

TERRITORIALITY OF THE COMMONS

Spatial Perspectives on the Governance
of Public Goods in Past and Present

International Research Workshop
29-30 September 2011 in Erkner



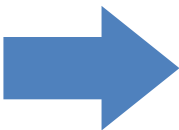
IRS

Leibniz Institute for
Regional Development
and Structural Planning



Paving the road in virtual spaces How to materialize rights to immaterial commons

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and Information Science
University of Konstanz,
Germany





**Universität
Konstanz**









Princeton University untersagt Universitätsangehörigen, ihre Rechte abzutreten

Erfasst von *iuwis-Redaktion* am 29. September 2011 - 14:30

Die Princeton University verschärft ihre Open Access Policy, so berichten verschiedene US-amerikanische Nachrichtenmedien. *The 4700 Blog* beschreibt die Sache wie folgt:



Erstinstanz hat zu E-Learning (§ 52a UrhG) geurteilt!

Erfasst von *Thomas Hartmann* am 28. September 2011 - 22:30

Am 27.09.2011 hat der 17. Zivilsenat des Landgerichts Stuttgart sein Schlussurteil im Musterprozess zu § 52a UrhG gefällt. Im Dezember 2010 hatte der Alfred Kröner Verlag, unterstützt vom Börsenverein des Deutschen Buchhandels, Klage gegen die Fernuniversität Hagen eingereicht (näheres [hier bei IUWIS](#)).

Wie das Landgericht Stuttgart nun auf IUWIS-Anfrage bestätigte, wurde am 27.09.2011 das Urteil in dem unter Aktenzeichen 17 O 671/10 geführten Rechtsstreit verkündet. Die Richter der 17. Zivilkammer haben demnach eine "teilweise Verurteilung" der beklagten Fernuniversität Hagen ausgesprochen. Nähere Informationen und Stellungnahmen sind vor allem vom Börsenverein des Deutschen Buchhandels zu erwarten, der auch die Klageschrift vollständig ([hier als pdf-Dokument](#)) veröffentlichte.

Im Jahr 2003 beschloss der deutsche Gesetzgeber § 52a UrhG in der Absicht, urheberrechtliche Nutzungsregelungen für E-Learning in Wissenschaft und Bildung vorzusehen. Urheberrechtlich geschützte Materialien dürfen demnach unter mehreren engen Voraussetzungen genutzt werden, ohne dass dafür jeweils einzeln eine Zustimmung bei den RechtsinhaberInnen eingeholt werden müsste. Die Vergütung der UrheberInnen und RechtsinhaberInnen wird durch die Verwertungsgesellschaften wahrgenommen. Die gesetzlichen Voraussetzungen sind jedoch im Einzelnen kompliziert und von Anfang an heftig umstritten.

Lehrstühle von...

27.09.2011 – 16:30

Aus der Literatur: Dirk von Gehlen (2011): Mashup. 2

▼ Infopool

Content - Topics

- **Virtual spaces**
- **Knowledge spaces, knowledge road**
- **(Knowledge) ecology**
- **Commons**
- **Towards an understanding of knowledge as a commons**
- **Who owns knowledge?**
- **Access – institutionalization of knowledge**
- **Copyright as a form of institutionalizing knowledge**
- **Open Access as a form of institutionalizing knowledge**
- **Models for the institutionalization of knowledge**
- **What needs to be done? Consequences**

Paving the road

**Are there roads in
virtual spaces?**

Virtual spaces

Virtual spaces

... seeks to define virtuality in terms of the actual space that is perceived through visual media.



photo: Marian Krebeli

<http://virtualspacetheory.com/book/>

Virtual spaces

Sylvia Eckermann

upcoming projects video-documentations bio articles contact **NEXT**



Expositur | a virtual knowledge space 2001

Expositur | a virtual knowledge space

In the framework of "Unternehmen Capricorn" project we developed a virtual knowledge space ["Virtueller Wissensraum"] in collaboration with 10 Austrian museums. The programme...enables 3 users to enter a cross-disciplinary environment based upon objects ... which then were translated into a spatial structure of rooms, corridors and places of different size, shape, remoteness or proximity.

<http://syl-eckermann.net/expositur/index.html>



Expositur | a virtual knowledge space: Installationview, Vienna. exhibition architecture: the nextENTERprise - architects (e.j.fuchs - mth.harmoncourt)

