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Frequently Asked Questions about the Public Domain

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This FAQ about the public domain has been re-edited for a second time after it first appeared in Dutch language. The original Dutch version was the result of an extensive 'Public Research' called 'Public Domain 2.0', carried out by the Society for Old and New Media (De Waag) in Amsterdam in the beginning of 1998.

The rhetoric of the 'Information Super-Highway' and the 'Digital Revolution' are dominated by anti-statist and neo-liberal discourses. The 'Public Domain 2.0' project questioned the self-evident nature of these assertions. The project can be seen as an attempt to reassert public agency in the information age, not as a given, but as a sphere which urgently needs to be reinvented to address the conditions of the unfolding era of global information and communication systems.

1. What is the public domain?

First of all the public domain as a social and cultural space should be distinguished from its juridical definition. The public domain is traditionally understood as a commonly shared space of ideas and memories, and the physical manifestations that embody them. The monument as a physical embodiment of community memory and history exemplifies this principle most clearly. Access, signification, disgust, and appropriation of the public monument are the traditional forms in which the political struggles over collective memory and history are carried out.

Juridical Definition:

1: land owned directly by the government.

2: the realm embracing property rights that belong to the community at large, are unprotected by copyright or patent, and are subject to appropriation by anyone.

(Date: 1832)

[Source: WWWebster Dictionary - <http://www.m-w.com/dictionary>]

Commentary:

Esma Moukthar: "What we today call the 'public domain' consists of a multiplicity of places and virtual spaces, in which people do gather, but not primarily to find differences, but to find agreement. Agreement with that which at that particular moment constitutes your chosen identity. Thus the differences search for their own place and direction. Each their own public domain as an extension of what is private."

Moukthar contrasts this definition with Hanna Arendt's, "The space created by the plurality of people".

[Source: Esma Moukthar, *Publiek Domein: Privé-Domein*, PHD Thesis, University of Amsterdam, 1998]

2. What is the public domain 2.0?

Public Domain 2.0 is the future public space in a digital media environment. A space which is neither dominated by commercial interests (market driven), nor monopolised by the state. Apart from publicly accessible information, active public participation is a distinctive characteristic of the Public Domain 2.0. The public in part determines the design and content of this new public space.

Many discussions about the information society tend to emphasise either the role of industry, or that of the state. Notably absent in these discussions is the third sector; social and cultural organisations, organisations for mental and health care, non-governmental organisations (NGO's), and community and interest groups.

3. Who owns the public domain?

Everyone and no one. The public domain of information and communication should not be monopolised by the state nor by commercial corporations.

4. What is a network society?

To answer this question we must first ask:

4.1: What is an Information Economy?

The information sector of an economy is that sector whose products consist principally of information goods.

Information goods are non-material goods. They are most easily distinguished by the fact that they can be stored in various media and when stored in electronic media, their cost of reproduction becomes negligibly low. Some examples of information goods include software, music, video, databases, books, machine designs, genetic information, and other copyrighted or patented goods.

When the information sector of an economy becomes more dominant than either its industrial or ecology sector, then that economy has become an information economy.

[Source: Roberto Verzola, *Cyberlords: The Rentier Class of the Information Sector*

Resources: <http://www.tao.ca/earth/lk97/archive/0174.html>]

4.2: When is it appropriate to speak of an Information Society?

A society in which Information and Communication Technology has become the dominant technology, and whose economy is primarily an information economy, can be called an information society. Another commonly used term for this kind of society is 'Post-Industrial Society'.

4.3: And what about the Network Society?

Sociologist Manuel Castells concludes in his book *The Rise of the Network Society*, "...as a historical trend, dominant functions and processes in the information age are increasingly organised around networks. Networks constitute the new social morphology of our societies, and the diffusion of networking logic substantially modifies the operation and outcomes in processes of production, experience, power, and culture. While the networking form of

social organisation has existed in other times and spaces, the new information technology paradigm provides the material basis for its pervasive expansion throughout the entire social structure."

