Translator's Note for The Future of Ideas

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1 What's This Book?

This book is the full translation of Lawrence Lessig **The Future of Ideas: The Fate of Commons in a Connected World** (Random House, 2001), with an additional introduction for the Japanese version. The translation is based on the file provided by the author, although it has been checked against the printed version.

2 About the Author

The author Lawrence Lessig has already become the almost definitive authority on the issues of law on the Internet. Although still very young, he is one of the brightest hopes of legal studies in America. Rumor has it that Stanford University created the Stanford Law School Center for Internet and Society for the sole purpose of dragging him from Harvard.

And his first book *Code and other laws of Cyberspace* was a shocking enough to justify the man's reputation. The argument in *CODE* is important in understanding this book as well, so I'll try to briefly summarize it here. There are about four points to his story;

> 1. Law is not the only thing that regulates human behavior.

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[*]`http://www.post1.com/home/hiyori13/`

Market, norms, and architecture can be (and often are) equally binding.

2. On the Net, the regulation through architecture = code (software) is especially strong, and once that code comes into effect, it will be uncontestable within that environment. Therefore, contrary to popular belief, regulation on the Net can potentially become too perfect, rather than too weak. And that's exactly where it's headed.

3. In law, there are provisions to make control imperfect, such as fair use or privacy. That's because imperfectness of control has significant values in maintaining democracy.

4. If this is so, then we need to regulate code, so that this imperfectness is also preserved in code.

Let's go over the points. The argument that regulation does not come through law alone is VERY important. Yes, if you don't want people to do something, forbid it using the law. That's as far as most legal people will go. But there are other ways. You can condition people to avoid that activity using norms of that society. Or, you can use the market to make it infeasible. Or, lock it down/make a wall around it to make it physically impossible. The control that we receive takes these various forms. Therefore, it's not enough to just look at the law alone. We have to look at all of these forms of restriction, and think of the whole effect. This is Lessig's argument.

This argument is especially important in the context of the Internet. When people complain that the Internet lacks proper regulation, they are just talking about the law. The Internet has a much stronger regulator. That's the code / software. When you're on the Net, you can't do anything that the software doesn't allow. Bunch of unregulated stuff on the Net — pornography, pirate copies — can be regulated completely with the right piece of code. And this is actually happening through the acts of government

and commerce.

Now, regulation through the law, norm and market is imperfect. We're forbidden to kill people, but I can, if I really want to. We're not supposed to make unauthorized copies of a book, but there are cases that this is permitted through fair use, and who's going to find out anyway if I secretly did? You can't watch people every moment to make sure the person doesn't break the law, and you're not supposed to. This is because it is agreed that too much regulation and control is not socially good.

Well then, Lessig argues, if imperfect control is important, then we should stand against the code-induced perfect control. We have to regulate code, so that too much control will not be built into it. It'll be the public's job to do that.

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Now, just think how weird this argument is compared to the normal debate surrounding the Internet. Usually, the whole debate would be to restrict or not to restrict. Restrict child pornography, or don't restrict it because of freedom of speech. Restrict cryptography, no, don't restrict it because of privacy. Simple black and white argument that even a politician can understand. But Lessig tells us to regulate in order not to regulate...now, which side is he on? But surprisingly, *CODE* actually made this point understandable. His argument about why this is important to preserve the democratic value did make sense, and it made clear the issues that many people had simply never thought about.

At the same time, this book was shocking because it uses concepts such as freedom and equality and democracy at the very center of its argument. Do not read any irony in the last sentence. I don't know about other countries, but here in Japan these days, it's kind of embarrassing to talk about these values with a straight face. Freedom? Democracy? Yer, right. And tomorrow we sing with the flower children. They seem too vague and ide-

alistic. We feel that the only people who are insensitive enough to rely on such ideas are either stupid die-hard left-winger leftovers that cater for kids, or unsophisticated feel-good ear-pleasing-but-meaningless conservative TV propaganda that caters for retired old guys. We feel that any argument that does not rely on economic efficiency or some strategic analysis based on game theory can't possibly have any rigor to stand the test of real life. We should re-establish the democratic tradition? Yeah yeah, tell the people to vote or something, right? You should live so long. *Code*, however, completely ignored that sort of smart-ass-ism. It simply went on to establish a convincing argument based on democratic value, and the argument was both sophisticated and powerful. In a sense, it was a book that smashed the nihilism that many of us Japanese unknowingly held.