Virtual spaces/libraries

Current Model

Traditional Library

Transformation

Virtual Library

What is needed

Traditional Library

Digital Library

<http://bit.ly/pL8D2b>

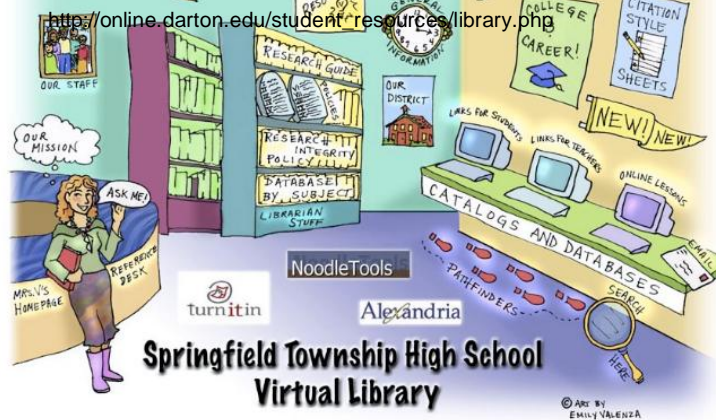


<http://bit.ly/pGTm6a>



<http://bit.ly/q1JCsA>

http://online.darton.edu/student_resources/library.php



<http://bit.ly/pfecZI>



<http://bit.ly/nM8Pxj>

<http://bit.ly/rjFboy>

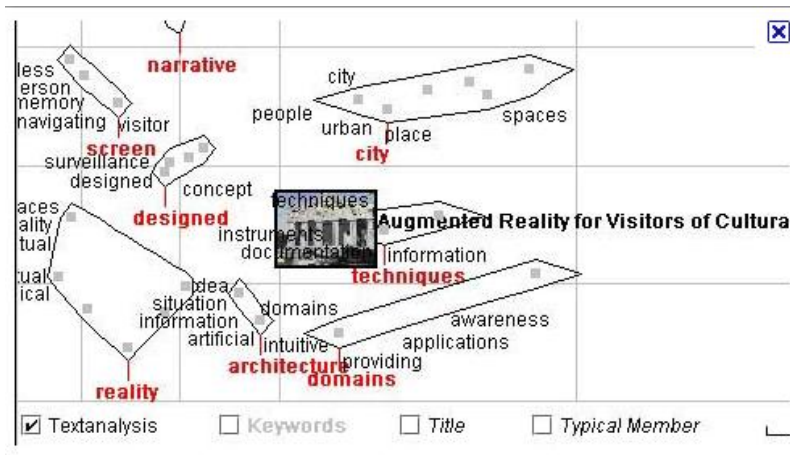


<http://bit.ly/piXMGP>

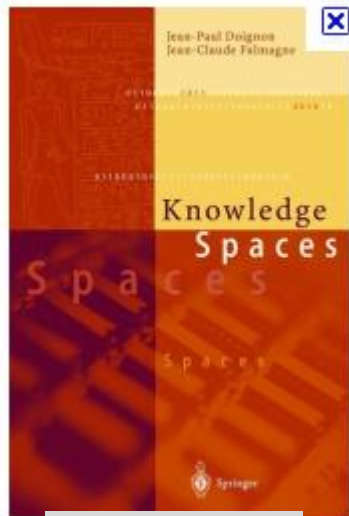
<http://bit.ly/o0t01B>

Knowledge spaces

Knowledge spaces



<http://bit.ly/ombf1w>



<http://bit.ly/rkqIPj>



<http://bit.ly/ou7fSr>



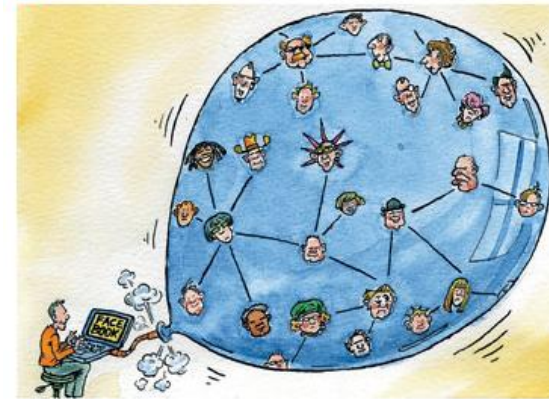
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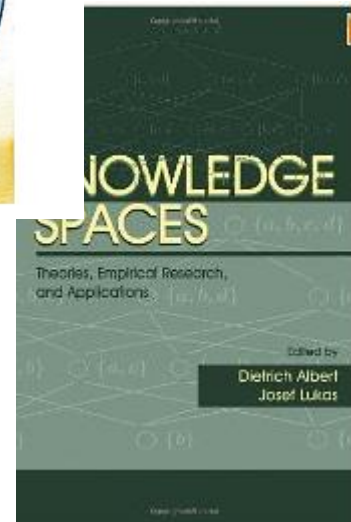
<http://bit.ly/qtFYDf>

social graph - Pesquisa de imagens do Google

☒ LIKE IT! ☒ SHARE THIS



<http://bit.ly/ou7fSr>



<http://bit.ly/qeXNoY>

(Knowledge) ecology

(Knowledge) ecology

Ecology in general is concerned with the **sustainability** of natural resources (for instance water, air/climate, wildlife, forests) by protecting these resources from overuse.

Knowledge ecology is also concerned with sustainability but **sustainability of immaterial goods**. This can only be achieved by making **knowledge** an **open space** and providing **free access** to it and **unrestricted use**.

Open space



Standing Committee on Copyright and Related Rights

Twenty-Second Session
Geneva, June 15 to 24, 2011

Proposal on an international instrument on limitations and exceptions for persons with print disabilities

Knowledge Ecology International

Attending and mending the knowledge ecosystem



**Right to Read
for Persons with
Reading
Disabilities**

Let's eliminate the need for making special, accessible copies and all that, and instead let's build access into the e-publishing technology from the ground up. That way we all can access the same content on our e-readers or computers, whether or not the person using it happens to be sighted or blind.

Robert Englebretson, Prof. of Linguistics at Rice, in a comment on the WIPO proposal

Knowledge ecology

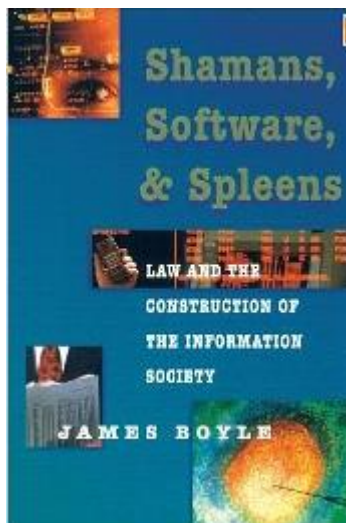


<http://bit.ly/nQMWNn>

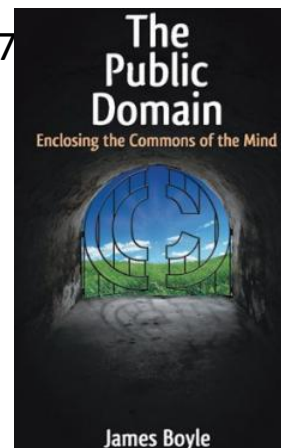
Figure 1 The 6 Elements of a Knowledge Ecology



<http://bit.ly/pFyq8l>



A Politics of Intellectual
Property: Environmentalism
For the Net?
James Boyle 2007



Open Access – part of knowledge ecology

Open access is part of knowledge ecology

Open Access provides an **alternative** or **complement**

both

to existing **commercial publishing models** on the international information

markets and

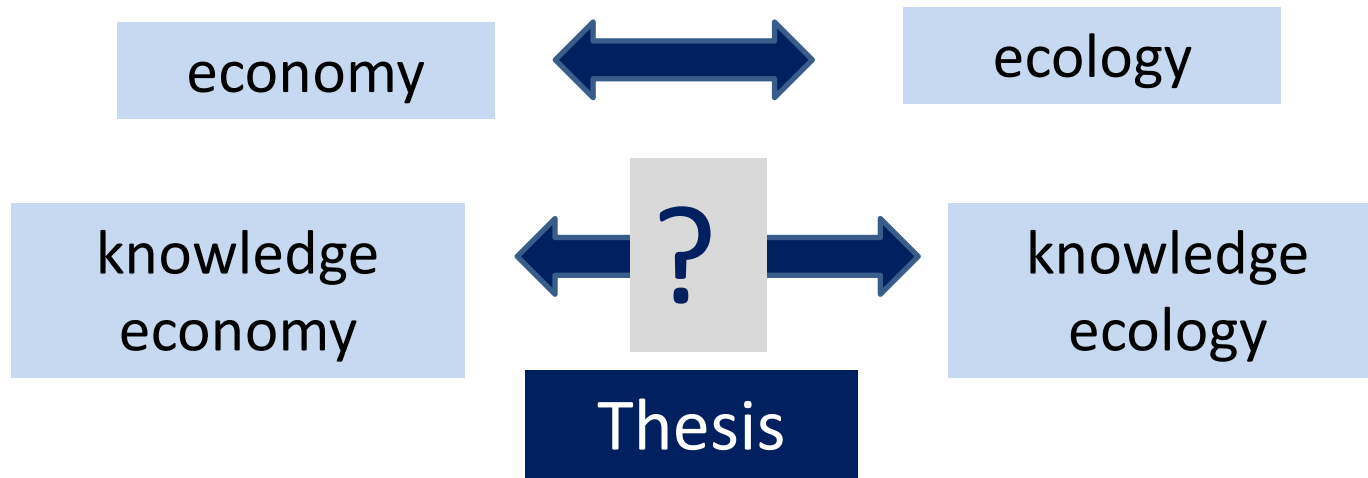
to **international copyright regulations**,

which, in the last 20 years, have mainly emphasized the **economic impact**

of knowledge and information

and thus have made knowledge a scarce resource

knowledge ecology/economy



Knowledge ecology **does not object to the commercial use of knowledge,**

but suggests that **publishing models are only acceptable when they**

acknowledge the status of knowledge as a commons,

allowing free and open access for everyone
not claiming exclusive property rights.

