

## Common Interests: Libraries, the Knowledge Commons, and Public Policy

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Every month, a few hundred million people visit Wikipedia, the free online encyclopedia. These readers access the site on their phones and their tablets, their work computers and their school computers. They look up articles about everything from pop culture to

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mathematical theories, and they read editions of Wikipedia in over 200 languages. A small portion of these readers, on the order of 80,000 people, contribute to Wikipedia by adding new articles, editing existing articles, uploading photos and other materials, or participating in the curation processes that keep forty million Wikipedia articles organized and up-to-date.<sup>1</sup> This collaborative, decentralized research and writing effort has, over the fifteen years of Wikipedia's existence, produced not only the largest encyclopedia to ever exist, but also eleven related knowledge projects, including a collection of thirty-three million freely licensed media files, a collection of out-of-copyright texts, a multilingual dictionary with five million entries, and more.<sup>2</sup> All of these projects are made available for anyone to use, without cost or other restrictions on access or reuse.

The volunteer editors who collect, research, write, and curate this tremendous repository of free content are in the business of collecting facts and finding answers to questions and then sharing them widely and freely. Although these editors do not have centralized coordination like a traditionally published encyclopedia, Wikipedia's contributors do share a set of content policies and general principles that guide the project. Wikipedia aims to be neutral, factual, and openly available to anyone.<sup>3</sup> And people volunteer for Wikipedia's work in large part because they know its impact, and want to help build a better information source.<sup>4</sup> Wikipedia is part of the knowledge commons, a shared intellectual resource that anyone may use or contribute to. Anyone who has access to the Internet can access Wikipedia without having to pay or be affiliated with an institution. Because of this, Wikipedia reaches far more people than almost any other reference source. Its many language editions are read and used by millions of people around the world from Buenos Aires to Bangladesh, people who may not have access to other sources of information.

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<sup>1</sup> *Wikipedia Report Card*, WIKIMEDIA FOUND., <http://reportcard.wmflabs.org/> [<http://perma.cc/PF9A-UR4J>].

<sup>2</sup> *Our Projects*, WIKIMEDIA FOUND., [https://wikimediafoundation.org/wiki/Our\\_projects](https://wikimediafoundation.org/wiki/Our_projects) [<http://perma.cc/HK9V-48J7>].

<sup>3</sup> *Five Pillars*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Wikipedia:Five\\_pillars](https://en.wikipedia.org/wiki/Wikipedia:Five_pillars) [<http://perma.cc/77BZ-UX5P>].

<sup>4</sup> ODED NOV, WHAT MOTIVATES WIKIPEDIANS?, 50 COMMUNICATIONS OF THE ACM 11 (2007), [http://faculty.poly.edu/~onov/Nov\\_Wikipedia\\_motivations.pdf](http://faculty.poly.edu/~onov/Nov_Wikipedia_motivations.pdf) [<https://perma.cc/VX7G-UFBN>].

Like the traditional orientation of public libraries, Wikipedia has adopted this ethos of openness in order to help the largest number of people possible access the information they need to educate themselves, learn about the world, and contribute to the sum of all knowledge. And like libraries, Wikipedia's ability to fulfill its mission depends on laws that govern how people can access, create, share, and remix content online. Over the same years as Wikipedia's rapid growth, libraries have been developing strategies for serving a public that increasingly relies on digital resources to learn about the world.<sup>5</sup> As both Wikipedia and libraries work on digitally sharing educational content, there will be more convergence among their policy concerns and new opportunities for collaboration.

This Article seeks to explain some of the significant policy topics that affect both traditional libraries and projects that, like Wikipedia, contribute to the knowledge commons. Part I reviews the role and mission of knowledge commons projects and libraries, as well as their shared values. Part II discusses the key policy and legal topics that affect both knowledge commons projects and libraries in three areas: copyright, intellectual freedom, and access to knowledge. Finally, Part III concludes with a summary of how the future of libraries depends on supporting the legal framework for a growing knowledge commons.

## I. KNOWLEDGE COMMONS AND LIBRARIES

Wikipedia is an instance of what we identify as knowledge commons projects, which are open to anyone to access or submit contributions.<sup>6</sup> Charlotte Hess and Elinor Ostrom explain that knowledge can be produced and used as a commons—a shared resource that is jointly used and non-subtractive—and can be maintained with strong self-governance, social capital, and collective action mechanisms. They note that “knowledge commons can consist of multiple types of goods and regimes and still have many

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<sup>5</sup> JOHN G. PALFREY, *BIBLIOTECH: WHY LIBRARIES MATTER MORE THAN EVER IN THE AGE OF GOOGLE* 48-50 (2015).

<sup>6</sup> For an exploration of some of the many different areas in which knowledge commons can function, see *GOVERNING KNOWLEDGE COMMONS* (Brett M. Frischmann et al. eds., 2014).

characteristics of a commons.”<sup>7</sup> Due to the low cost of distributing information online, knowledge commons projects make cultural and scientific heritage more freely available and open for additional contribution. Knowledge commons projects fill gaps—they can make information that may have only been accessible locally (like a city’s archives) widely accessible, and they pioneer new ways of producing, organizing, and distributing information.

Knowledge commons projects collectively make up a broad and growing base of information about our world. They include user-generated projects like the collaborative mapping project OpenStreetMap, which relies on the work of contributors around the globe combined with open data sources to create an open detailed map of the world,<sup>8</sup> and Wikimedia Commons, which collects free media (photos, videos, and more) from a variety of sources including individual volunteer donations, archives, and museums.<sup>9</sup> Libraries, archives, and historical societies have also worked together to build knowledge commons projects, such as the Digital Public Library of America, Europeana, and the Biodiversity Heritage Library. These projects aim to bring together the open archives of libraries and historical societies.<sup>10</sup> Citizen science projects, which provide volunteers a way to contribute by transcribing manuscripts, scientific labels, or analyzing images, also help open up closed-off collections for all.<sup>11</sup> More generally, movements towards open scientific and

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<sup>7</sup> *Introduction: An Overview of the Knowledge Commons, in UNDERSTANDING KNOWLEDGE AS A COMMONS: FROM THEORY TO PRACTICE* (Charlotte Hess & Elinor Ostrom eds., 2007).

