

Diritto comparato della proprietà intellettuale

Lezione 3 – Pubblico dominio

Università di Trento – Facoltà di Giurisprudenza

a.a. 2024-2025

Roberto Caso

Esercizio (10 minuti)

Cercate una definizione di **pubblico dominio** (o **dominio pubblico**) in:

- **Legge italiana sul diritto d'autore**
- **Codice della proprietà industriale**

Esercizio (10 minuti)

- Cosa avete trovato?
- Sapreste dare una definizione di pubblico dominio?

LEGGE 22 aprile 1941 , n. 633

Protezione del diritto d'autore e di altri diritti connessi al suo esercizio (LdA)

Art. 80

1. Si considerano artisti interpreti ed artisti esecutori gli attori, i cantanti, i musicisti, i ballerini e le altre persone, inclusi i doppiatori che rappresentano, cantano, recitano, declamano o eseguono in qualunque modo opere dell'ingegno, siano esse tutelate o di **dominio pubblico**.

[...]

LEGGE 22 aprile 1941 , n. 633

Protezione del diritto d'autore e di altri diritti connessi al suo esercizio (LdA)

Capo III

- Diritti relativi ad edizioni critiche e scientifiche di opere di pubblico dominio
- Art. 85-quater, 85-quinquies

L'ordine del ragionamento

1. L'origine storica del concetto e la discussione filosofica. Regola o eccezione?
2. L'erosione del pubblico dominio
3. Access to Knowledge movement, Free software, Creative commons (cenni), Open Access, Public Domain Manifesto

1. Diderot (1764)



- Lettre sur le commerce des livres (1764)
- https://fr.wikisource.org/wiki/Lettre_address%C3%A9e_%C3%A0_un_magistrat_sur_le_commerce_de_la_librairie

1. Pievatolo su Diderot (1764)

<http://btfp.sp.unipi.it/dida/fpa/ar01s03.xhtml#diderot>

- «Diderot, allo scopo di emancipare gli scrittori dal mecenatismo, **costruisce il diritto d'autore come fondato su una sua proprietà originaria, indistinguibile dalla proprietà di un oggetto materiale e da trattarsi, dunque, alla stessa stregua di quella.** L'autore produce la propria opera tramite una **elaborazione di idee, esperienze e sentimenti della sua propria anima:** questo è un caso di **applicabilità perfetta della fondazione lockeana** della proprietà privata sul lavoro personale. L'opera dell'ingegno è infatti una produzione irripetibile, che riposa interamente sulla creatività dell'individuo».

1. Pievatolo su Diderot (1764)

<http://btfp.sp.unipi.it/dida/fpa/ar01s03.xhtml#diderot>

- «E' inoltre **bene che l'edizione avvenga in un regime di monopolio a causa degli alti costi della stampa**: la concorrenza fra librai danneggerebbe la qualità delle edizioni.
- Diderot, in altre parole, **mira a trasformare la proprietà letteraria in un diritto soggettivo**, indipendente dalla concessione regia, allo scopo di rendere l'autore economicamente autonomo. In questa prospettiva, in un mondo in cui la stampa è una intrapresa costosa e rischiosa, **sente gli editori come suoi naturali alleati e fa proprie le loro rivendicazioni**».

1. Décret des 13 et 19 janvier 1791 (Le Chapelier)

- «la plus **sacrée**, la plus **inattaquable** et, si je puis parler ainsi, la plus **personnelle** de toutes les propriétés est l'ouvrage, fruit de la pensée d'un écrivain»

1. Sacra

2. Inattaccabile

3. Personale

1. Décret des 13 et 19 janvier 1791 (Le Chapelier)

- «cependant **c'est une propriété d'un genre tout à fait différent des autres propriétés.** Quand un auteur a livré son ouvrage au public, quand cet ouvrage est entre les mains de **tout le monde**, que tous les hommes instruits le connaissent, qu'ils en ont confié à leur mémoire les traits les plus heureux, il semble que, dès ce moment, **l'écrivain ait associé le public à la propriété, ou plutôt la lui ait transmise tout entière.**

1. Décret des 13 et 19 janvier 1791 (Le Chapelier)

- «Cependant, comme il est extrêmement juste que les hommes qui cultivent le domaine de la pensée tirent quelque fruit de leur travail, il faut que pendant leur vie, et quelques années après leur mort, personne ne puisse, sans leur consentement, disposer du produit de leur génie. Mais enfin, après le délai fixé, **la propriété du public commence**, et tout le monde doit pouvoir imprimer, publier les ouvrages qui ont contribué à éclairer l'esprit humain».