Commons

**Commons is the central
concept of
knowledge ecology**

**Commons are often understood either as
common goods/common-pool resources
or as public goods**

	Excludable	Non-excludable
Rivalrous	Private goods food, clothing, cars, personal electronics	Common goods (Common-pool resources) fish stocks, timber, coal
Non-rivalrous	Club goods cinemas, private parks, satellite television	Public goods free-to-air television, air, national defense

http://en.wikipedia.org/wiki/Public_good

**But commons are neither common goods
nor public goods**

common heritage
of
nature

common heritage
of
social life

common heritage
of
cultural
creativity

What are commons?

Commons are institutionalized
common-pool resources

Figure 1.1
THE THREE FORKS OF THE COMMONS RIVER

Nature

Air...water...dna...photosynthesis...seeds...topsoil...airwaves...minerals...
animals...plants...antibiotics...oceans...fisheries...aquifers...quiet...
wetlands...forests...rivers...lakes...solar energy...wind energy...

Community

Streets...playgrounds...the calendar...holidays...universities...libraries...museums...
social insurance...law...money...accounting standards...capital markets...
political institutions...farmers' markets...flea markets...craigslist...

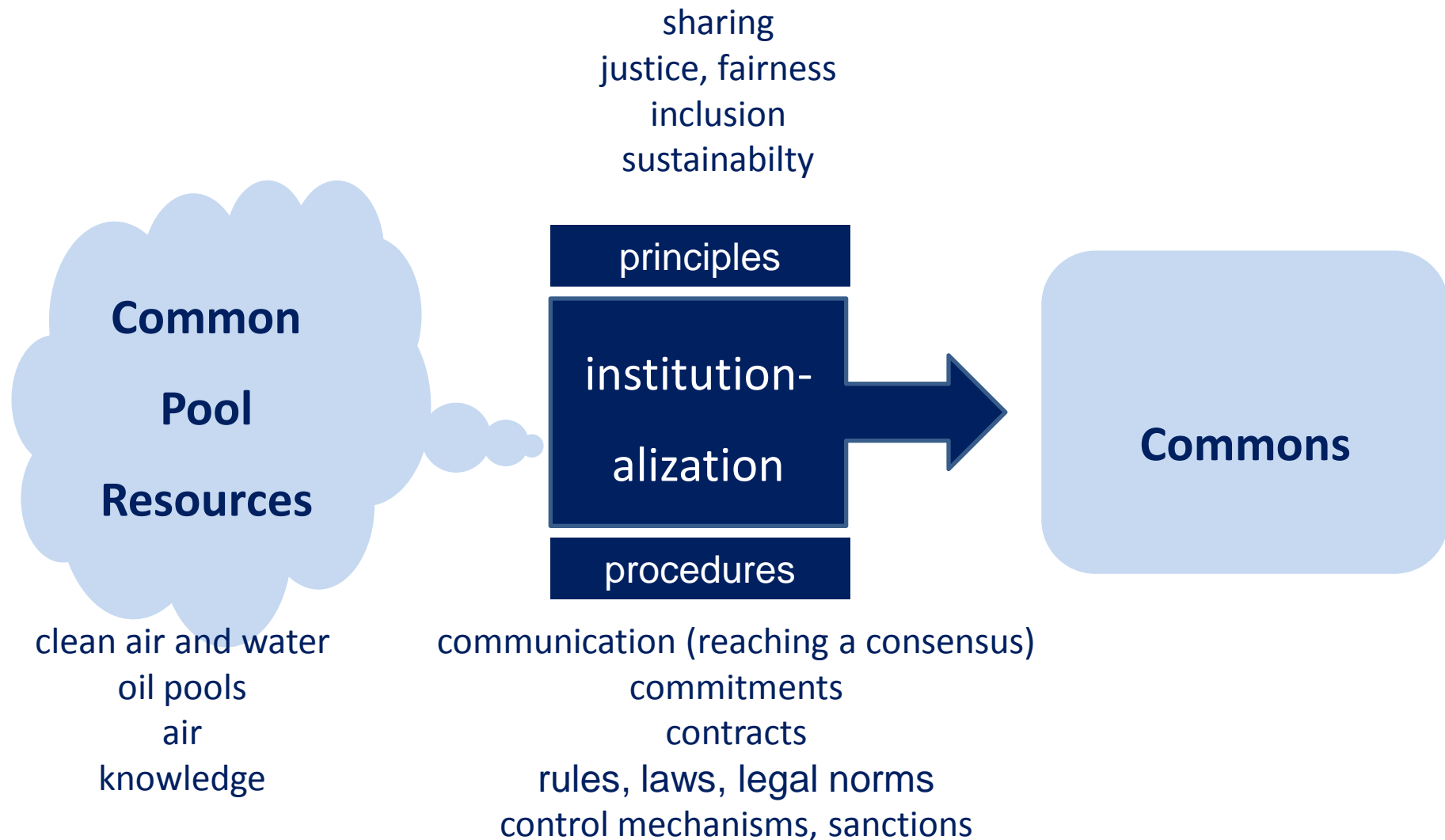
Culture

Language...philosophy...religion...physics...chemistry...musical instruments...
classical music...jazz...ballet...hip-hop...astronomy...electronics...the internet...
broadcast spectrum...medicine...biology...mathematics...open source software...

The
Commons

Aus: Peter Barnes: Capitalism 3.0

Institutionalizing common-pool resources making them commons



Towards an understanding of knowledge as a commons

Knowledge commons

The Knowledge Commons offers:

- access to the Internet
- ALEPH, the online catalogue
- indexes to journal articles
- full-text electronic journals
- SABINET, the online catalogue of South African libraries
- electronic reference books
- MS Office software, with online training
- Typing tutor software
- Printing & scanning facilities



UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD



Oh Yes! IT'S
FREE

<http://www.lib.uct.ac.za/kc/>

From Digital Libraries to Knowledge Commons

http://www.ercim.eu/publication/Ercim_News/enw66/ioannidis.html

by Yannis Ioannidis

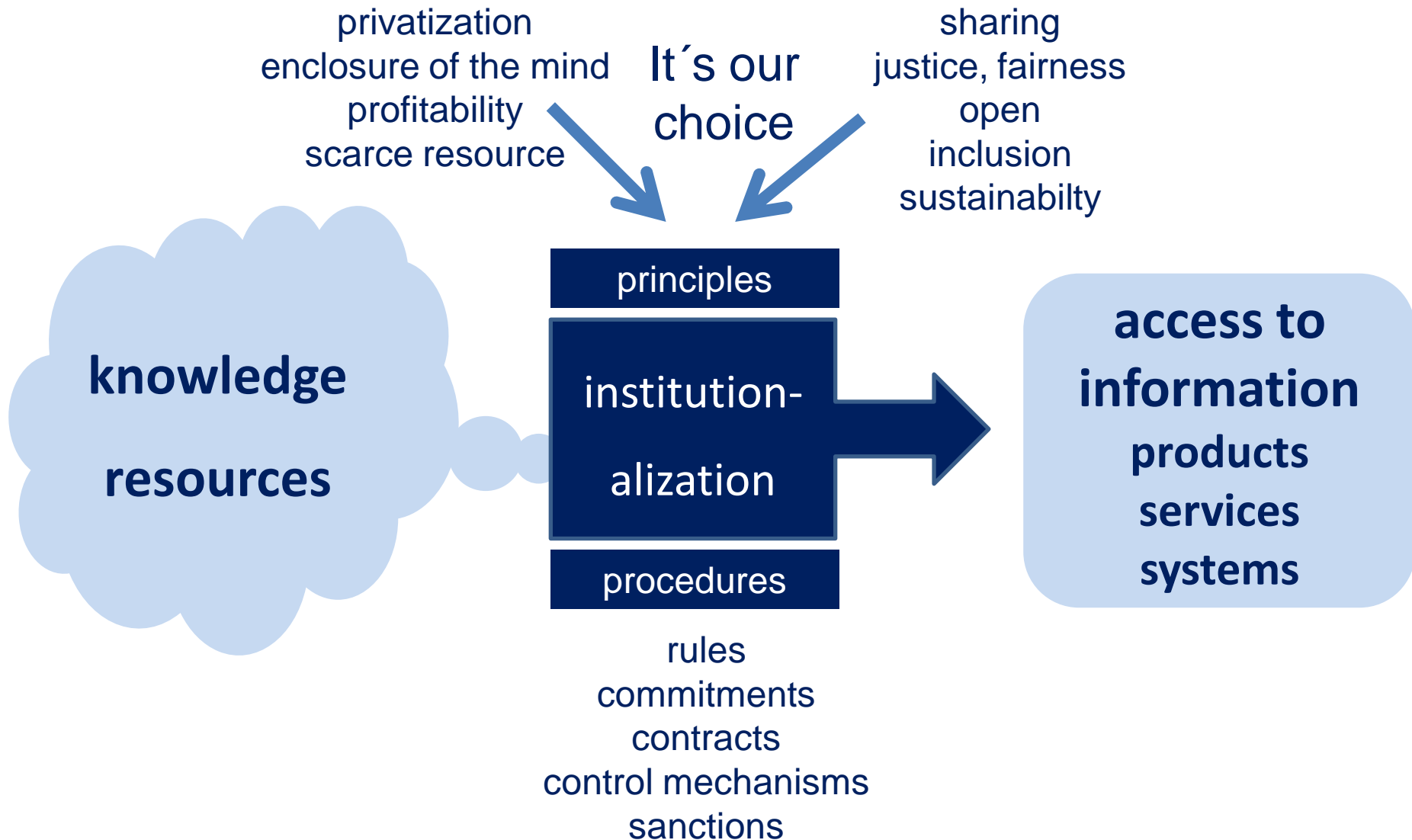


Shared Purpose.
Global Access.
Common Knowledge.

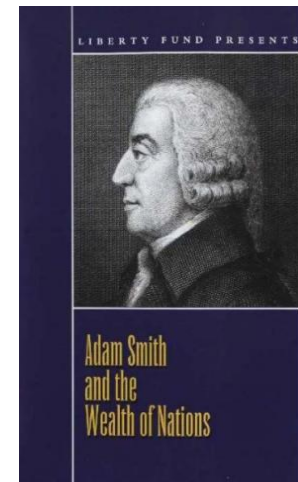
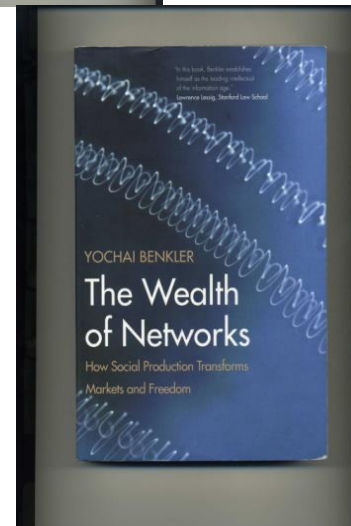
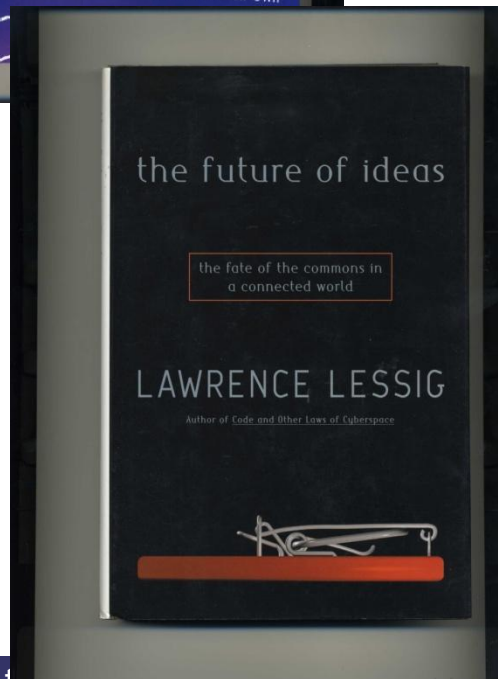
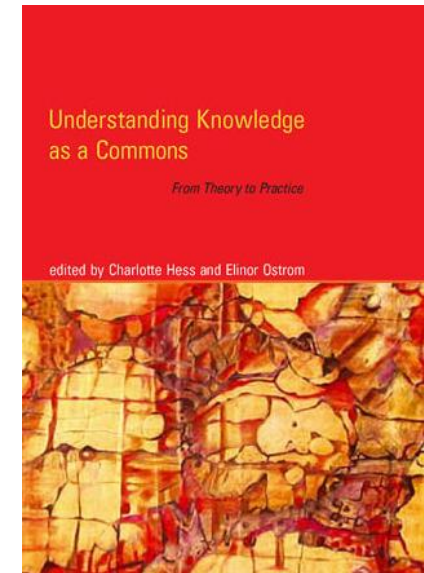
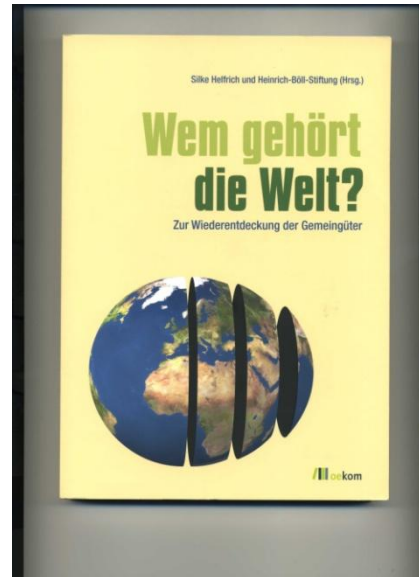
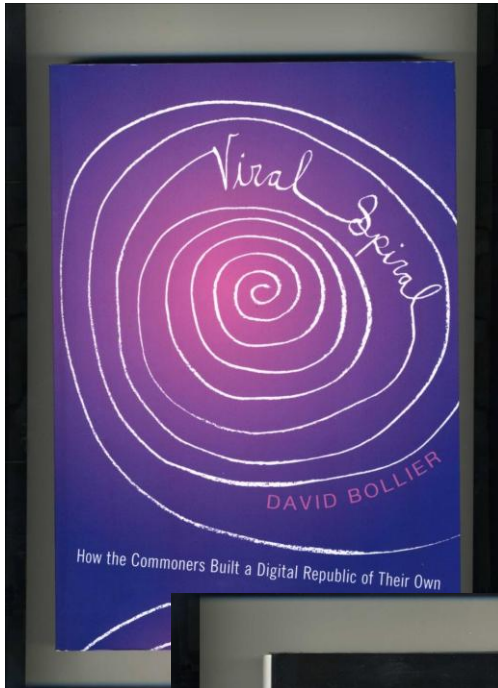
<http://www.knowledgecommons.org/category/mhl/>

The Open Knowledge Commons (OKC) works to make the **record of human knowledge as broadly available as possible**. We envision development of a “**knowledge commons**”—a distributed, interoperable universal access digital library of information that may be **queried, combined, annotated, mined, manipulated and shared to extract new information**.