<sup>8</sup> OPENSTREETMAP, <https://www.openstreetmap.org/> [<http://perma.cc/RFJ5-684G>].

<sup>9</sup> *Partnerships, WIKIMEDIA COMMONS*, <https://commons.wikimedia.org/wiki/Commons:Partnerships> [<http://perma.cc/5HJZ-YBMW>].

<sup>10</sup> DPLA, <https://dp.la/> [<http://perma.cc/5NX4-SMT9>]; EUROPEANA, <http://www.europeana.eu/portal/> [<http://perma.cc/46RH-37GH>]; BIODIVERSITY HERITAGE LIBR., <http://www.biodiversitylibrary.org/> [<http://perma.cc/TPY3-SHR7>] (curate collections from the United States, Europe, and the biodiversity and natural history museum community, respectively).

<sup>11</sup> See ZOONIVERSE, <https://www.zooniverse.org/> [<http://perma.cc/E68Y-JRGC>]. For an analysis of one such crowd-sourced transcription project, see Nicole Kearney & Elycia Wallis, *Transcribing Between the Lines: Crowd-Sourcing Historic Data Collection, MUSEUMS AND THE WEB ASIA 2015*, <http://mwa2015.museumsandtheweb.com/paper/transcribing-between-the-lines-crowd-sourcing-historic-data-collection/> [<http://perma.cc/WWE4-4TMH>].

government data, open access research, and open educational resources are also part of the knowledge commons by opening up data and academic knowledge to a broader audience.

Knowledge commons projects play an important role in education, by providing access to knowledge without cost or other barriers to material that might otherwise be locked away behind a paywall, in a proprietary format, or in a remote physical archive. These projects promote the large-scale distribution and dissemination of information and scientific and cultural resources, and are participants in the preservation of cultural heritage.<sup>12</sup> They make this possible through large-scale collection and organization endeavors, often building communities of participants who contribute, edit, and curate content. Although these projects can be built through decentralized efforts among peers, they may still rely on centralized hardware and other resources, maintained by a steward or umbrella non-profit organization.<sup>13</sup> Many of these collaborative projects rely on technical tools, such as wikis, collaborative transcription and annotation platforms, and legal tools, such as free public licenses. Knowledge commons projects also share values, including accessibility of material to all, ability for many creators to participate, and openness, including open licensing and technical specifications.

How do these new kinds of knowledge projects, which have only been possible in the last few decades as access to the Internet has expanded, relate to libraries? Though their methods may be vastly different, the work that knowledge commons projects do is related to the role that libraries and librarians play in their communities, and knowledge commons projects and libraries have shared interests and shared goals. Knowledge commons projects, along with libraries, have the goal of making knowledge accessible to all, preserving the cultural record for the long-term, and helping people gain access to the information and sources that they need.

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<sup>12</sup> See WIKI LOVES MONUMENTS, <http://www.wikilovesmonuments.org/> [<http://perma.cc/Q89K-VQA7>] (a photography contest, which recruits photographers worldwide to document monuments and historical sites).

<sup>13</sup> See *generally* SOFTWARE FREEDOM L. CTR., A LEGAL ISSUES PRIMER FOR OPEN SOURCE AND FREE SOFTWARE 19-20 (Richard Fontana et al. eds., 2008) <https://www.softwarefreedom.org/resources/2008/foss-primer.pdf> [<https://perma.cc/YU6T-7L84>]. For example, the Linux Foundation, Apache Foundation, Free Software Foundation, Software Freedom Conservancy, and other organizations provide technical and legal support for some open source projects. Wikipedia's servers, as well as legal support, are provided by the non-profit Wikimedia Foundation.

Libraries, whether they exist in the context of a university, an organization, or a city or town, embody a long-range outlook, rich current and historical collections, and knowledge of, and ability to assist with, people's information needs. Libraries serve many roles, with most libraries specializing in service to particular communities, whether geographically or institutionally defined. Libraries collect materials over the long term, providing a repository of materials related to the interests and information needs of the community they serve, and provide a trusted place where people can access resources both on and off-line. Many libraries also archive aspects of community memory, from local newspapers and historical images to scientific research reports, keeping these materials on behalf of the community they serve and society at large.

Libraries serve as important places of instruction and education, where people can receive help and guidance in accessing information, whether they are university students researching a dissertation or adult learners using the Internet for the first time. And public libraries in particular also serve as community centers, with the potential to reach all parts of society, including those with the fewest resources and least ability to access information in other ways. Libraries both within and across sectors are highly collaborative institutions, working together as a distributed network to share resources and expertise among themselves in order to ensure the broadest possible access to materials and services. The challenges of libraries today are increasingly related to the digital world, as libraries digitize their own historical materials, purchase born-digital collections that may have copyright or digital rights management restrictions, and seek to reach a wider online audience.

Libraries today also share common values, which are enshrined in professional codes of ethics and professional practice. Those values include equitable access, support for intellectual freedom and freedom of expression, rejection of censorship, patron privacy, neutrality, respect for intellectual property rights, and a commitment to ethical behavior and access to information.<sup>14</sup> Among these, providing free and equal access to information is a core value found globally among

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<sup>14</sup> See *Code of Ethics of the American Library Association*, AM. LIBR. ASS'N, <http://www.ala.org/advocacy/proethics/codeofethics/codeethics> [<http://perma.cc/3C9B-Z8JL>]; *IFLA Code of Ethics for Librarians and other Information Workers*, IFLA, <http://www.ifla.org/news/ifla-code-of-ethics-for-librarians-and-other-information-workers-full-version> [<http://perma.cc/K3B3-CJED>].

library organizations.<sup>15</sup> The implications of this value are made explicit in some codes: for instance, the International Federation of Library Associations and Institutions (IFLA) Code of Ethics states that the right of access to information includes library support for open information and less-restrictive copyright. According to the Code, this “includes support for the principles of open access, open source, and open licenses . . . Librarians and other information workers also advocate that copyright terms should be limited and that information that has fallen in the public domain remains public and free.”<sup>16</sup> To support and protect these values, libraries and library organizations engage in advocacy and litigation.<sup>17</sup>

## II. POLICY AND LAW ISSUES THAT AFFECT LIBRARIES AND THE COMMONS

One important aspect of the relationship between online knowledge commons projects like Wikipedia and libraries is the law and public policy environment that regulates information creation and distribution. Legal and policy decisions made in the broad areas of copyright, privacy, censorship and surveillance, and network access affect not only the ability of libraries to protect patron privacy, provide network access and collect and share materials for the next generation of patrons, but also affect the ability of open projects to collect and share materials with the world and for readers to access them.