1. Fichte (1790)



- .G. Fichte, «Beweis der Unrechtmäßigkeit des Büchernachdrucks. Ein Räsonnement und eine Parabel», *Berlinische Monatsschrift*, Mai 1793; trad. it. di M.C. Pievatolo, corredata dal testo originale, disponibile on-line sul sito del *Bollettino telematico di filosofia politica* <<https://commentbfp.sp.unipi.it/fichte/>>

1. Fichte (1790)

- «Dunque quanto si offre in primo luogo sicuramente in vendita con la pubblicazione di un libro è **la carta stampata**, per tutti coloro che hanno i soldi per pagarlo o un amico per farselo prestare; e il **suo contenuto**, per tutti coloro che hanno abbastanza cervello e diligenza per impadronirsene».

1. Fichte (1790)

- **«La prima, con la vendita, cessa immediatamente di essere una proprietà dello scrittore (che qui possiamo considerare pur sempre come venditore) e diviene proprietà esclusiva del compratore, perché non può avere più signori; ma il secondo, in virtù della sua natura spirituale, può essere comune a molti, così che ciascuno lo possiede interamente, e con la pubblicazione di un libro cessa tuttavia di essere proprietà esclusiva del primo signore (ammesso che lo sia stato prima, come non è il caso per qualche libro di quest'anno), ma rimane sua proprietà in comune con molti».**

1. Fichte (1790)

- **«– Ciò di cui però nessuno può appropriarsi, perché rimane fisicamente impossibile, è la forma di questi pensieri, la connessione di idee e i segni con i quali sono rappresentati».**

2. Boyle (2002)

- English enclosure movement: «the process of fencing off common land and turning it into private property».

James Boyle

Fencing off ideas: enclosure & the disappearance of the public domain

2. Boyle (2002)

- «Although we refer to it as "the enclosure movement," it was actually a series of enclosures that **started in the fifteenth century** and went on, with differing means, ends, and varieties of state involvement, **until the nineteenth**».

2. Boyle (2002)

- «This is a debate of more than antiquarian interest, for we are in the midst of **a new kind of enclosure movement**, this one aimed at exploiting a new and intangible kind of commons - call it a 'commons of the mind'.»