Institutionalizing knowledge as a commons



Knowledge as a commons



An understanding of knowledge as a commons

res nullius
res privatae
res publicae
res communes

What is the
status of
knowledge?



Justinian I., Mosaikdetail aus der Kirche [San Vitale](#) in [Ravenna](#)

<http://bit.ly/pUgtds>



Who owns knowledge?

An understanding of knowledge as a commons

Who owns knowledge?

producers/authors?

exploiters/content providers/publishers?

users/those who need it for their work?

**knowledge is part of the commons – of the res
communes**

nobody should own knowledge exclusively

Who owns knowledge?

is it the right question?

knowledge itself, ideas, facts, theories, ...data(??)

is not protected by copyright laws

The Letters of Thomas Jefferson: 1743-1826

NO PATENTS ON IDEAS

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To Isaac McPherson *Monticello, August 13, 1813*

If nature has made any one thing less susceptible than all others of exclusive property, it is the **action of the thinking power called an idea**, which an individual may exclusively possess as long as he keeps it to himself; **but the moment it is divulged, it forces itself into the possession of every one**, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. **He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.**

Who owns knowledge?

is it the right question?

knowledge is a commons
but only usable **when it is accessible**

Who owns knowledge?

Who has access to knowledge?

Who controls the access to knowledge?

The question is not one of **knowledge** but one of **information**

**Who has access to information – who controls
information?**

Access – institutionalization of knowledge

Open access is one of many forms of **institutionalizing knowledge** and making it a commons, a common property

but

Copyright regulation is also one of many forms of **institutionalizing knowledge** and making it a **private property, a (scarce) good**

Copyright as a form of institutionalizing knowledge

Copyright as a regulative model for institutionalizing knowledge

International main-stream assumption

Strong copyright - an appropriate means to
**further progress in the arts, science and
education**

Copyright as a regulative model for institutionalizing knowledge

What is a strong copyright?

(a) One that makes knowledge and information a scarce good – a commodity ?

or

(b) One that supports open, free access to knowledge and information ?

Copyright as a regulative model for institutionalizing knowledge

The **enforcement of strong copyright regulations** (in

Europe and North America in the last 20 years)

heavily **supports the commercial exploitation** of

knowledge and information (not necessarily creators' rights).

This makes it **more and more difficult to freely access**

world-wide information resources, in principle available

on world-wide information markets.

Copyright as a regulative model for institutionalizing knowledge

The default in copyright law is the **exclusive right** of the rightholders – **authors** or (by contract) **exploiters/publishers/content providers**

The right to exclude others from access to published knowledge and from using it freely

The **interests of the public**, in particular for science and education, **are only taken into account through exceptions and limitations** to the exclusive rights of the right-holders

under the control of the three-step-test

under the control of the three-step-test

disabling?



English: A barrier, restricting the access for cars for a nature reserve

Deutsch: Eine **Schranke**, die die Einfahrt von Kraftfahrzeugen in ein Naturschutzgebiet verhindert

<http://bit.ly/otoybc>

enabling?



„Schranke“ (barrier, gate) is a German copyright term (in international law: „exceptions, limitations“) which abridges the otherwise exclusive rights of knowledge producers.

Copyright as a regulative model for institutionalizing knowledge

TRIPS - Agreement on Trade-Related Aspects of Intellectual Property Rights

Article 13

Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which

do not conflict with a normal exploitation of the work

and do not unreasonably prejudice the legitimate interests of the right holder.

Exceptions for science, education (§ 52a German copyright law)

Only small parts of works

Only for use **in** classroom

Time limit end of 2006, then
2008, now 2012

For the use of
defined research
groups

UrhG § 52a Öffentliche Zugänglichmachung für Unterricht und Forschung

§ 52a: Nicht mehr anzuwenden gem. § 137k (F 10. September 2003) mWv 1.1.2007

(1) **A reasonable fee needs to be paid to collecting societies in**

1. **any case**

angs sowie

einzelne Beiträge aus Zeitungen oder Zeitschriften zur Veranschaulichung
im Unterricht an Schulen, Hochschulen, nichtgewerblichen Einrichtungen der
Aus- und Weiterbildung sowie an Einrichtungen der Berufsbildung
ausschließlich für den bestimmt abgegrenzten Kreis von
Unterrichtsteilnehmern oder

Only for **registered**
students in classes

without any direct or
indirect commercial
interest

2. veröffentlichte Teile eines Werkes, Werke geringen Umfangs sowie einzelne
Beiträge aus Zeitungen oder Zeitschriften ausschließlich für einen
bestimmt abgegrenzten Kreis von Personen für deren eigene
wissenschaftliche Forschung