[Source: Manuel Castells, *The Rise of the Network Society: The Information Age* Vol.1, Blackwell Publishers, Malden (Mass.), 1996, p. 469]

Commentary:

"...people still live in places. But because function and power in our society are organised in the space of flows, the structural domination of its logic essentially alters the meaning and dynamic of places. Experience, by being related to places, becomes abstracted from power, and meaning is increasingly separated from knowledge. It follows a structural schizophrenia between two spatial logics that threatens to break down communication channels in society. The dominant tendency is toward a horizon of networked, ahistorical space of flows, aiming at imposing its logic over scattered, segmented places, increasingly unrelated to each other, less and less able to share cultural codes. Unless cultural and physical bridges are deliberately built between those two forms of space, we may be heading toward life in parallel universes whose times cannot meet because they are warped into different dimensions of a social hyperspace".

[Source: Castells, 1996, p. 428]

5.1: What is Free Software?

'Free software' is a matter of liberty, not price. To understand the concept, you should think of 'free speech', not 'free beer'.

'Free software' refers to users' freedom to run, copy, distribute, study, change and improve the software. More precisely, it refers to four kinds of freedom for the users of the software:

(freedom 0) The freedom to run the program, for any purpose.

(freedom 1) The freedom to study how the program works, and adapt it to your needs. Access to the source code is a precondition for this.

(freedom 2) The freedom to redistribute copies so you can help your neighbour.

(freedom 3) The freedom to improve the program, and release your improvements to the public, so that the whole community benefits. Access to the source code is a precondition for this.

A program is free software if users have all of these freedoms.

[Source: Free Software Foundation - <http://www.gnu.org/philosophy/free-sw.html>]

5.2: What is open source?

The basic idea behind open source is very simple. When programmers on the Internet can read, redistribute, and modify the source for a piece of software, it evolves. People improve it, people adapt it, people fix bugs. And this can happen at a speed that, if one is used to the slow pace of conventional software development, seems astonishing.

We in the open-source community have learned that this rapid evolutionary process produces better software than the traditional closed model, in which only a very few pro-

grammers can see source and everybody else must blindly use an opaque block of bits.

A complete definition of Open Source can be found at:

<http://www.opensource.org/osd.html>

[Source: The Open Source Initiative (OSI) - <http://www.opensource.org>]

5.3: What is copyleft?

The simplest way to make a program free is to put it in the public domain, un-copyrighted. This allows people to share the program and their improvements, if they are so minded. But it also allows uncooperative people to convert the program into proprietary software. They can make changes, many or few, and distribute the result as a proprietary product. People who receive the program in that modified form do not have the freedom that the original author gave them; the middleman has stripped it away.

In the GNU project, our aim is to give all users the freedom to redistribute and change GNU software. If middlemen could strip off the freedom, we might have many users, but those users would not have freedom. So instead of putting GNU software in the public domain, we 'copyleft' it. Copyleft says that anyone who redistributes the software, with or without changes, must pass along the freedom to further copy and change it.

Copyleft guarantees that every user has freedom.

[Source: Free Software Foundation - <http://www.gnu.org/copyleft/copyleft.html>]

5.4: Why are free software, open source, and copyleft relevant for the public domain 2.0?

Copyright and intellectual property protection, though invented to protect the rights of authors, increasingly serve the interests of intermediaries, publishers, software and media conglomerates. The increasing tendencies towards integration and mega mergers in and across these sectors create anti-markets that stifle the development of new products and ideas, promote pricing that is unrelated to production costs and as a result high consumer prices, and finally make markets increasingly inaccessible for new players.

The network logic can work in two opposed directions, towards the winner-takes-all effect: because many people use a given product more people use it, i.e. monopolies emerge as a 'natural' result. Or the fact that value of a network product rises because more people use it can promote systems of free distribution, shareware, and gift economies. This is a matter of choice, not necessity.

6. What is convergence?

"The term convergence eludes precise definition, but it is most commonly expressed as: The ability of different network platforms to carry essentially similar kinds of services, or the coming together of consumer devices such as the telephone, television and personal computer". (...)

Traditionally, communications media were separate. Services were quite distinct - broadcasting, voice telephony and on-line computer services. They operated on different networks and used different 'platforms': TV sets, telephones and computers. Each was regulated by different laws and different regulators, usually at national level.

Nowadays digital technology allows a substantially higher capacity of traditional and new services to be transported over the same networks and to use integrated consumer devices for purposes such as telephony, television or personal computing.

Telecommunications, media and IT companies are using the flexibility of digital technologies to offer services outside their traditional business sectors, increasingly on an international or global scale.