2. Boyle (2002)

- Databases
- Business methods
- Gene sequences

2. Boyle (2003)



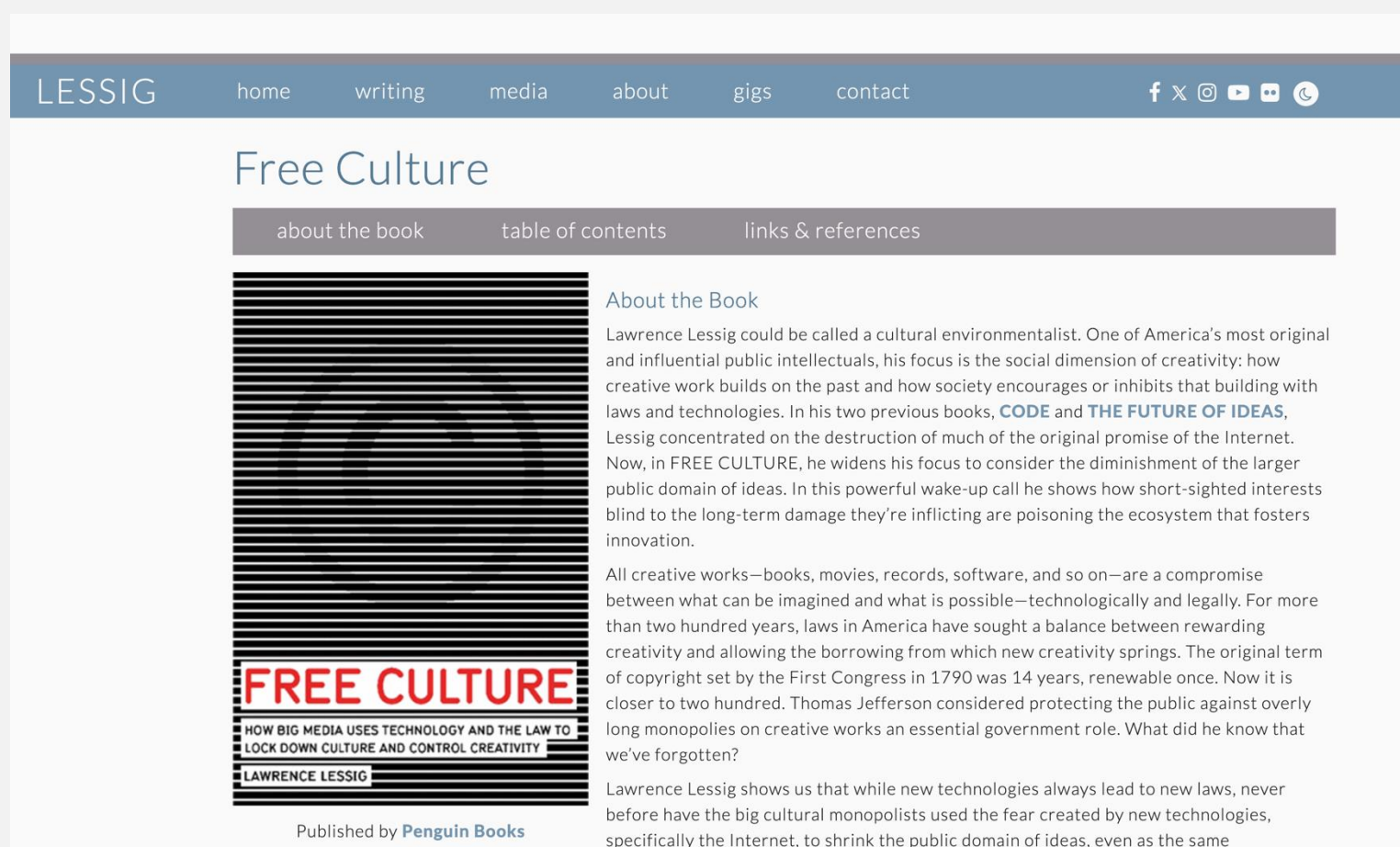
DUKE LAW SCHOOL

Duke Law School Public Law and
Legal Theory Research Paper Series

Research Paper No. 53 December 2003

The Second Enclosure Movement
And the Construction of the Public Domain

2. Lessig (2004)



The screenshot shows the website for Lawrence Lessig's book 'Free Culture'. The top navigation bar includes 'LESSIG', 'home', 'writing', 'media', 'about', 'gigs', and 'contact', along with social media icons for Facebook, X, Instagram, YouTube, and a moon icon. Below the navigation bar, the title 'Free Culture' is displayed. A secondary navigation bar contains 'about the book', 'table of contents', and 'links & references'. The main content area features a book cover on the left and a text description on the right. The book cover has a black background with white horizontal lines and the title 'FREE CULTURE' in large red letters. Below the title, it reads 'HOW BIG MEDIA USES TECHNOLOGY AND THE LAW TO LOCK DOWN CULTURE AND CONTROL CREATIVITY' and 'LAWRENCE LESSIG'. The publisher 'Penguin Books' is mentioned at the bottom of the cover. The text on the right, under the heading 'About the Book', describes Lessig as a cultural environmentalist and discusses the social dimension of creativity, the impact of laws and technologies, and the book's focus on the public domain of ideas and the damage caused by short-sighted interests.

LESSIG home writing media about gigs contact f x @ y t c

Free Culture

about the book table of contents links & references

About the Book

Lawrence Lessig could be called a cultural environmentalist. One of America's most original and influential public intellectuals, his focus is the social dimension of creativity: how creative work builds on the past and how society encourages or inhibits that building with laws and technologies. In his two previous books, **CODE** and **THE FUTURE OF IDEAS**, Lessig concentrated on the destruction of much of the original promise of the Internet. Now, in **FREE CULTURE**, he widens his focus to consider the diminishment of the larger public domain of ideas. In this powerful wake-up call he shows how short-sighted interests blind to the long-term damage they're inflicting are poisoning the ecosystem that fosters innovation.

All creative works—books, movies, records, software, and so on—are a compromise between what can be imagined and what is possible—technologically and legally. For more than two hundred years, laws in America have sought a balance between rewarding creativity and allowing the borrowing from which new creativity springs. The original term of copyright set by the First Congress in 1790 was 14 years, renewable once. Now it is closer to two hundred. Thomas Jefferson considered protecting the public against overly long monopolies on creative works an essential government role. What did he know that we've forgotten?