This Article argues that libraries and knowledge commons projects have shared interests and shared values when it comes to legal and policy decisions related to information access. Both knowledge

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<sup>15</sup> Pnina Shachaf, *A Global Perspective on Library Association Codes of Ethics*, 27 *LIBR. & INFO. SCI. RES.* 4, 513-533 (2005) (Shachaf does a comparative content analysis of library association codes of ethics from twenty-eight countries and concludes that “the two principles that appeared most frequently and that were among the most emphasized in the codes are free and equal access to information and responsibilities toward the profession”).

<sup>16</sup> *IFLA Code of Ethics for Librarians and other Information Workers*, IFLA, <http://www.ifla.org/news/ifla-code-of-ethics-for-librarians-and-other-information-workers-full-version#openaccess> [<http://perma.cc/K3B3-CJED>].

<sup>17</sup> As an example, the American Library Association has an advocacy portal. See *Advocacy, Legislation & Issues*, AM. LIBR. ASS'N, <http://www.ala.org/advocacy/home> [<http://perma.cc/4AFZ-KWS8>]; see also *Office of Government Relations*, AM. LIBR. ASS'N, <http://www.ala.org/advocacy/advleg/federallegislation> [<http://perma.cc/6EZZ-WPE7>]; *Advocacy and Policy Update*, ASS' OF RES. LIBR., <http://www.arl.org/news/advocacyandpolicyupdates> [<http://perma.cc/29MN-S4G7>]; LIBR. COPYRIGHT ALL., <http://www.librarycopyrightalliance.org/> [<http://perma.cc/H2QM-FEZ2>].

commons projects and libraries focus on serving and advocating for the public interest by providing access to information as broadly as possible. The ability to provide access to information, however, is affected by what can be digitized, what can be put online, and what can be distributed by both libraries and knowledge commons projects. Wikipedia is rooted digitally—it relies on people’s ability to access resources over the Internet. Libraries face a similar challenge from a different perspective. Libraries are rooted locally—they can provide a physical space to access books and materials, and now must address the needs of digitally connected patrons. We take the example of Wikipedia as a highly used international knowledge commons project to examine how challenges in the broad areas of copyright, freedom of expression, and access to knowledge can affect both libraries and the knowledge commons.

### A. Copyright

Copyright law is a complex and important topic that affects both libraries and knowledge commons projects. The shifting landscape of international copyright incompatibilities has startling implications for the daily work of documenting the world and our cultural heritage. Copyright policy also has a profound impact on the daily work of libraries, affecting what can be shared, digitized, and preserved.

Copyright law governs when a creative work may be reproduced, distributed, or used to create a derivative work.<sup>18</sup> These rights are a fundamental component of the knowledge commons, and are particularly important in a digital environment. When creative works are digitally distributed, they must be accompanied by permissions to reproduce the work. As Wikipedia contributors write and share encyclopedia articles, they follow a comprehensive set of community-developed guidelines on copyright.<sup>19</sup> As libraries incorporate ebooks and other digital resources to their collections, they also agree to follow new copyright terms.<sup>20</sup> Copyright issues are interwoven into the

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<sup>18</sup> 17 U.S.C. § 106 (2002).

<sup>19</sup> See *Copyrights*, WIKIPEDIA, <https://en.wikipedia.org/w/index.php?title=Wikipedia:Copyrights&oldid=708324718> [https://perma.cc/VH8Y-KJUP].

<sup>20</sup> Carol Henderson, *Libraries as Creatures of Copyright: Why Librarians Care about Intellectual Property Law and Policy*, AM. LIBR. ASS’N, <http://www.ala.org/advocacy/copyright/copyrightarticle/librariescreatures> [https://perma.cc/6MUQ-VWVNX].



fabric of digital resources, so it is important to understand how they affect creating and sharing knowledge.

### 1. *Free licensing*

Collaborative projects like Wikipedia are built on a free licensing tradition that reevaluates the role of copyright law in encouraging creation. Under a utilitarian view of the role of copyright law, a limited exclusive right to original works gives authors an economic incentive to create.<sup>21</sup> Some authors, however, choose to release their works under a free license, available to everyone, to reduce the barriers to sharing and remixing. Free licenses are offered to the public, so that anyone may use a work. There are two broad categories of free licenses. First, free and open source software licenses,<sup>22</sup> such as the GNU General Public License, are designed for the purposes of software. Second, free culture licenses, like the Creative Commons license suite, are designed for cultural works like text or photographs.<sup>23</sup> Although there is a lot of variety among free licenses, they are all united by permissions to make copyright-protected works free to use, study, distribute, and improve. These permissions are often accompanied by minimal conditions, like providing credit or attribution to the author of a work.

Free licenses have allowed knowledge commons projects to flourish online. Wikipedia from its beginning was written under a free license and powered by free software. Wikipedia is extensively illustrated by photos, art, and diagrams that are in the public domain or released under a free license. The OpenStreetMap community has mapped the world based on input that is released under an Open Database License. Some open access academic publishers, like the Public Library of Science, also provide works under a Creative

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<sup>21</sup> WILLIAM M. LANDES & RICHARD A. POSNER, *THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW* (2003).

<sup>22</sup> The term “free and open source software license” (FOSS) encompasses a number of different types of licenses with distinct but related goals. For a more detailed discussion of the qualities of FOSS licenses, see OPEN SOURCE INITIATIVE, <https://opensource.org/osd> [<https://perma.cc/7JSC-QQVR>]; see also FREE SOFTWARE FOUND., <http://www.gnu.org/philosophy/free-sw.en.html> [<https://perma.cc/3HY6-QEYL>].

