library and the laboratory), from copyright expansionism, and 3) assertion of the fact that all cultural expression uses as well as contributes to our cultural commons. How archivists, librarians, museum curators, and others in institutions of cultural memory respond to these and similar calls to action and reflective practice will determine the future richness and availability of culture. Wirtén's book provides a well-grounded and clear explanation of why and how we might proceed.

Philip Doty, University of Texas at Austin

Notes

1. For considered analyses of the commons, see James Boyle, *Collected Papers: Duke Conference on the Public Domain* (Durham, N.C.: Center for the Public Domain, 2003), which also is a special issue of *Law & Contemporary Problems* 66, nos. 1 and 2 (2003): 1–483; James Boyle, *The Public Domain: Enclosing the Commons of the Mind* (New Haven, Conn.: Yale University Press, 2008); Tarleton Gillespie, *Wired Shut: Copyright and the Shape of Digital Culture* (Cambridge, Mass.: MIT Press, 2007); Charlotte Hess and Elinor Ostrom, *Understanding Knowledge as a Commons: From Theory to Practice* (Cambridge, Mass.: MIT Press, 2007).

2. Michael K. Buckland, "What Is a Document?" *Journal of the American Society for Information Science* 48, no. 9 (1997): 804–9.

3. Garrett Hardin, "The Tragedy of the Commons," *Science* 162, no. 3859 (1968): 1243–48.

4. See Boyle, *The Public Domain*, and the special issue of *Law & Contemporary Problems* 70, no. 5 (2007) on the tenth anniversary of Boyle's germinal paper on environmentalism and networked information; James Boyle, "A Politics of Intellectual Property: Environmentalism for the Net?" <http://www.law.duke.edu/boylesite/intprop.htm>, 1997; James Boyle, "Fencing Off Ideas: Enclosure & the Disappearance of the Public Domain," *Daedalus* 131, no. 2 (2002): 13–25; James Boyle, "Cultural Environmentalism and Beyond," *Law & Contemporary Problems* 70, no. 5 (2007): 5–21.

5. See Hess and Ostrom, *Understanding Knowledge*; and Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).