Lawrence Lessig shows us that while new technologies always lead to new laws, never before have the big cultural monopolists used the fear created by new technologies, specifically the Internet, to shrink the public domain of ideas, even as the same

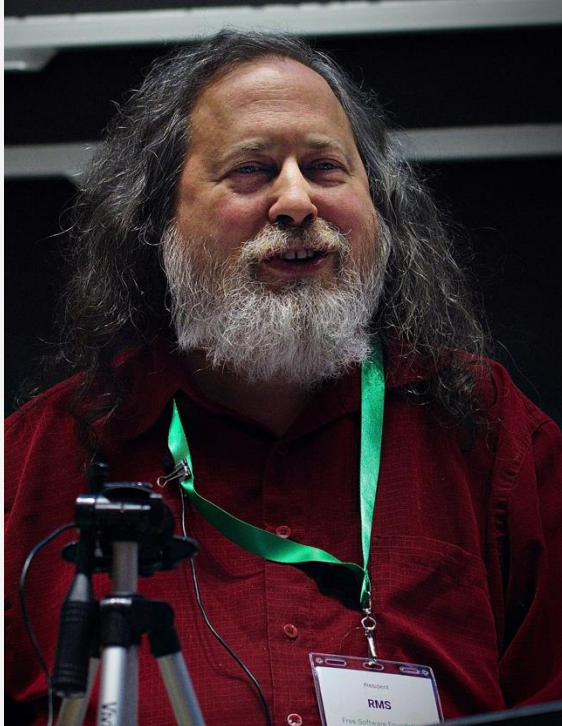
Published by Penguin Books

3. Access to knowledge movement



The screenshot shows the Wikipedia interface for the article "Access to Knowledge movement". At the top, there is a navigation bar with the Wikipedia logo, a search bar, and links for "Create account" and "Log in". Below the navigation bar is a blue-bordered banner with a globe icon and the text: "Donate your 5×1000 to Wikimedia Italia! Write: 94039910156". The article title "Access to Knowledge movement" is displayed in a large font, with a language selector showing "9 languages". Below the title are tabs for "Article" and "Talk", and a row of action links: "Read", "Edit", "View history", and "Tools". The main content area starts with a summary: "From Wikipedia, the free encyclopedia". The first paragraph states: "The **Access to Knowledge (A2K) movement** is a loose collection of [civil society](#) groups, [governments](#), and individuals converging on the idea that access to [knowledge](#) should be linked to fundamental principles of [justice](#), [freedom](#), and [economic development](#)." Below this is a section titled "History" with an "[edit]" link. The text under "History" reads: "The [Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities](#) from 2003 is a major declaration reflecting the goals of the movement pertaining to academic publishing." The next paragraph states: "In October 2004, the [Geneva declaration on the future of the World Intellectual Property Organization](#) emerged from a call from [Brazil](#) and [Argentina](#) for a development agenda for the [World Intellectual Property Organization](#), and was supported by hundreds of organizations.^[1] Supporters included the [Free Software Foundation](#), with a statement *Towards a "World Intellectual Wealth Organisation": Supporting the Geneva Declaration*.^[2]" On the left side of the article, there is a "Contents" section with a "hide" button. It lists several sections: "(Top)", "History", "Human rights debate", "Supporters", "Knowledge Ecology International", "Consumers International", "See also", "References", "Further reading", and "External links".

3. Think free



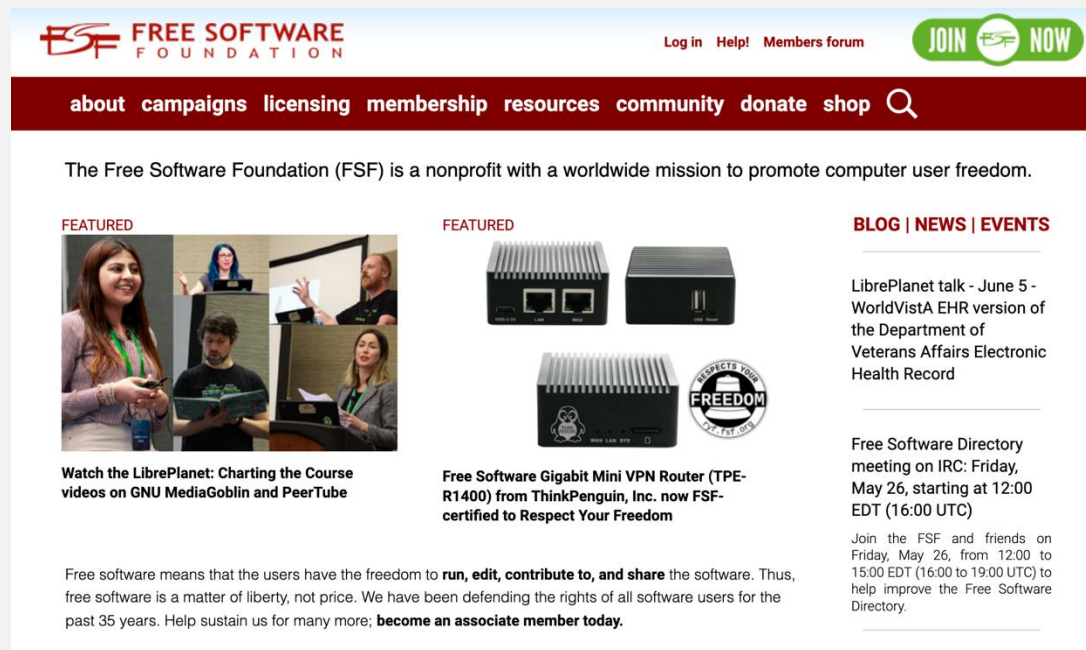
- Richard Stallman "Think free as in free speech, not free beer."