<sup>23</sup> See *Share Your Work*, CREATIVE COMMONS, <https://creativecommons.org/share-your-work/> [<https://perma.cc/6HK6-M7BD>].

Commons license to make their works more accessible.<sup>24</sup> Similarly, many library-run academic institutional repositories allow users to assign Creative Commons licenses to the works of scholarship they deposit as a mechanism to encourage access and sharing. Other social platforms, like Flickr and YouTube, also allow users to adopt a Creative Commons license for their works. The authors and creators on these Internet platforms rely on a vibrant knowledge commons to create, share, and remix their work.

## 2. *Limits on Copyright*

Copyright law provides rights in creative works. The copyright protection for some works may have expired, or the works may be otherwise ineligible for copyright protection; these works make up the public domain. The policy discussion around the future of the public domain is not settled. Some groups of copyright holders may wish to expand the term of copyright protection, the length of time that works require the author's permission to reproduce or create derivative works. Extending copyright terms would delay some works from entering the public domain and thus delaying their availability to the knowledge commons. In the United States, the term of copyright protection is the life of the author plus seventy years, but this varies in other jurisdictions. In an online world that is instantly connected to a global audience, differing copyright term lengths add another dimension of complexity. This leads to situations where works that are indisputably part of our shared cultural heritage, and perhaps even out of copyright in some countries, are still in copyright in others.

A recent example involved the Dutch-language edition of *The Diary of Anne Frank*, which was removed from the Wikisource website—which is a volunteer-driven open project that aims to collect, digitize and proofread free classic texts—because the book is still believed to be in copyright in some countries. The author, of course, has been dead for seventy-one years, but copyright resides in the work for ninety-five years after publication in the United States in this case, meaning the diary may be restricted until 2042.<sup>25</sup> This means that for

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<sup>24</sup> *License*, PUB. LIBR. OF SCI., <https://www.plos.org/license> [<https://perma.cc/B7VN-W6DE>].

<sup>25</sup> Jacob Rogers, *Wikimedia Foundation removes The Diary of Anne Frank due to copyright law requirements*, WIKIMEDIA: BLOG (Feb. 10, 2016), <http://blog.wikimedia.org/2016/02/10/anne-frank-diary-removal/> [<https://perma.cc/JE4A-6G4X>].

nearly a hundred years after they happened, the documentation of the atrocities that Frank bravely wrote to tell the world about still cannot be freely shared online in the United States and elsewhere.

One valuable contributor to the knowledge commons is the United States Federal Government. Since the Copyright Act of 1909, the Government is unable to hold copyright in many cases and thus their creations are often free for others to reuse. Many state governments, but not all, have followed suit and released their works in the public domain. In places where states still retain copyright, some advocates like Carl Malamud are taking these issues to the court.<sup>26</sup> Outside of the United States, many governments still retain copyright, but some intergovernmental groups like the European Space Agency have recognized the value of increasing the public's access to publicly funded works; they have adopted a Creative Commons license for much of their media.<sup>27</sup> This licensing means that, for instance, photographs of space from ESA-funded missions can now be used to illustrate the relevant Wikipedia articles. Decisions like this enrich the knowledge commons, and enable access without the barrier of copyright payments for libraries, online platforms, and the general public.

Copyright law around the world also recognizes some additional exceptions and limitations. Under the fair use doctrine in the United States, authors may use a work for the sake of academic commentary or creating transformative remixes. Libraries have been important defenders of these rights, providing a valuable balance for extensive copyright protection.

### 3. *Mass Digitization*

Although a tremendous wealth of knowledge is available digitally, there is still a large amount that is available only in printed books. Initiatives like Google Books and Internet Archive seek to make more physical books digitally accessible. These digitization efforts can improve accessibility and discoverability, ensure long-term

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<sup>26</sup> See Melissa J. Sachs, *Annotations to Georgia's Laws Lack Valid Copyright, Nonprofit Says*, 33 No. 8 WESTLAW J. INTELL. PROP. 3, 1 (2015).

<sup>27</sup> For example, see Marco Trovatiello, *Creative Commons Licensing for Mars Express VMC Images*, EUR. SPACE AGENCY (May 1, 2015), <http://blogs.esa.int/communication/2015/01/05/creative-commons-licencing-for-all-mars-express-vmc-images/> [https://perma.cc/6UGF-3WWV].

preservation, and lower the cost of accessing resources.

These digitization efforts have faced significant legal challenges. When the copyright holder's whereabouts are unknown, it can be extremely difficult or impossible to identify the people who may have rights in a book. As libraries look to digitize and preserve large collections of books, they may face the daunting task of evaluating when permission is necessary and possible. James Boyle explains:

Since it is so difficult to know exactly who owns the copyright (or copyrights) on the work, many libraries simply will not reproduce the material or make it available online, until they can be sure the copyright has expired—which may mean waiting for over a century. They cannot afford to take the risk.<sup>28</sup>

Smaller, decentralized digitization efforts are also challenged by legal ambiguity. Platforms like Wikimedia Commons and the Internet Archive also accept uploads from users participating in decentralized digitization efforts, but the complexities of copyright law result in huge amounts of effort and time spent in order to determine what can be freely shared.<sup>29</sup>

Libraries need to be staunch defenders of the knowledge commons to fully serve our future users and users around the world. Copyright is an essential component of the knowledge commons, and libraries have a powerful voice in policy debates about maximizing the public domain, promoting free licenses, and advocating for solutions to the challenges of orphan works and mass digitization.

## B. *Intellectual Freedom*

Libraries and knowledge commons projects share a common goal of enabling people to find, examine, and create ideas and information.

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<sup>28</sup> James Boyle, *Mertonianism Unbound?: Imagining Free, Decentralized Access to Most Cultural and Scientific Material*, in UNDERSTANDING KNOWLEDGE AS A COMMONS: FROM THEORY TO PRACTICE 126 (Charlotte Hess and Elinor Ostrom eds., 2007).