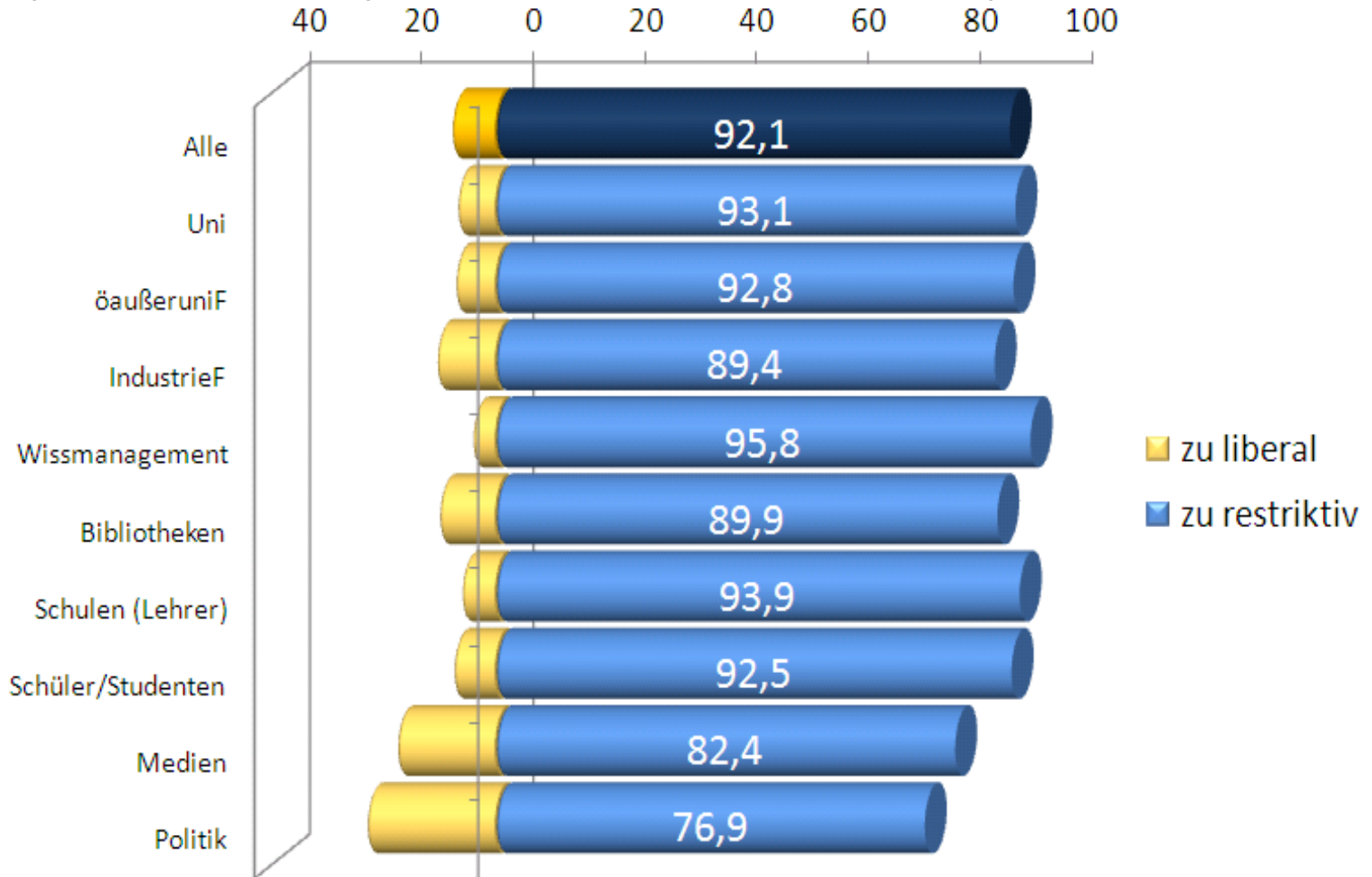
Use of copyrighted material **in**
schools only with special
permission of rightholders

öffentlich zugänglich zu machen, soweit dies zu dem jeweiligen Zweck geboten und zur
Verfolgung nicht kommerzieller Zwecke gerechtfertigt ist.

(2) Die öffentliche Zugänglichmachung eines für den Unterrichtsgebrauch an Schulen
bestimmten Werkes ist stets nur mit Einwilligung des Berechtigten zulässig. Die
öffentliche Zugänglichmachung eines Filmwerkes ist vor Ablauf von zwei Jahren nach
Beginn der üblichen regulären Auswertung in Filmtheatern im Geltungsbereich dieses
Gesetzes stets nur mit Einwilligung des Berechtigten zulässig.

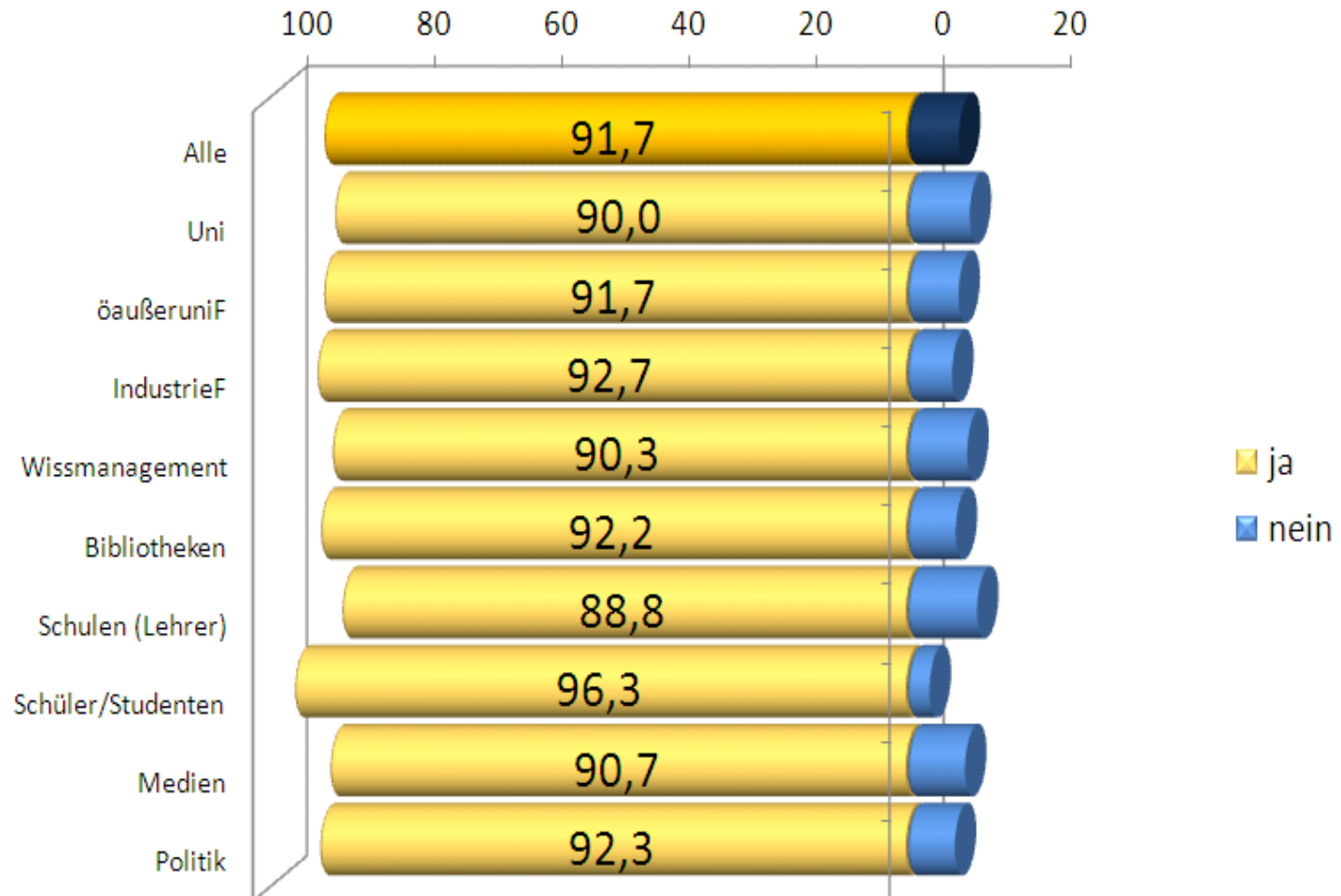
Use of movie/video material
only 2 years after public
performance

Question: **Is § 52a UrhG too liberal (restricting exclusive rights of rightholders too much) or too restrictive (useless for research and education)**



<http://www.urheberrechtsbuendnis.de/befragung2011-auswertung1.pdf>

Question: **Should published knowledge, at least knowledge produced through public financial means, be freely accessible and usable by everyone?**



<http://www.urheberrechtsbuendnis.de/befragung2011-auswertung1.pdf>

Open Access as a form of institutionalizing knowledge

But copyright is not the only form of institutionalizing knowledge and making it a commons, a common property

Open access is a form of institutionalizing knowledge, not by law but through the initiative of the commoners – the people who are concerned in the production, publishing and usage of knowledge.