3   About this Book

And at last, we turn to *Future of Ideas*. This book is, in a sense, a continuation of *Code*, in the sense that it extends parts of the relatively theoretical and conceptual arguments in *Code* into something more concrete and actionable. Also, if *Code* was (among other things) a book that aims at the re-establishment of democratic values on and through the Internet, *Future of Ideas* is a book that aims at the re-establishment of freedom on and through the Internet.

And this is the first great thing about this book. It attempts to show the value of freedom in the most direct manner.

Freedom is supposed to be a good thing. People say that Communism died and Freedom prospered, so freedom should be good. But when you ask these people to explain the actual benefits of freedom, hardly anyone can give a meaningful answer. This isn't (necessarily) because they are stupid. It's because freedom itself doesn't do anything. Freedom is just an environment that allows you to do something.

Another point is that there is no such thing as perfect freedom. We all live in some level of regulation and restriction. If someone asks you to concede just one further step of that freedom in the name of, say, efficiency or whatever, it's so hard to argue against that. Pornography or slanders on the Net pisses people off, and it's hard to argue for freedom against these pissed off people. And of course, there is such a thing as abuse of freedom. "There's no freedom to hurt people," these guys will argue, and they do have a point. So you give in, step back, once, twice, and before long, you're firmly assimilated into Borg-land.

But Lessig tries to convince us of the value that freedom has. Freedom provides a platform that people can freely take and use. That's the commons. And because of the commons, cultures have evolved and prospered. If you want to keep that innovation, you have to protect that commons. And that's why we have to protect freedom.

Of course, you can question the assumption that innovation is important. Some people will argue that we already have all the technology and wealth that we need (may be more), so there's no point in pursuing more innovation. But when we say innovation, we're not talking about just technology. Every little improvements and new ideas are included here, A new story, a new peice of music, or even a new joke... even if you choose to become the Unabomber, you can't deny that these add value to your life. And what makes it possible is the commons, and hence the freedom.

Among various freedoms that existed, Lessig focuses on the Internet as a convergence point of various mode of commons, and how it embodied the freedom that led to amazing innovations.

What's the value of the Internet? Many people, unless they are free software advocates and/or die hard hippies, will not cite freedom as one of them. Many people regard the Internet simply as a cheaper communication medium, and nothing more. When you look at all those books and articles on e-whatevers and Net business this and that, all you read about is how

Internet lowered the cost of communication, and that this was the decisive factor in the Internet explosion. For these people the "freedom" of the Internet was just a flaw that needs fixing. But Lessig denies this view. The reason for the explosive innovations on the Net is not just communication costs. Freedom played a decisive role there, and that enabled the explosive growth of the Net, he argues.

And many "proper" theorists would hesitate to name Napster as one of the wonderful innovations of the Net. Napster has gotten so much bad press that it's rather risky to have your argument (or yourself) positively associated with it. Even if you do, the usual manner would be to put bunch of disclaimers like; "I don't endorse Napster and the piracy that it promoted, yes that was bad, and no, I've never used it myself, but it seems to have had bits and pieces of good parts..." But Lessig blatantly praises Napster. He comes out as an everyday user, and actually praises its values. And then he connects that value to the inherent value of the Internet. Once that connection is set, advocates of IT society and knowledge economy can't write off Napster. Or in another example, if you think your wireless LAN is cool, you can't deny the importance of free spectrum.

By connecting the idea of commons and the Internet, this book illustrates the truly important role of freedom in every corner of development. It's role in the basic principle of the Internet, free software, spectrum allocation, copyrights and patents — it's simply amazing that such diverse topics can be summarized under the same theme.

And then, he goes on to explain how that freedom was realized. It's not something that grows on trees. What created freedom and made the commons possible? In many cases, it was some form of regulation. Some were intentional (like limits to copyrights) and some were not (like the Internet on the phone lines), but regulations none the less.

Based on these understanding, Lessig describes how this freedom is losing ground in the US today. Legal and regulatory trends, media concentration,

increasing auctioning of the radio waves, Microsoft monopoly, tighter copyrights and trends like software patents and business model patents. He also warns about the increasing misconception that in order to escape regulation, all you have to do is to leave it to the market. You need to recall the argument in *CODE* here. Market is also a regulator.