<sup>29</sup> For instance, the summary of copyright laws by territory developed by Wikimedia Commons volunteers runs to fifty printed pages, and this is just one piece of the guidance provided to volunteers wishing to upload photos or historical material. *Commons: Copyright Rules by Territory*, WIKIMEDIA COMMONS, [https://commons.wikimedia.org/w/index.php?title=Commons:Copyright\\_rules\\_by\\_territory&oldid=203986825](https://commons.wikimedia.org/w/index.php?title=Commons:Copyright_rules_by_territory&oldid=203986825) [<https://perma.cc/L5SL-4NZL>].

The American Library Association (ALA) publishes a Library Bill of Rights explaining the basic policies that should guide how libraries provide their service. The current Library Bill of Rights provides that libraries should “challenge censorship” and provide free access to all resources to all visitors.<sup>30</sup> The ALA’s accompanying interpretation to the Library Bill of Rights explains that privacy is also an integral part of the library’s mission.<sup>31</sup> Knowledge commons projects like Wikipedia have a similar mission, to provide a forum for people to share ideas and information, even on topics that some people may find objectionable.<sup>32</sup> Library management includes some practical decisions that may touch upon the First Amendment, like economic decisions about a collection or filtering access to the Internet for the purpose of protecting younger visitors.<sup>33</sup> Libraries have developed policies and guidelines around these free expression topics, including elements of both privacy and censorship, under the banner of intellectual freedom.<sup>34</sup>

### 1. *Privacy*

Privacy has been a concern of libraries since well before the development of the Internet. The American Library Association (ALA) affirmed a right to privacy and confidentiality in 1939.<sup>35</sup> As the ALA

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<sup>30</sup> *Library Bill of Rights*, AM’ LIBR. ASS’N (Jan. 23, 1996), <http://www.ala.org/advocacy/intfreedom/librarybill> [https://perma.cc/34MY-HT92].

<sup>31</sup> *Privacy: An Interpretation of the Library Bill of Rights*, AM’ LIBR. ASS’N (July 1, 2014), <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy> [https://perma.cc/3G9M-MUTQ].

<sup>32</sup> *Wikipedia is Not Censored*, WIKIPEDIA (Aug. 30, 2016), [https://en.wikipedia.org/wiki/Wikipedia:What\\_Wikipedia\\_is\\_not#Wikipedia\\_is\\_not\\_censored](https://en.wikipedia.org/wiki/Wikipedia:What_Wikipedia_is_not#Wikipedia_is_not_censored) [https://perma.cc/3GPK-67F3].

<sup>33</sup> For ALA’s response to CIPA, see *The Children’s Internet Protection Act (CIPA)*, AM’ LIBR. ASS’N, <http://www.ala.org/advocacy/advleg/federallegislation/cipa> [https://perma.cc/SAA8-6625]. See generally Anne Klinefelter, *First Amendment Limits on Library Collection Management*, 102 LAW LIBR. J. 343 (2010).

<sup>34</sup> *Intellectual Freedom*, AM’ LIBR. ASS’N, <http://www.ala.org/advocacy/intfreedom> [https://perma.cc/6F3C-RBM3].

<sup>35</sup> *Privacy: An Interpretation of the Library Bill of Rights*, AM’ LIBR. ASS’N, <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy#6> [https://perma.cc/NB58-BSGT].

describes, privacy is essential to each person's intellectual freedom. Long before online catalogues and ebook services, libraries collected, maintained, and protected data about patrons in a manner that considered patron privacy. Libraries understood that monitoring what people read could affect their participation in society.

For website operators and third party advertisers, this personal and non-personal data is often seen as a valuable resource. After surveying the potential data in the digital economy, some entrepreneurs see data as valuable as “the new oil.”<sup>36</sup> In the era of big data, privacy is an increasingly prevalent issue for people on the Internet. Data about browsing activity can provide keen insight into individual behavior. Law enforcement and other government agencies have also shown an interest in this personal data. Secretive government surveillance programs add a layer of uncertainty and erode trust when people visit websites. Exacting personal data like a resource has a significant consequence. People report that it changes their online activity and may lead to an overall decrease in usage of certain online resources, with the National Telecommunications and Information Administration reporting that in 2015 “twenty-nine percent of households concerned about government data collection said they did not express controversial or political opinions online due to privacy or security concerns.”<sup>37</sup>

Knowledge commons communities that rely on an online platform inevitably have to make decisions about how they treat private data from those who visit their site. Like most websites, Wikipedia posts a privacy policy to thoroughly explain when user data is collected, stored, used, and shared. Unlike most privacy policies, Wikipedia's was developed through a collaborative process that incorporated user input.<sup>38</sup> This helps users maintain collective standards for private data. Additionally, platforms like Wikipedia and many others publish

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<sup>36</sup> Perry Rotella, *Is Data the New Oil?*, FORBES (Apr. 2, 2012), <http://www.forbes.com/sites/perryrotella/2012/04/02/is-data-the-new-oil/#d9ec7b377a9a> [https://perma.cc/6EDA-AVG3].

<sup>37</sup> Rafi Goldberg, *Lack of Trust in Internet Privacy and Security May Deter Economic and Other Online Activities*, NTIA (May 13, 2016), <https://www.ntia.doc.gov/blog/2016/lack-trust-internet-privacy-and-security-may-deter-economic-and-other-online-activities> [https://perma.cc/GQY2-AV8A].

<sup>38</sup> Michelle Paulson, *Launching a Privacy Policy Built the Wiki Way*, WIKIMEDIA: BLOG (May 7, 2014), <http://blog.wikimedia.org/2014/05/07/launching-a-privacy-policy-built-the-wiki-way/> [https://perma.cc/C59V-9ZNT].

a regular transparency report to explain when information is disclosed to law enforcement.<sup>39</sup> Finally, to defend user privacy, many sites are adopting more encryption online, protecting news reading habits in addition to credit card transactions. Users worried about their privacy may also adopt stronger anonymity tools, like browser extensions that block third-party tracking tools, or visiting websites through a Virtual Private Network (VPN) or The Onion Router (Tor).