The Berlin Declaration of Open access is an example for establishing guidelines for the publication and the usage of knowledge and information by acknowledging the moral rights (die Persönlichkeitsrechte) of the authors

But copyright is not the only form of institutionalizing knowledge, making it a commons, a common property

From the Berlin Declaration of Open - 2003

Open access contributions must satisfy two conditions:

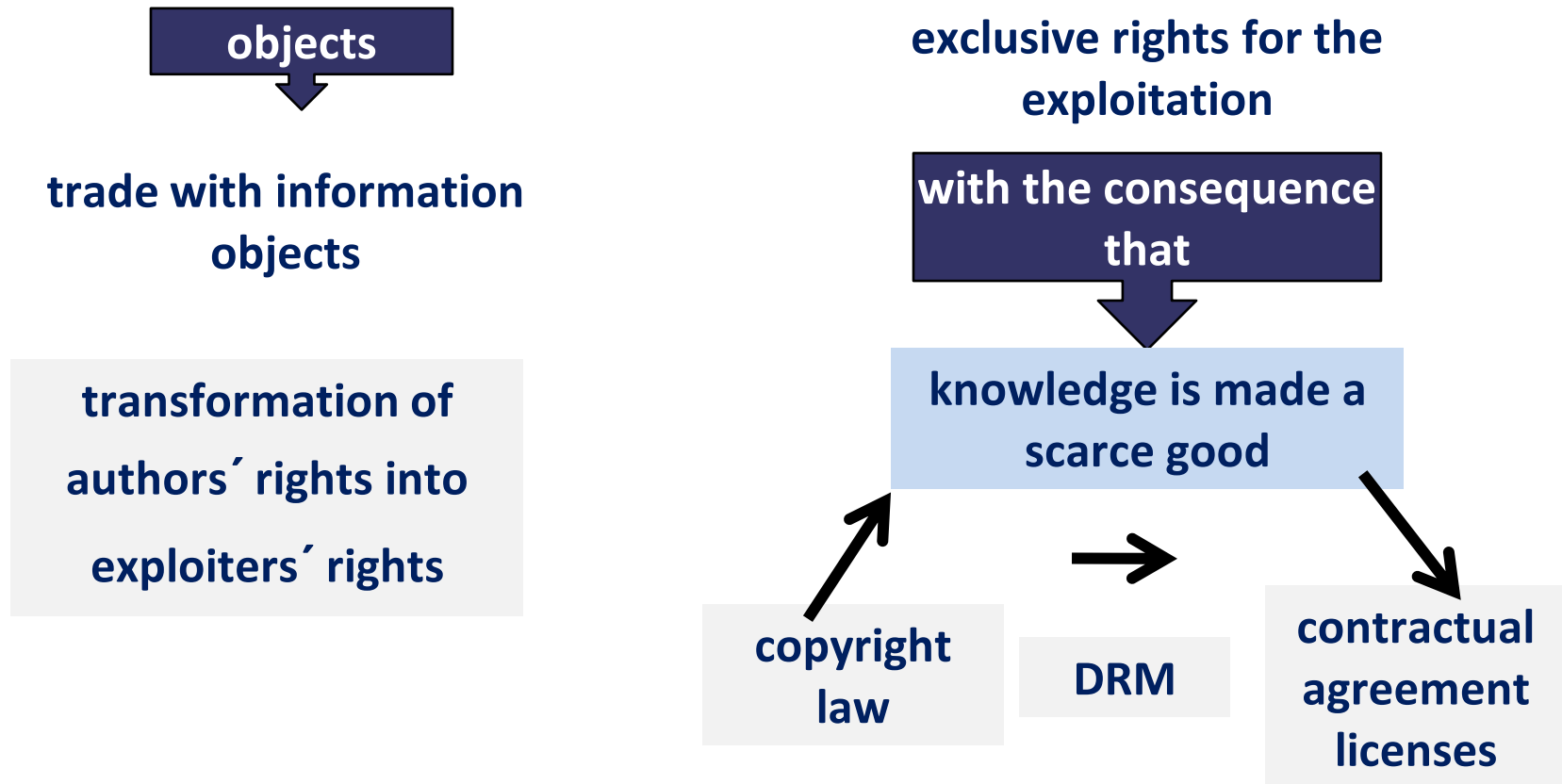
1. The author(s) and right holder(s) of such contributions grant(s) to all users a free, irrevocable, worldwide, right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship (community standards, will continue to provide the mechanism for enforcement of proper attribution and responsible use of the published work, as they do now), as well as the right to make small numbers of printed copies for their personal use.
2. A complete version of the work and all supplemental materials, including a copy of the permission as stated above, in an appropriate standard electronic format is deposited (and thus published) in at least one online repository using suitable technical standards (such as the Open Archive definitions) that is supported and maintained by an academic institution, scholarly society, government agency, or other well established organization that seeks to enable open access, unrestricted distribution, inter operability, and long-term archiving.

http://www.zim.mpg.de/openaccess-berlin/berlin_declaration.pdf

Models for the institutionalization of knowledge

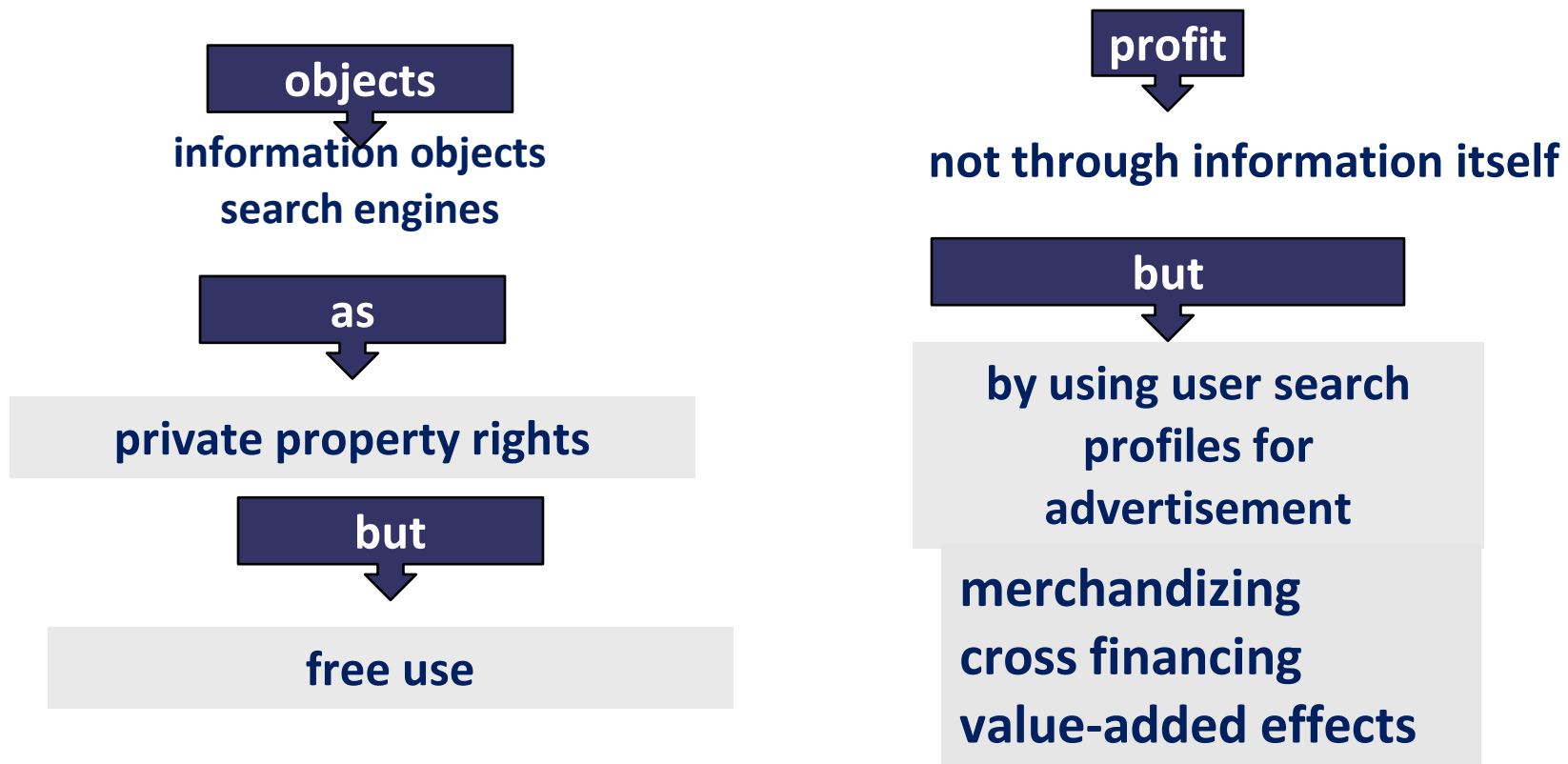
Models for the institutionalization of knowledge