[Source: European Commission, *Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation: Towards an Information Society Approach*, Brussels, 3 December 1997. This and other papers can be found at: <http://www.ispo.cec.be/convergencegp/>]

Commentary:

As a result of the convergence of formerly separate media and (tele-)communications industries a gigantic fusion and merger process is haunting these industries. These mergers principally take two shapes: Firstly, 'horizontal integration': Companies within a certain business segment integrate to achieve a greater share in the world's media and communication markets. More interestingly, there also is a strong movement towards 'vertical integration', where mergers cut across various business segments; i.e. cable operators going into telephony, fusions of telecommunication companies and media content producers, software companies buying into film - and media - production companies.

Economists will always argue against vertical integration, putting production and distribution in one hand, which sets ideal conditions for the creation of what Braudel calls 'anti-markets'. Vertical integration has been an on-going process in the media and telecommunications industries, but it was the recently accepted mega merger between Internet provider *AmericaOnLine* and media giant *TimeWarner* that shocked the business and the media world alike. Though it remains to be seen if this colossus will turn out to be a successful venture, it is clear that the power issue, putting internet access, cable networks, TV and news stations, radio, magazines and print publishers under the helm of one single board of directors on such an unprecedented scale, is a direct threat to the freedom of information.

7. Who is going to pay for the public domain?

Right now the user generally pays for the telecommunications services according to use; in other words the consumer pays. In many European countries public broadcasting services are, on the contrary, financed through the state-budget, often via a public broadcasting fee paid by viewers and listeners. Commercial broadcasting is financed through sponsorship and advertisement.

If the public domain in the digital media environment is viewed as a community service, an alternative financial model will have to be developed. This will require either a restructuring of the budget for public broadcasting services, or the institution of an 'info-tax' on the commercial use of communication networks. Out of these revenues funds can be established, out of which community services that run over existing emerging networks can be financed.

8. Does the public domain still exist?

Like the public urban space, also the public media domain is threatened by privatisation and increased surveillance. These threats are now most pertinent for the Internet. While the proliferation of commercial communication in the mass-media in Europe is controlled by regulation, commercial exploitation is unrestricted, or even encouraged, in the case of the Internet.

9. Why is the right to communication necessary?

"The quality of information provision affects the ways in which we exercise our civil rights. These rights also imply the civil responsibility to monitor and respond to social developments. This can only be done adequately when we are properly informed through such media as broadcasting, the press, or the Internet".

[Source: Introduction to the *People's Communication Charter*]

Access to information and communication should be seen as fundamental democratic right for all citizens of the world, not as an asset or simply a consumer product.

Commentary:

The People's Communication Charter (PCC):

"The People's Communication Charter represents a citizens' demand for the protection of the quality of communication services and the provision of information. Communication services should be user-friendly, accessible and affordable and information should be reliable and pluralist.

(...) Rapid developments in the field of information and communication technology (digitalisation, the emergence of new media and network connectivity) have a far-reaching impact on society. The commercialisation of knowledge creates more and more situations in which a price tag is attached to the provision of information. As a result, a social gap grows between those who can afford access to information and those who will be excluded. Moreover, numerous mergers and joint ventures create powerful media conglomerates that escape adequate public control. In order to monitor these developments critically, it is urgent to initiate a global civil movement. In such areas as human rights, environmental protection and consumer interests, there is already a great deal of civil action. This has so far not been the case in the field of information and communication.

The eighteen articles of the People's Communication Charter can be summed up with these five key themes:

1. Communication and Human Rights

Communication and information services should be guided by respect for fundamental human rights.

2. Public Domain

Communication resources (such as airwaves and outer space) belong to the 'commons'; they are public domain and should not be appropriated by private parties.

3. Ownership

Communication and information services should not be monopolized by governments or business firms.

4. Empowerment

People are entitled to the protection of their cultural identity and to the development of their communicative skills.

5. Public accountability

Providers of communication and information services should accept public accountability for the quality of their performance”.

[Source: Introduction to the *People's Communication Charter*:
<http://www.waag.org/pcc>]

10. How can a public domain 2.0 be created?

Besides the existing public media channels, new forms of public media uses should be stimulated. Important are in particular new forms of media practice that aim at an active involvement of ordinary citizens in the new information and communication environments. Interactive media such as the internet are characterised by the fact that they are participatory media, and not merely oriented towards passive media consumption. In a participatory medium the user also becomes a provider of content, individually or in co-operation with others. Incidentally these kind of self-created services may be economically viable in themselves, but more often they relate to the cultural and social self-expression of citizens.