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Our shrinking commons

By **MARK KRAMER**, Special to the Star Tribune

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"Federal law provides severe civil and criminal penalties for unauthorized reproduction, distribution or exhibition of copyrighted motion pictures."

What's with the many movies we watch at home launching with this threat? You can't even fast-forward past it! And what's with day-care centers being threatened for decorating with Mickey Mouse images? And club proprietors who must caution open-mike artists against strumming published songs? Are rockers who fold in a few seconds from some popular work, and visual artists who quote commercial imagery, really thieves?

It wasn't always that way. Such cultural expression was, for centuries past, sharing, not theft. We've moved radically far in a long process of intellectual enclosure, privatizing and shutting down a vigorous cultural commons.

Lewis Hyde, MacArthur Fellow and professor at Kenyon and Harvard, offers a brilliant and absorbing account of the development of restrictive and enduring private ownership of shared experience. "Common as Air" develops, in Hyde's own words, "a model and defense of our 'cultural commons,' that vast store of unowned ideas, inventions and works of art that we have inherited from the past and that we continue to create."

"The Commons" described medieval villagers' shared lands. These weren't anarchistic; restrictions called "stints" stabilized them -- you could graze only your own few cows, cut rushes only in a certain month. Villagers annually partied and ripped down "encroaching" structures -- at least until the Enclosure Movement, starting in the mid-1700s, enabled aristocrats to fence out other villagers.

The United States' Founding Fathers supported far less restrictive commons than have come to pass. Hyde writes about "John Adams attacking the Stamp Act as a tax on knowledge, Benjamin Franklin encouraging skilled artisans to smuggle technical expertise out of England, James Madison explaining why unlimited copyright undermines civic and religious liberty, and Thomas Jefferson trying to get a prohibition on patent monopolies written into the Bill of Rights." Copyrights and patents originated as brief tradeoffs, minimal, transient monopolies granted to stimulate and reward invention.

Hyde charts corporate interests' erosion of these views, restricting sharing of even long-iconic creativity, the prolonging of copyright terms and the widening boundaries of exclusive ownership. These days, the Sonny Bono Copyright Term Extension Act of 1998, lobbied for by major media companies, assures personal copyrights for life plus 70

years and corporate rights typically enduring from 95 to 120 years.

Hyde explores the constitutional framework for a lost "balance between private wealth and commonwealth." His argumentation is dazzling, dense with lucid ideas, erudition, wry humor. Hyde is a scholar and poet, not a movement leader, however. We end up saddened -- and frustrated -- by his demonstration of what's been taken. Aside from a Copy Left crowd who, within the current legal context, elect to reassign their intellectual property rights back to the public, we're all grumbling and paying up. Like his elegant 1983 underground bestseller, "The Gift," about social codes of giving and accepting, "Common as Air" will surely inspire thoughtful responses for even longer than its own copyright endures.

Mark Kramer was founding director of the Nieman Program for Narrative Journalism at Harvard, a professor of journalism at Boston University and writer-in-residence at Smith College in Massachusetts.

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