Libraries have a valuable role to play in protecting our privacy online. Libraries need to help both information consumers and online projects improve our collective awareness of privacy issues, and ensure that traditional values in the Library Bill of Rights are meaningful in the new online landscape. When libraries maintain computer labs, they should understand how privacy tools like a VPN and Tor might be valuable to protect patron privacy. Libraries also need to be careful about protecting the valuable data they may have an opportunity to collect in the future. Privacy should be a central component of how libraries evaluate e-book vendors or library management systems, as well as online services. Libraries may need to follow standard practices like adopting a clear privacy policy and publishing a transparency report.<sup>40</sup> Finally, there are increasing opportunities for libraries to actively engage in public discussions around surveillance and online data protection.

## 2. *Online Censorship*

Internet censorship is an obvious but complex challenge to free expression online. As Internet adoption has increased globally, so has Internet censorship. Government censorship initiatives range from targeting specific pages to wholesale blocking of certain types of online activity. Countries like Russia and China have built powerful Internet regulators that can block access to sites.<sup>41</sup> Some governments

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<sup>39</sup> See *Transparency Report*, WIKIMEDIA FOUND., <https://transparency.wikimedia.org/>.

<sup>40</sup> Privacy policies for libraries are outlined in the ALA Privacy Toolkit. See *Privacy Tool Kit*, AM' LIBR. ASS'N, <http://www.ala.org/advocacy/privacyconfidentiality/toolkitsprivacy/privacy> [<https://perma.cc/5FND-69XJ>].

<sup>41</sup> For details and a list of Internet censorship by country, see *Internet Censorship and Surveillance by Country*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Internet\\_censorship\\_and\\_surveillance\\_by\\_country](https://en.wikipedia.org/wiki/Internet_censorship_and_surveillance_by_country) [<https://perma.cc/5CFW-5R25>].

have turned to Internet censorship as a method of preventing online organization, such as blocking access to social media in Egypt, Syria, and elsewhere during protests. In the United States, the government has seized domain names to combat sites that allegedly facilitate copyright infringement,<sup>42</sup> and considered other laws that may provide new tools for censorship.<sup>43</sup>

The knowledge commons has grown and thrived thanks to a globally connected society. Internet censorship poses a significant threat to both creating and sharing knowledge, as it divides people and reduces valuable opportunities for cross-cultural collaboration. Sites like Wikipedia, which mostly rely on Internet access to share and create knowledge, may be victim to online censorship initiatives. This can affect Wikipedia directly and indirectly. Wikipedia has been directly targeted by Internet blocks, sometimes for brief periods of time, which affects not only the readers but the quality of the project as a whole, as Wikipedia relies on users who are able to research topics and improve the corresponding articles on Wikipedia.<sup>44</sup> Libraries have been powerful advocates for First Amendment protections in the United States, through initiatives like raising awareness of and challenging banned books.<sup>45</sup> As libraries continue this role, they may be in a powerful position to provide Wikipedia contributors access to information they need to maintain the encyclopedia, and to continue to advocate for access to information without censorship.

### *C. Access to Knowledge*

The ability to access knowledge is a human right, essential for

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<sup>42</sup> David Kravits, *Uncle Sam: If it Ends in .com, it's Seizable*, WIRED (Mar. 6, 2012), <https://www.wired.com/2012/03/feds-seize-foreign-sites/> [<https://perma.cc/L3Q6-F59Y>].

<sup>43</sup> For a list of related laws, see *Internet Censorship in the United States*, WIKIPEDIA [https://en.wikipedia.org/wiki/Internet\\_censorship\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Internet_censorship_in_the_United_States) [<https://perma.cc/KCM4-HE3F>].

<sup>44</sup> See *generally Censorship of Wikipedia*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Censorship\\_of\\_Wikipedia](https://en.wikipedia.org/wiki/Censorship_of_Wikipedia) [<https://perma.cc/HU5Z-UKLP>].

<sup>45</sup> For an example of ALA's Banned Books Week Initiative, see *Banned Book Week: Celebrating the Freedom to Read*, AM' LIBR. ASS'N, <http://www.ala.org/bbooks/bannedbookweek> [<https://perma.cc/XKP7-RJ9Y>].



development and the ability to “enjoy the arts and to share in scientific advancement and its benefits,” a right that is enshrined in the UN Declaration of Human Rights.<sup>46</sup> However, the ability to access knowledge, including the valuable resources on the Internet, is not distributed uniformly. Access requires both removing economic barriers to access and ensuring that information communication technology providers equitably provide connection to their services. The access to knowledge movement seeks to address these barriers, recognizing access to information as crucial for development. As an example of the issues encompassed by those concerned about access to knowledge, in 2014 a wide coalition of stakeholders, including library organizations and organizations supporting the knowledge commons, agreed on a set of principles in the Lyon Declaration On Access to Information and Development. These include the principle that “increased access to information and knowledge, underpinned by universal literacy, is an essential pillar of sustainable development.”<sup>47</sup>

### 1. *Network Access*

A critical part of access and development is widespread network access, so that it is possible for the majority of the population to use and benefit from online resources. For Wikipedia, the need for widely available Internet access is obvious: readers and contributors cannot access the site unless they are also able to get access to the Internet. Barriers to access include lack of network infrastructure and affordability; at the end of 2015, only 34% of households in the developing world had Internet access, compared to 80% in the developed world.<sup>48</sup> Mobile Internet adoption is growing rapidly as mobile phones become ubiquitous, but this poses its own challenges, as high data charges prevent mobile users from fully taking advantage

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<sup>46</sup> Lea Shaver argues that “the right to science and culture,” or access to shared cultural and scientific knowledge, is a human right enshrined in Article 27 of the Universal Declaration of Human Rights, which has implications for future intellectual property regulation. Lea Shaver, *The Right to Science & Culture*, WIS. L. REV. 121, 181-183 (2010).

<sup>47</sup> THE LYON DECLARATION ON ACCESS TO INFO. & DEV., <http://www.lyondeclaration.org/> [<https://perma.cc/4REX-JLMP>].