https://it.wikipedia.org/wiki/Richard_Stallman#/media/File:Richard_Stallman_at_LibrePlanet_2019.jpg

3. Free software foundation

<https://www.fsf.org>

- «The Free Software Foundation (FSF) is a nonprofit with a worldwide mission to promote computer user freedom»



The screenshot shows the homepage of the Free Software Foundation (FSF). At the top left is the FSF logo and the text "FREE SOFTWARE FOUNDATION". To the right are links for "Log in", "Help!", and "Members forum", along with a green "JOIN NOW" button. Below this is a dark red navigation bar with white text for "about", "campaigns", "licensing", "membership", "resources", "community", "donate", and "shop", followed by a search icon. The main content area features a paragraph: "The Free Software Foundation (FSF) is a nonprofit with a worldwide mission to promote computer user freedom." Below this are three featured sections. The first, titled "FEATURED", shows a collage of people at a conference with the caption: "Watch the LibrePlanet: Charting the Course videos on GNU MediaGoblin and PeerTube". The second, also titled "FEATURED", shows two black network routers with the caption: "Free Software Gigabit Mini VPN Router (TPE-R1400) from ThinkPenguin, Inc. now FSF-certified to Respect Your Freedom". The third section is titled "BLOG | NEWS | EVENTS" and contains two entries: "LibrePlanet talk - June 5 - WorldVista EHR version of the Department of Veterans Affairs Electronic Health Record" and "Free Software Directory meeting on IRC: Friday, May 26, starting at 12:00 EDT (16:00 UTC)". At the bottom of the page, a paragraph states: "Free software means that the users have the freedom to **run, edit, contribute to, and share** the software. Thus, free software is a matter of liberty, not price. We have been defending the rights of all software users for the past 35 years. Help sustain us for many more; **become an associate member today.**"

3. La definizione di software libero

<https://www.gnu.org/philosophy/free-sw.html>

Le quattro libertà essenziali

Un programma è software libero se gli utenti del programma godono delle quattro libertà fondamentali: [1]

- Libertà di eseguire il programma come si desidera, per qualsiasi scopo (libertà 0).
- Libertà di studiare come funziona il programma e di modificarlo in modo da adattarlo alle proprie necessità (libertà 1). L'accesso al codice sorgente ne è un prerequisito.
- Libertà di ridistribuire copie in modo da aiutare gli altri (libertà 2).
- Libertà di migliorare il programma e distribuirne pubblicamente i miglioramenti da voi apportati (e le vostre versioni modificate in genere), in modo tale che tutta la comunità ne tragga beneficio (libertà 3). L'accesso al codice sorgente ne è un prerequisito.

3. GNU General Public License v.1 (1989)

<https://www.gnu.org/licenses/old-licenses/gpl-1.0.html>

GNU GENERAL PUBLIC LICENSE
Version 1, February 1989

Copyright (C) 1989 Free Software Foundation, Inc.
51 Franklin St, Fifth Floor, Boston, MA 02110-1301 USA

Everyone is permitted to copy and distribute verbatim copies
of this license document, but changing it is not allowed.

3. Budapest Open Access Initiative (2002)



The screenshot shows the top portion of the BOAI website. The header is a solid orange bar containing the BOAI logo on the left and a navigation menu on the right with links for HOME, READ (underlined), SIGN, BOAI20, BOAI15, BOAI10, and MORE with a dropdown arrow. Below the header is a light orange breadcrumb trail: Home / Read the Declaration. The main content area is white and features the heading "Read the Declaration" in large, bold, black text. Below this is the sub-heading "BUDAPEST OPEN ACCESS INITIATIVE" in bold, black, all-caps text. To the right, under the heading "ABOUT THE DECLARATION", there is a paragraph of text that is partially cut off at the bottom.