Internet had freedom, and prospered because of that freedom, which was realized through regulation. If that freedom is threatened now, and if the value that it produced was important— then we should once again invoke the regulation to re-establish freedom. The government should step in to create a regulation that creates a regulation-free commons!

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As with *CODE*, this book also reaches a seemingly contradicting conclusion, saying we need regulation for freedom. But the persuasiveness of this argument, and the fact that it does not rely on any sort of nit-picking, or acrobatic twist of logic, is impressive. Also in this book, there's a much concrete policy recommendation compared to *CODE*. Of course, it's not just something we can take and apply here. But the foundation for these arguments does apply to Japan. In Japan, too, freedom on the Net had value, and it helped to create value. How should we protect that? What should our way be? This is very relevant to us.

BTW, Lessig is not simply talking about these ideas as a theoretician. He is involved in the Eldred v Ashcroft case that is mentioned in this book. Although the past decisions were not very favorable, the case is currently in the Supreme Court, and in October 2002, Lessig made his argument there. Although the odds of winning are considered to be unfavorable, the fact that he was able to make his case is considered to be significant in itself. Possibly, this could lead to an opposite trend. Stay tuned.

4   Significance for Japan

Translating *CODE* was pretty depressing. If things are hopeless in the US, well, it's the Stone Age for Japan. And translating this book was also a depressing experience in a way.

We're not totally hopeless. The story about Cable TV operators doesn't apply to Japan (yet). ADSL has become popular just like that. In this sense, Japan is a bit better. Over concentration of the media doesn't apply. But the rest? I don't hear any proper debate about the value of freedom on the Internet.

Some of the issues pointed out in this book will probably seem totally alien. If there ever was a Microsoft in Japan, the government wouldn't even dream of applying anti-monopoly laws against it (they'll probably hail them). Articles in Japan about the MS trial usually don't get the issues pointed out here. Even the articles that support the US department of justice action usually does it out of their personal grudge against MS. There are movements to introduce Open source software in the public sector, but then, the national id network is built solely on Windows.

And then about copyrights and patents. Here also, the debate is pro-tightening. Strengthen it, get it up to global standards, and let's bring in those business model patents and software patents! One reason that this book is so understandable is because there is a Constitutional base for limiting Copyrights in the US, and every argument can be based on that (Honestly speaking, when you read this book, the American Framers seems to have been a group of wizardly geniuses that understood everything before it even happened, and the last 200 years or so seems to be a long endless process of interpreting and footnoting what they had in mind). We don't have that sort of constitutional limits in Japan, and probably because of that, the arguments against overprotection seem a bit arbitrary and vague. Most of the books about copyrights on the net simply repeats "don't vio-

late it, the consequences are deep and expensive" over and over again. Or maybe how we need to strengthen them to become on level grounds with the US and EU. It reminds me of the age old debate about free trade and protectionism. It is often said that bilateral protectionism is similar to the argument that says "since they destroyed their own port, we should block ours too." Arguments for strengthening IPR to meet global standards have a very similar ring.

In every context, the argument surrounding the Internet is all for stronger restriction. Various trials about anonymous BBS and the web move toward killing the freedom there. Is this really OK? Or in all those government PRs about the "IT-fication of the economy" and "e-whatevers", I don't see any signs of serious thoughts concerning what made the Internet valuable. Lessig mentions in the Japanese Foreword that he hopes this book will help Japan in its copyright debate. As for myself, I hope this will lead to the reconsideration of factors that made the Net so great. Without that, all this talk about Knowledge economy and IT promotion would be totally wasted. It's not just about getting optic fibers to the home. Think about that.

And then there's the reverse problem, although it's not Lessig's fault. There were people who read *CODE* as an endorsement of ALL regulations. We've already started to see the same thing happen with this book. It goes something like this; "As Lessig argues, too much claims of rights on the net hampers its development. In Japan, we have idiots who oppose the national id asking for too much privacy, or bureaucrats refusing to disclose information using privacy as an excuse. So privacy is questionable. And privacy may be an illusion in the first place, because all information runs freely on the Net anyway. So people arguing for too much privacy is doubly misguided." Ikeda Nobuo promotes this sort of argument.[1] Amazing. What

