

THE NEGLECTED ROLE OF NON-PROFIT ORGANIZATIONS IN THE
INTELLECTUAL-COMMONS ENVIRONMENT

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ABSTRACT

Intellectual commons are intellectual resources, which anyone can use either without permission, or with permission granted in advance. Since intellectual commons are crucially important to creativity, innovation, and human development, the shrinkage of the intellectual-commons environment will be a profound loss for our cultural freedom. Therefore, protecting intellectual commons has been one of the most important goals of recent innovation and information policies. Awareness of this importance has grown in large measure because of expanding intellectual property (IP) laws and the growth of digital technology that controls the flow of information. Scholars have urged society to reconstruct the public domain that protects the commons from enclosure, and public-interest advocates have also sought ways to expand access to various online intellectual resources. As a result, significant institutional efforts have emerged to preserve the intellectual-commons environment.

Institutions are among the structures through which a society seeks to deal with its various problems; therefore, it is important to understand the effectiveness of alternative forms of institutions, such as the government, for-profit businesses, and nonprofit organizations (NPOs). By the same token, in any discussion of preserving and strengthening the intellectual-commons environment, it is crucial for researchers to understand how different institutions affect this environment. Over the past twenty years, the creation of institutions and organizations, such as Creative Commons (CC), the Electronic Frontier Foundation (EFF), the Free Software Foundation (FSF), and Public Knowledge (PK) has laid essential building blocks for intellectual-commons as a social movement. Of importance to this Dissertation, these organizations are primarily NPOs.

This Dissertation focuses on the role of NPOs that occupy an increasingly critical and visible position in the intellectual-commons environment in recent years. By organizing effective institutional arrangements to enhance the production, access, use, search-ability, and preservation of diverse intellectual commons, various NPOs have emerged to perform public functions in public-goods provision, and, perhaps more importantly, their influence sometimes extends beyond the market firm and the state agency. These organizations have unique features enabling them to serve important social aims that neither the private sector nor the government can adequately fulfill. Nonetheless, scholars have tended to overlook the NPO as a topic worthy of theorizing and empirical investigation. Given the importance of NPOs in the intellectual-commons environment, it is surprising how little attention they have received in legal literature.

The aim of this Dissertation is to fill that gap. Through a detailed description of these NPOs and a series of in-depth, semi-structured interviews with twenty-three officials from nineteen NPOs and three executives in proprietary businesses, I argue that NPOs have provided the social structures that are necessary to support the production of intellectual commons, and yet differ from the structures supporting the production of proprietary information. Based on current commons and NPO

scholarship, I propose that the intellectual-commons environment has provided an “environmental niche” in which NPOs thrive. That is, the nature of NPOs is more consistent with commons-environment culture than that characteristic of for-profits or the government.

I aim to contribute to current scholarship in three aspects. First, I want to highlight the importance of the nonprofit sector in the digitally networked environment, which has been neglected by mainstream IP and Internet law scholarship. Second, researchers from diverse social sciences have adopted and adapted various NPO theories in a variety of philanthropic settings, such as health education, care, and performance arts. Nonetheless, no scholar has tested NPO theories in the intellectual-commons environment. Through applying these theories in a new territory, this study not only broadens the scope of NPO scholarship but also provide new implications for existing NPO theories. Third, by illustrating NPOs’ role in shaping the commons realm, this study provides a new lens through which to understand the intellectual-commons environment.