(1) Proprietary commercial information markets



Models for the institutionalization of knowledge

(2) Freeconomics markets – prototype Google

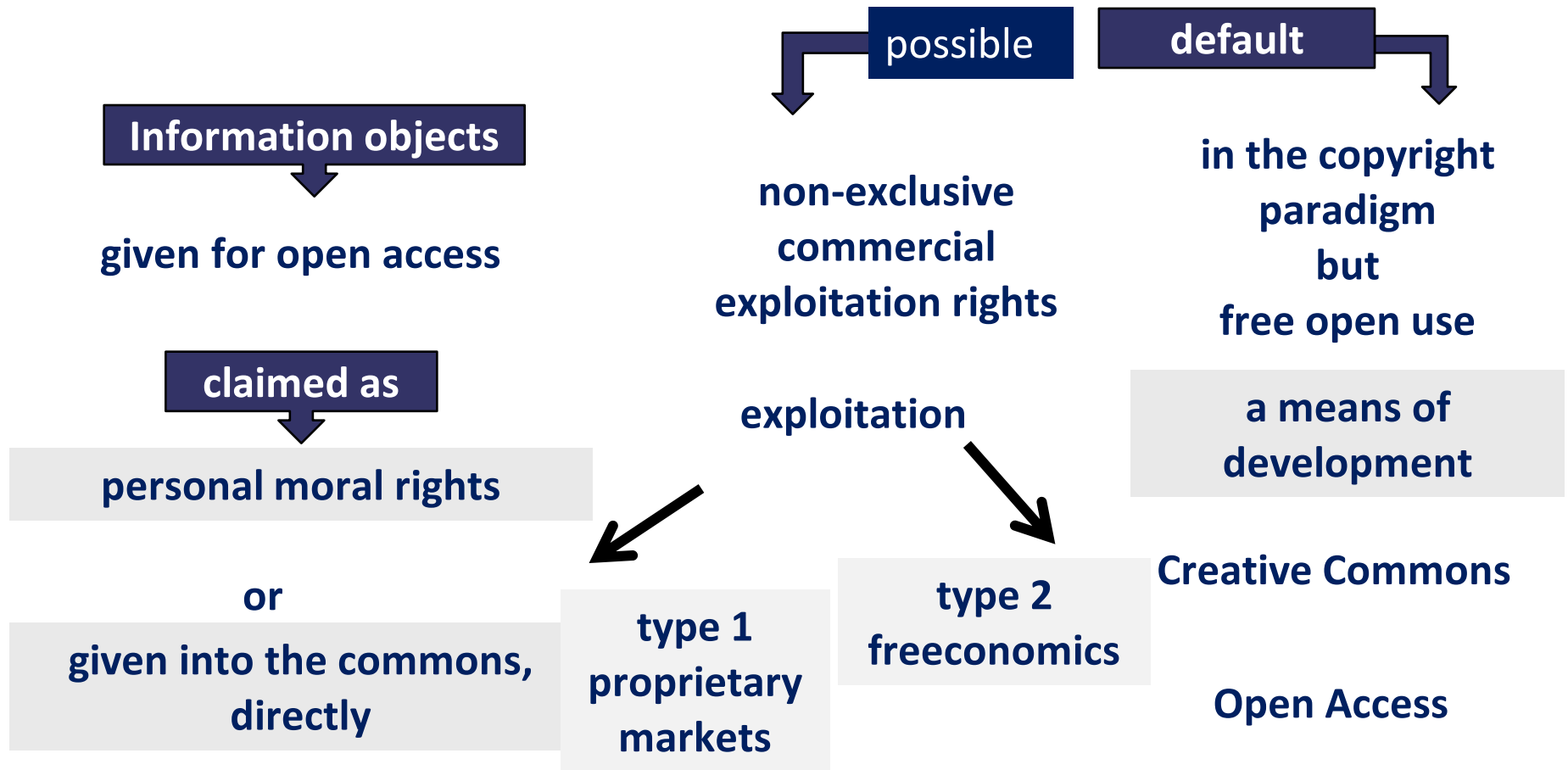


Will SpringerOpen mutate into a freeconomics model?

Usage open/free, copyright remains by the authors – the public finance the production costs and the profit of a company on the information market

Models for the institutionalization of knowledge

(3) Open free markets



Models for the institutionalization of knowledge

(4) commons-based information markets

Commons

air/sky
water
wildlife
natural resources
the public space
knowledge
....



**A property of mankind
but**

**private rights for
exploitation possible and
often necessary**

but only

**with non-exclusive exploitation rights
with sufficient compensation to the
public
as long as free access to everyone is
guaranteed**

What needs to be done? Consequences

Consequences

Needed

a new understanding of intellectual
property

knowledge as a commons is **not to be considered a**
res nullius, which can be used ad libitum by everyone for
whatever purpose

Knowledge and its derivative information products **cannot**
be the subject of exclusive private property rights

Consequences

a new understanding of intellectual
property

a new understanding of copyright
free access → the default
commercial exploitation → the exception

developing a concept of common property rights
without denying private individual property rights

Conclusion

Knowledge and its derivative information products **cannot**
be the subject of exclusive private property rights

Production and use of knowledge and its derivative information
products **depend on commons-based institutionalization forms**
appropriate to electronic environments

Commons-based information markets do not make the
commercial use of knowledge and its derivative information
products **impossible** but rather are the realistic chance for
the **information economy to survive successfully**

Paving the road in knowledge spaces

and

materializing rights to immaterial commons

means to institutionalize rights to free access and

usage to published knowledge as a commons

***Thank you for your
attention***

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