BOAI

HOME READ SIGN BOAI20 BOAI15 BOAI10 MORE ▾

Home / Read the Declaration

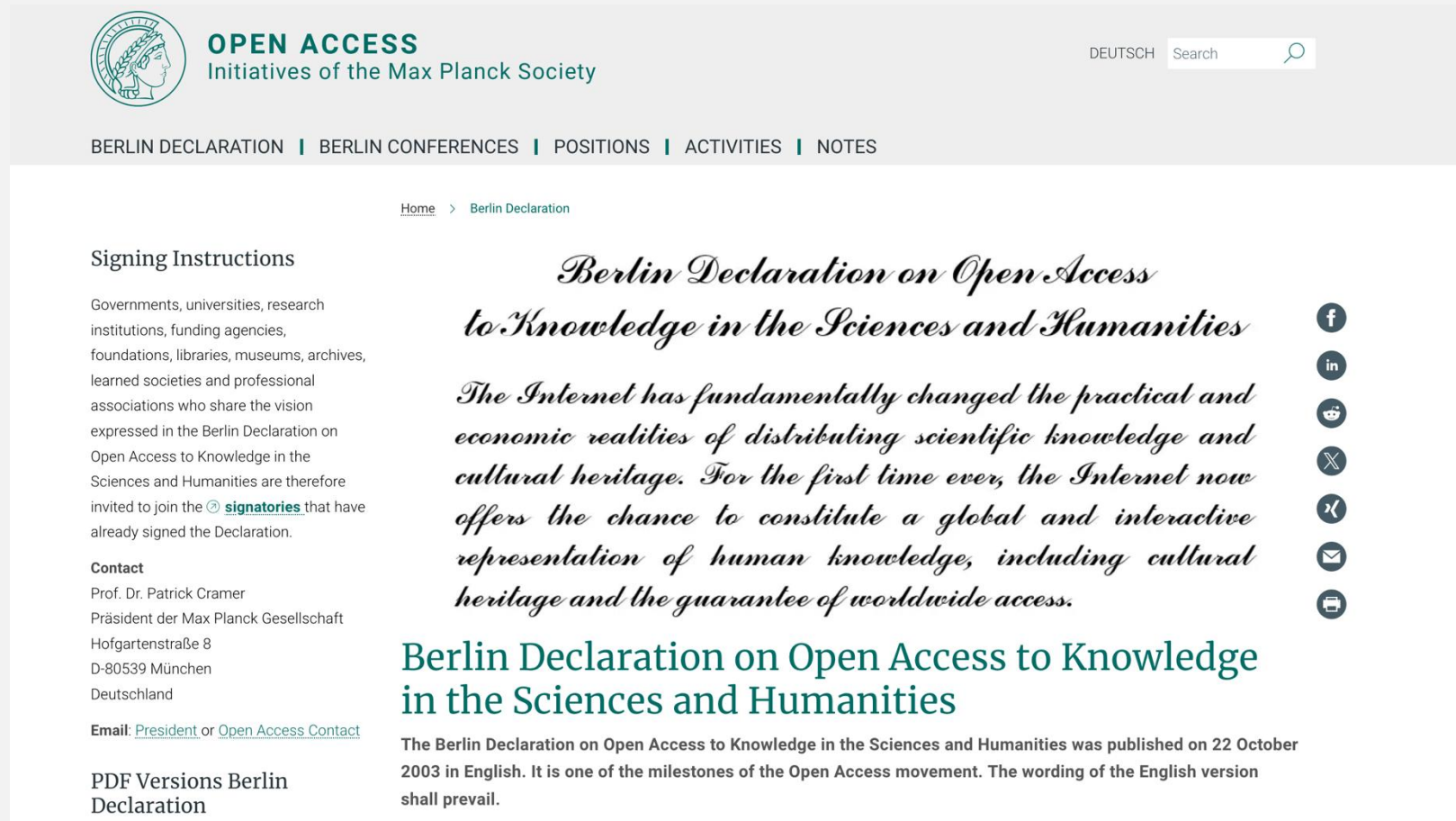
Read the Declaration

BUDAPEST OPEN ACCESS INITIATIVE


ABOUT THE DECLARATION

The BOAI is a statement of principle, a statement of strategy, and a statement of commitment. The initiative was signed by the Budapest participants and thousands of individuals and organizations from around the world who represent researchers, universities, laboratories, libraries, foundations, journals, publishers, learned societies, and kindred