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[1]Check out his column in hotWired to see his claim: `http://www.hotwired.co.jp/bitliteracy/ikeda/011120/textonly.html` Also, the argument citing this book was made on a mailing list, so let me know if you want to take a look. BTW, I must add that he's not all bad. He makes a lot of good arguments on many issues, so do not simply write

can I say? Lessig himself wouldn't have expected to have his argument used AGAINST privacy (he didn't, he told me[2]). It's true that privacy gets to be used as a sorry excuse in many cases. But that's a far cry from denying privacy itself. The value of not being search has been argued in CODE, and the importance of privacy is well described there. Just because some regulations are good, not all regulations are good. Likewise, just because some free commons is desirable, it doesn't follow that everything should be in the commons. This book incessantly stresses "Balance", and that's what we need to look for.

5 So What doed this Mean to You?

CODE was a great book, but it wasn't easy to act upon. We need to re-establish the democratic value? Woa, where do we even start? But with this book, there are many ways that you could actually help the actual attempts toward increasing freedom and the commons.

Let's start with small things. You can start and think about your home network. The argument about IP masquerade (NAT) destroying end-to-end has been promoted by IPv6 advocates in Japan, but there hasn't been any clear argument why end-to-end matters. Well, now you have one. So now you can start thinking about IPv6.

Of course, that doesn't mean you should rip out your firewalls and NAT routers right now. Or, you don't have to re-format your Windows partition and switch to Linux today. It may seem like a heroic act of courage, but do try to calm down. Even I don't (and can't) do such a thing. Idiots send us MS Word/Excel files all the time, and we have to deal with them. Besides, MS products aren't tools from hell (although some people argue that they are) and they can be pretty convenient.

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him off.

[2]This happened in Daikanyama with JSB. It was a passing remark, so maybe you don't remember.

But you should realize that locking yourself into an MS only environment does have consequences beyond your personal convenience. You should realize that there are other choices. Test them once in a while. You should start noticing about IPv6. Understand that you have the freedom of choice, and exercise that choice sometime.

You could directly contribute to the commons. Develop free software, create documents for them, or you can contribute to projects like Aozora Bunko and Project Gutenberg (or maybe the Project Sugita Genpaku by yours truly). Or it doesn't have to be such a big deal. Create your own home page or something, and when you do that, try not to put those pointless small prints like "unauthorized copying prohibited" or "no commercial use". And also, when you hear people talking about copyright violation, try to stop and think; does this really make sense, considering the original (or proper) purpose of copyrights? This book is your best guide in thinking that through.

And last but not least, the one thing that you should do is to go out and actually create stuff using the existing innovation platform — the Internet and/or other commons. Use the resources and innovate, develop, create. Use the freedom that you have, and realize the potential that the freedom offered. That activity will most persuasively prove the importance of the innovation commons. You should do that, expand what you do, and try to feel the need for more room to create. You should go and feel the need for commons. Many people feel that they are simply passive consumers, or that they lack the ability to innovate. But you don't have to be a top notch master (although you should try a bit). Answering a simple question on a newsgroup, or writing some comments about a book on Amazon.com — all these are innovations and creations. If you want to argue that commons are good, the prerequisite for that would be that people would take advantage of the commons and start creating. If no one does that, there's no point in having a creative commons. If more people engage in that, and start

noticing the importance of the commons that allows them to do so, then people will fully understand the significance of the arguments in this book. And if enough people realized that, maybe the worries in this book would turn out to be a false alarm — yer right, who am I trying to fool, but it could happen.

6 Acknowledgement

The actual work of the translation took about 3 months, from August to October 2002. A load of thanks to katokt, who checked the translation in amazing detail, pointing out numerous mistakes and typos. Thanks also to the editor, Keiko Toyama, has took the trouble of editing this huge volume. Also, in the final stage of this translation, the author himself was in Japan for several months, and I was able to straighten out bits and pieces of questions. Thanks. BTW, he has started to work on his next book that would make a much stronger appeal toward freeing creativity, with some Japanese examples. So there's something to look forward to.

Finally, some URIs that you might want to check out;

- Author's web page <`http://cyberlaw.stanford.edu/lessig/`>
- The book (original)'s web page <`http://the-future-of-ideas.com`>
- Creative Commons <`http://creativecommons.org`>
- Free Mickey Trial Page <`http://eldred.cc`>
- and the Japanese translation support page <`http://cruel.org/foi/`>

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