

LAW AND THE LAWYER-FREE ZONE: TRAVELS IN THE PUBLIC DOMAIN

ABSTRACT

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In my paper I want to explore the way in which the public domain—partly due to the increase in intellectual property protectionism during the last twenty-odd years—has emerged the coveted “other,” a desired and beneficial state that is seen as the ultimate line of defence against the blitz-krieg inclined copyright holders. I will particularly focus on the ramifications of Lawrence Lessig’s definition of the public domain as a “lawyer-free zone,” which in some sense, considering the number of legal scholars involved in the study of the public domain and the red tape management that comes with initiatives such as the creative commons, is a somewhat paradoxical label.

In any case, the public domain seems to be a place where those of us who are *not* legal scholars would have something to contribute to the discussion. I am therefore especially interested in the way different epistemologies are at work in the study of the public domain; are there dominant ways of looking at the public domain, and if so, what are they and from where are they articulated? Does this mean that there are analytical trajectories that have been disregarded and what could alternative theoretical and methodological approaches contribute to what David Lange calls an “affirmative defence” of the public domain?

Although I can only briefly discuss these questions in my paper, they are hopefully more fully covered in an article in the forthcoming special issue on intellectual property in the journal *Cultural Studies*, where I deal with the possible consequences of the by now commonplace use of the (highly gendered, by the way) terms “creativity” and “free/dom” as powerful rhetorical devices in the critique of intellectual property expansionism. I am currently at work on a book about the public domain under contract with the University of Toronto Press for publication in 2007, a book that in some sense represents a follow-up to my *No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization*, published last year by the same Press.