3. Berlin declaration on Open Access (2003)



The screenshot shows the website for the Berlin Declaration on Open Access. At the top left is the logo of the Max Planck Society, a circular emblem with a profile of a woman. To its right, the text reads "OPEN ACCESS Initiatives of the Max Planck Society". On the top right, there is a language selector set to "DEUTSCH" and a search bar. Below the header is a navigation menu with links for "BERLIN DECLARATION", "BERLIN CONFERENCES", "POSITIONS", "ACTIVITIES", and "NOTES". The main content area features a breadcrumb trail "Home > Berlin Declaration". On the left side, there is a section titled "Signing Instructions" which describes the types of organizations invited to sign and provides contact information for Prof. Dr. Patrick Cramer, President of the Max Planck Society. Below this is a link to "PDF Versions Berlin Declaration". The center of the page is dominated by the title "Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities" in a large, elegant serif font, followed by a paragraph of text in the same font: "The Internet has fundamentally changed the practical and economic realities of distributing scientific knowledge and cultural heritage. For the first time ever, the Internet now offers the chance to constitute a global and interactive representation of human knowledge, including cultural heritage and the guarantee of worldwide access." To the right of this text is a vertical column of social media icons for Facebook, LinkedIn, YouTube, Twitter, and Email. Below the main text is a section titled "Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities" in a teal color, followed by a short paragraph explaining the declaration's significance and date.

 **OPEN ACCESS**
Initiatives of the Max Planck Society

DEUTSCH

BERLIN DECLARATION | BERLIN CONFERENCES | POSITIONS | ACTIVITIES | NOTES

[Home](#) > [Berlin Declaration](#)

Signing Instructions

Governments, universities, research institutions, funding agencies, foundations, libraries, museums, archives, learned societies and professional associations who share the vision expressed in the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities are therefore invited to join the [signatories](#) that have already signed the Declaration.

Contact
Prof. Dr. Patrick Cramer
Präsident der Max Planck Gesellschaft
Hofgartenstraße 8
D-80539 München
Deutschland

Email: [President](#) or [Open Access Contact](#)

PDF Versions Berlin Declaration

Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities

The Internet has fundamentally changed the practical and economic realities of distributing scientific knowledge and cultural heritage. For the first time ever, the Internet now offers the chance to constitute a global and interactive representation of human knowledge, including cultural heritage and the guarantee of worldwide access.

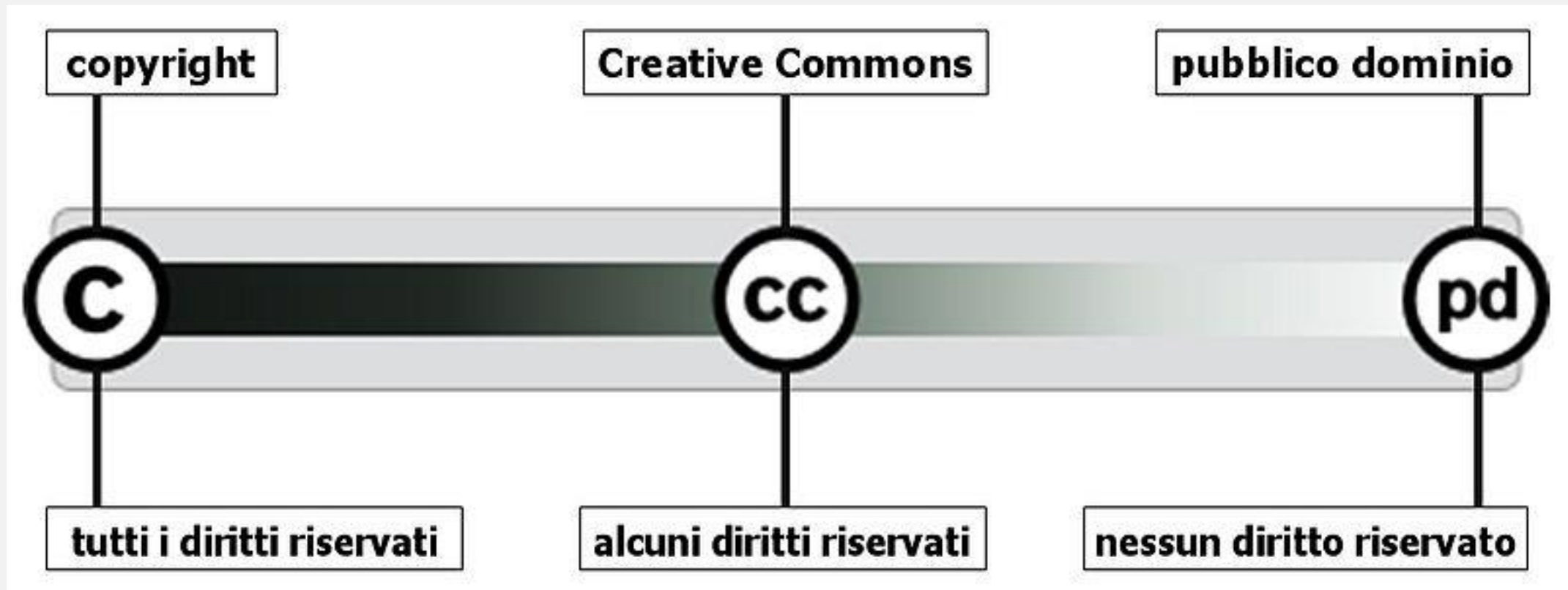
Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities

The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities was published on 22 October 2003 in English. It is one of the milestones of the Open Access movement. The wording of the English version shall prevail.