<sup>48</sup> INT’L TELECOMM. UNION, ICT FACTS AND FIGURES, THE WORLD IN 2015, <http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2015.pdf> [<https://perma.cc/6ANE-TX3T>].

of Internet resources.<sup>49</sup> And as Jessamyn West, a librarian based in rural Vermont, points out, Internet access numbers obscure the fact that rates of Internet adoption and access are distributed unevenly: “increases [in Internet access] do not happen proportionately across all segments of society,” with large numbers of people in both developed and developing countries still unable to access the Internet due to affordability, infrastructure, or education barriers.<sup>50</sup> For instance, a 2012 study in Mississippi showed that rural, lower-income, and African-American communities are less likely to have affordable Internet access than their urbanized, higher-income, white counterparts.<sup>51</sup>

Libraries are in a unique position to provide Internet access and improve digital literacy. As local institutions, libraries provide free and open access to computers and the Internet, along with education and information literacy training in how to use them—a component that West points out is equally important as providing access to technology in encouraging Internet use. In the United States, nearly one-third of the population did not have broadband Internet access at home as of 2014, but virtually all public libraries provide both Internet access and public computer use.<sup>52</sup> Library leaders have recognized this as a crucial part of their mission; the president of the New York Public Library has called for libraries to serve as part of a municipal network to provide Internet to all residents.<sup>53</sup> Providing access to and training

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<sup>49</sup> Recognizing this, the Wikimedia Foundation is providing no-charge access to Wikipedia in some countries in partnership with mobile phone companies through the Wikipedia Zero initiative. *Wikipedia Zero*, WIKIMEDIA FOUND., [https://wikimediafoundation.org/wiki/Wikipedia\\_Zero](https://wikimediafoundation.org/wiki/Wikipedia_Zero) [<https://perma.cc/ZVA4-AHWR>].

<sup>50</sup> JESSAMYN WEST, *WITHOUT A NET: LIBRARIANS BRIDGING THE DIGITAL DIVIDE* xxix (2011).

<sup>51</sup> CTR. FOR SOC. INCLUSION, *BROADBAND IN MISSISSIPPI: TOWARD POLICIES FOR ACCESS EQUITY* (2012), <http://www.centerforsocialinclusion.org/wp-content/uploads/2012/07/Broadband-in-Mississippi-Toward-Policies-for-Access-Equity1.pdf> [<https://perma.cc/VUM3-ZX46>].

<sup>52</sup> JOHN CARLO BERTOT ET AL., INFO. POL’Y & ACCESS CTR., *2014 DIGITAL INCLUSION SURVEY: SURVEY FINDINGS AND RESULTS* (2015), <http://digitalinclusion.umd.edu/sites/default/files/uploads/2014DigitalInclusionSurveyFinalRelease.pdf> [<https://perma.cc/WCK5-X7J3>].

<sup>53</sup> Anthony Marx, *Too Poor to Afford the Internet*, N.Y. TIMES (Aug. 12, 2016), <http://www.nytimes.com/2016/08/12/opinion/too-poor-to-afford-the-internet.html> [<https://perma.cc/R7TP-KXWT>].

in using the Internet makes the library a valuable entry point for resources that go far beyond the local collection, including access to use and participate in knowledge commons projects.

## *2. Open Access to Research*

Expanding access to the knowledge commons also requires expanding access to research literature and educational resources. The open access movement is a core part of making research accessible. Open access publication venues, including open access journals that provide access to all readers without subscription fees, pre-print servers and repositories that are open for all readers remove the barrier that journal subscription costs pose for both individuals and libraries around the world who would like to access cutting-edge academic research.

Getting access to research literature is crucial for Wikipedians around the globe, as they face paywalls and closed access in their quest to collect sources to improve Wikipedia articles. When they are able to get access to closed resources, whether through their institutional affiliations or other means, Wikipedians use these sources to cite statements and facts in articles and sometimes add summaries of the work, according to Wikipedia's manual of style. However, this poses a challenge: Wikipedia relies on distributed peer review from other editors. When access to the literature supporting a Wikipedia article is only available to some people, it means there are fewer editors who have the resources to correct inaccuracies or improve the coverage. It also means that readers of the articles don't have access to those sources to verify statements made in the Wikipedia article, or read more deeply on the topic and conduct their own research. Open access mitigates these issues, by ensuring that sources are as available to readers as the Wikipedia articles citing them are.

Libraries are in a unique position to support open access for scholarship, as advocates for researchers and readers and as the primary subscribers to many closed academic publications. Libraries have long served as open access advocates, supporting open access mandates at institutions and open access publishing projects like the physics and computer science preprint server arXiv.<sup>54</sup> The

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<sup>54</sup> *arXiv Business Support and Governance Model*, CORNELL U. LIBR., <https://arxiv.org/help/support> [<https://perma.cc/Y5W7-7VX5>].

sustainability crisis in scholarly publishing and need for fundamental reform of how academic publishing is conducted has been an issue for many decades, and the idea of open access as a solution for this crisis has been under development for over 15 years.<sup>55</sup> But the rise of projects like Wikipedia, which depend on access to the best research literature to disseminate accurate information to the world, makes the imperative for open access even more urgent.

### III. A SHARED FUTURE

The scope and scale of Wikipedia's vision—every human having access to the world's knowledge in their own language, without restriction or cost—is revolutionary, but it has antecedents in the fundamental values and goals of libraries. Libraries have a long history and strong roots in their local community. Knowledge commons projects developed out of the promise of the Internet to provide access to all. Together, they share a common goal: to get people the information they need, fairly and freely. And they also share a vision of the world where all people can get access to the information and education they need to learn, do their work, participate and share in their cultural heritage and lead fulfilling lives.