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[in](#)
[yt](#)
[tw](#)
[envelope](#)
[printer](#)

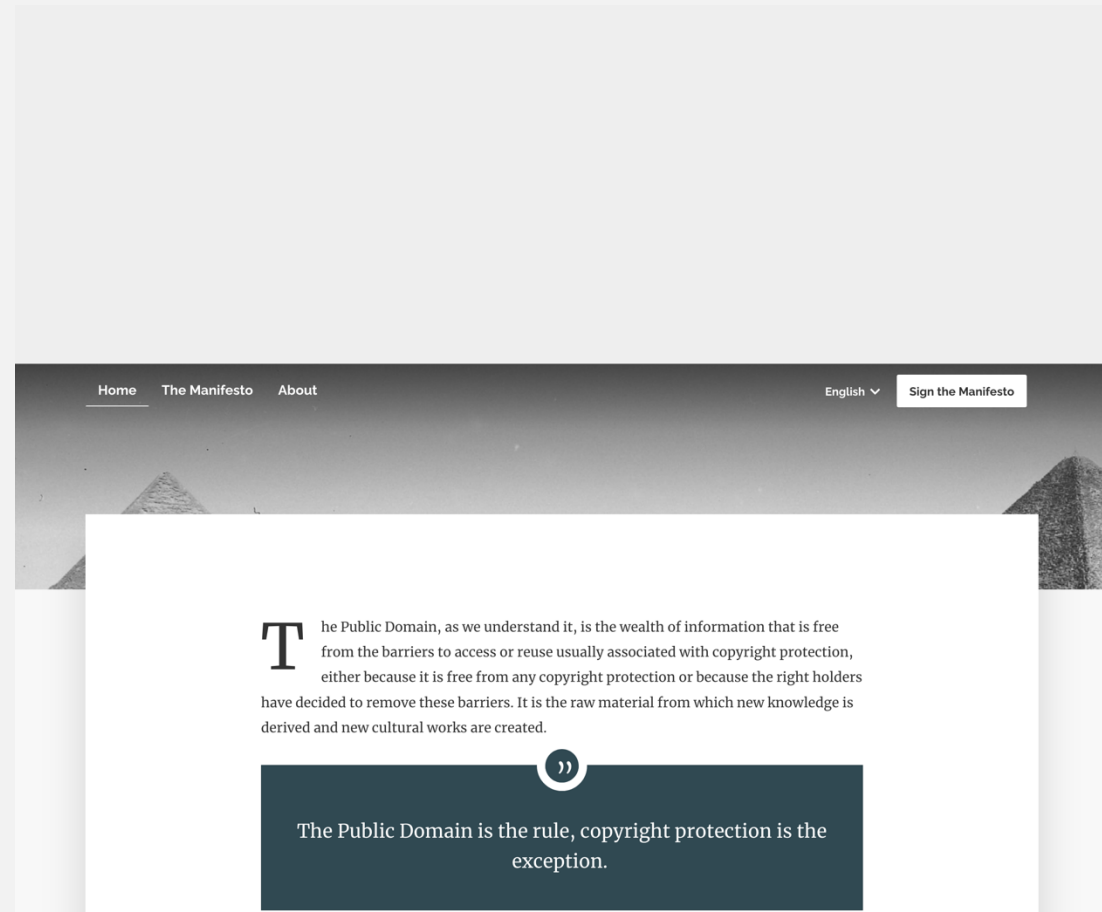
3. Larry Lessig (2004)





https://it.m.wikipedia.org/wiki/File:Licenze_Creative_Commons.jpg

3. Public domain manifesto (Communia): <https://publicdomainmanifesto.org/>



3. Public domain manifesto (Communia): <https://publicdomainmanifesto.org/>

- «The Public Domain, as we understand it, is the wealth of information that is free from the barriers to access or reuse usually associated with copyright protection, either because it is free from any copyright protection or because the right holders have decided to remove these barriers».

Lecture

- J. Boyle, Fencing off Ideas: Enclosure & the Disappearance of the Public Domain (March 1, 2002). *Daedalus*, Vol. 131, No. 2, Spring 2002, Available at SSRN: <https://ssrn.com/abstract=3084184>

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