But Wikipedia, like other knowledge commons projects and like libraries themselves, exists within a bigger ecosystem of community, technology, and policy. Similarly, libraries and library collections are shaped by political, legal, and economic choices. Contributing to knowledge commons projects like Wikipedia furthers the mission of libraries, by greatly increasing the reach of library resources and expertise and by increasing the quality of these widely-used online information sources. But the work of information professionals should not stop there: to further their shared goals, information professionals and knowledge commons leaders alike must understand the fundamental laws and policies that govern their work, including copyright, privacy and access, and the implications of changes in this fragile framework. As we have described in the previous section, these laws and policies have far-reaching consequences across sectors that

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<sup>55</sup> Though discussions of open and freely-disseminated publishing had occurred for many years before this, the first discussion forum on open access was founded in 1998. See *Global Open Access Forum*, WIKIPEDIA [https://en.wikipedia.org/wiki/Global\\_Open\\_Access\\_Forum](https://en.wikipedia.org/wiki/Global_Open_Access_Forum) [<https://perma.cc/C7QT-N7K5>]; THE BUDAPEST OPEN ACCESS INITIATIVE, <http://www.budapestopenaccessinitiative.org/> [<https://perma.cc/U7CV-DT2J>].

affect whether and how information can be shared and accessed. Together, library and knowledge commons project leaders can advocate for policy that lets the public benefit from new digital tools and gain access to information, without compromising their shared values of intellectual freedom and access to knowledge.

Libraries are crucial in the knowledge commons ecosystem, both individually as locally rooted institutions, and in aggregate as a highly distributed network of long-term knowledge preservation and educational institutions. Collaborations between knowledge commons projects and libraries can extend the reach of libraries beyond their walls and borders, furthering their mission to provide information, and can enrich the depth and perspective of knowledge commons projects and help ensure wider participation in them. As an example of how this has worked, libraries have participated in Wikipedia through sharing collections, expertise and educating their patrons about these projects.<sup>56</sup> For instance, libraries have hosted Wikipedia edit-a-thons, where participants are given reference resources and training to help them edit Wikipedia articles.<sup>57</sup> These may be one-off events or themed multi-institution campaigns.<sup>58</sup> These events and projects like them enable library patrons and the local community to participate in, understand and gain from these open projects. Libraries have also opened their doors to Wikipedians, who need access to good libraries to find the facts and research that Wikipedia is built on.<sup>59</sup> This helps Wikipedians, who are mainly in the business of

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<sup>56</sup> Phoebe Ayers, *Wikipedia, User-Generated Content, and the Future of Reference Sources*, in *REIMAGINING REFERENCE IN THE 21ST CENTURY* (David A. Tyckoson & John G. Dove eds., 2014), <http://escholarship.org/uc/item/4sm4b8w2> [<https://perma.cc/6GJA-9ZAB>].

<sup>57</sup> See *GLAM/Model projects/ Edit-a-thon How-To*, WIKIMEDIA OUTREACH [https://outreach.wikimedia.org/wiki/GLAM/Model\\_projects/Edit-a-thon\\_How-To](https://outreach.wikimedia.org/wiki/GLAM/Model_projects/Edit-a-thon_How-To) [<https://perma.cc/HR3S-G4Q9>]; *Wikipedia Loves Libraries/ Model projects*, WIKIMEDIA OUTREACH, [https://outreach.wikimedia.org/wiki/Wikipedia\\_Loves\\_Libraries/Model\\_projects](https://outreach.wikimedia.org/wiki/Wikipedia_Loves_Libraries/Model_projects) [<https://perma.cc/JPU6-XFWK>].

<sup>58</sup> For example, starting in 2014 a group of Wikipedia contributors concerned about the encyclopedia's coverage of notable women in art history started the Art+Feminism edit-a-thon series of events; there have now been dozens of these themed events throughout the world. See Talia Lavin, *A Feminist Edit-a-Thon Seeks to Reshape Wikipedia*, *NEW YORKER* (Mar. 11, 2016), <http://www.newyorker.com/tech/elements/a-feminist-edit-a-thon-seeks-to-reshape-wikipedia> [<https://perma.cc/4R8R-XTR7>].

<sup>59</sup> For an example, see *Wikipedian-in-Residence*, WIKIMEDIA OUTREACH, [https://outreach.wikimedia.org/wiki/Wikipedian\\_in\\_Residence](https://outreach.wikimedia.org/wiki/Wikipedian_in_Residence) [<https://perma.cc/7ZT9->

looking up and distilling sources, do their work to improve the site, and helps drive readers who find sources through Wikipedia articles back to the library, which can provide a gateway to a network of rich and deep collections. Wikipedia is far from finished, which makes library participation, with their deep collections, community perspective and expertise, even more crucial.

Sharing and opening collections is another way libraries and archives can participate in the knowledge commons. Libraries have used Wikimedia Commons, the open media repository that is connected to Wikipedia, to share public domain archival material and images that can then be used in Wikipedia articles; Wikimedia Commons currently contains images from the National Archives of the United States, the German National Archives, and many more institutions.<sup>60</sup> Sharing collections in this way with the world enables libraries to reach beyond their walls. More broadly, libraries can support and become part of the knowledge commons by promoting open access models for sharing research, cultural heritage and open data.

Finally, in addition to these hands-on ways of contributing to the commons, we argue that libraries and knowledge commons projects should work together to form a shared advocacy agenda around copyright, privacy and access. Libraries and knowledge commons projects together can represent the information needs of users who may be poorly served by commercial interests. Cooperation is crucial as libraries increasingly confront the challenges of operating in the digital world, and online knowledge projects increasingly confront local realities of network access. Libraries and knowledge commons projects have an important responsibility to make sure that the interests of ordinary information users are represented in changes to law and policy. In their ambitious mission, libraries and knowledge commons projects should work together to advocate for policies and laws that support a shared future of open, accessible information for all.

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V97C]; *Wikipedia Library Visiting Scholars*, WIKIMEDIA META-WIKI, [https://meta.wikimedia.org/wiki/The\\_Wikipedia\\_Library/Scholars](https://meta.wikimedia.org/wiki/The_Wikipedia_Library/Scholars) [https://perma.cc/8332-3P6G]. An example library Wikipedian-in-Residence is at National Library of Scotland. See *National Library of Scotland recruits 'Wikipedian'*, BBC (Apr. 23, 2013), <http://www.bbc.com/news/uk-scotland-22264118> [https://perma.cc/4BAQ-KE8M].

<sup>60</sup> *Commons: Partnerships*, WIKIMEDIA COMMONS, <https://commons.wikimedia.org/wiki/Commons:Partnerships> [https://perma.cc/DTK8-XSRV].