Postcolonial Piracy

Media Distribution and Cultural Production in the Global South

Edited by Lars Eckstein

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Lars Eckstein and Anja Schwarz

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Series Editor's Foreword

The current global situation of copyright and the challenges to it through piracy can only be understood by locating contemporary developments within a long history of imperial and capitalist relations. This, in brief, is the argument framing the exceptional book, *Postcolonial Piracy: Media Distribution and Cultural Production in the Global South,* edited by Lars Eckstein and Anja Schwarz. The assertion of personal authorship and proprietary rights, they argue, is under-pinned by complex legal commitments, most notably the 1994 TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement that established a global standard for copyright governance. At the same time, however, advances in technology – digital and other – have increased the possibilities of broader sections of the global population not only to consume, but also to create, adapt and redistribute media and communications. The ways in which this is happening, particularly in the global South, they suggest, can be best understood through the conceptual framing of 'postcolonial piracy' which draws attention to the deeper tensions between modernity and piracy.

Eckstein and Schwarz bring together a group of renowned scholars to reflect on issues of 'postcolonial piracy' from and in different geographical contexts and in relation to diverse disciplinary commit-ments. As a whole, the book examines the many ways in which people from around the globe access forms of technology, media and related products outside of the standard logic of 'property' as defined within modernist conceptions of such engagements. The chapters focus on how people negotiate the global regimes of authority and property, work through different understandings of copy and piracy, or explore the tensions between notions of legality and criminality in this context. Rather than seeking to define piracy or come to a common agreement as to what it *is*, the collection offers a gripping account of what piracy *does* across various contexts in the global South.

One of the key concerns of the Theory for a Global Age series is to ask how we might understand our present and future differently if we start from a critical examination of the idea of the global as constitutive of our conceptual categories and paradigms. *Postcolonial Piracy* provides a wonderfully rich gathering of topics, themes and debates in address of such concerns. Each chapter brings something distinctive to the book and, together, the chapters offer a strong challenge to understandings of modernity and related concepts that do not take the global into consideration. The postcolonial framing is both a theoretical one and a situational one that enables the chapters to engage across a variety of themes and build a forceful account of the domains, discourse and work of postcolonial piracy. It is an excellent contribution to the debates on modernity, copyright and piracy and provides a number of openings for us to begin to think through these issues in a new light.

Gurminder K. Bhambra

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Introduction

Towards a Postcolonial Critique of Modern Piracy

Lars Eckstein and Anja Schwarz

Campinas, Brazil, 2013: A 20-year-old funk carioca MC with millions of followers on YouTube, but no exposure in record stores, on the radio or on TV, is shot performing on stage in front of thousands of fans. Cochabamba, Bolivia, 2008: In a self-produced music video, an *originario* musician from the northern Potosi region styles himself as a local *tinku* warrior who takes 'justice in his own hands' by wrecking a shop selling pirated VCD material mass-manufactured in Peru. Bamako, Mali, 2006: An aspiring Malian dance band plays a series of free concerts secretly hoping to be spotted for an international booking on the world music circuit; MCs toast to the audience to buy their officially labelled cassettes while the band liberally borrows, embeds and layers the sounds of other artists. Cochin, India, 1995: An ultra-leftist playwright from Kerala is taken to court for 'stealing literary property' after writing a counter-play to a classic 1952 communist drama in which he examines the caste-based injustices of communist rule.

Across the global South, converging media technologies have facilitated complex forms of cultural production, distribution and reception in which globalized norms of creating, self and belonging interact with local histories and desires in intricate ways. This volume sets out to examine the innumerable 'provisional compromises' (Chakrabarty 2000: 70) resulting from this dynamic in a global age in which the vast majority of the world's population fails to access the flows of technology, media, goods and ideas according to the dominant logic

of property set as 'modern' standard. This standard, as it were, has a distinct local history; it basically evolved from British utilitarian legal models and German idealist notions of personal authorship, but travelled quickly across the Atlantic and beyond. Entangled, since its inception, in the imaginaries of imperialism and an emerging capitalist world system, it was enshrined as a global doctrine with the 1994 TRIPS Agreement which set minimal standards of copyright governance for all WTO member states. As indicated by the above examples, however, the notions of property and self propagated by this regime have been thoroughly challenged over the past decades, not least by the technological interventions of the analogue and digital revolutions. While these transformed the global North, they brought a sea change, as Ravi Sundaram and Lawrence Liang among others have pointed out, for large sections of the population in the South by increasingly offering 'people ordinarily left out of the imagination of modernity, technology and the global economy ways of inserting themselves into these networks' (Liang 2005: 12). These new avenues of access range from the spread of the four-track tape machine across Asia, Africa and the Americas in the 1970s to the introduction of various video formats in the 1980s and 1990s; they encompass the global distribution of often recycled computer hardware all the way to the mass dissemination of the internet and mobile phones in the new millennium. What all these technologies have in common is that they have allowed users not only to consume, but crucially also to produce, share and reproduce media in an infrastructure that is more often than not informal and volatile, yet which has facilitated a velocity of media content which increasingly renders difficult if not obsolete any attempts to confine it and prevent it from travelling.

We have chosen to address a kaleidoscope of vastly different practices which have emerged in the strained spaces between global regimes of authority and property on the one hand, and local 'culture[s] of the copy' (Sundaram 2007) on the other as cultures of *piracy*, with due awareness of the ideological and conceptual complexities this entails. This first concerns the fact that the term *piracy* is habitually

tied to questions of the law, be it in the rampant rhetoric of anti-piracy campaigns by industry associations or in the discourses of anti-copyright lobbies. Yet legalistic definitions of piracy are notoriously vague and at the same time too limited in scope for the kind of engagement with the phenomenon that is envisaged here. As Joe Karaganis points out, piracy has not had a stable legal referent across history, nor is there any consistency today in intellectual property legislation, let alone practices of enforcement, across national and regional contexts, despite all efforts at international synchronization. Piracy, he argues on these grounds, 'is almost certainly better understood as a product of enforcement debates than as a description of specific behavior' (Karaganis 2011: 2). If we nevertheless stick with the term to address a highly heterogeneous set of *cultural practices*, this requires some qualification. We should make it quite clear that this volume does not seek to define what piracy *is*, legally or otherwise. Rather, our interest is to describe what piracy *does* across a range of different contexts in the global South. We find these descriptions emerging in the cultural work of locally specific modes of medial production, consumption and distribution which oscillate between the formal and informal, within highly heterogeneous frameworks of 'porous legalities' (Liang 2005); yet we refrain from 'bringing everything back to intellectual property' (Lobato, Chapter 5, this book). The thrust of this volume, then, is to work towards an understanding of the cultural performance of postcolonial piracy. Its aim is to assemble and reflexively assess critical interventions conceptualizing such performances, to relate them to specific case studies across Asia, Africa and the Americas, and to ultimately devise new languages for thinking and theorizing the work of piracy for a global age.

The second challenge that inevitably comes with the term *piracy* is its semantic entanglement with maritime piracy, from seventeenth-century Caribbean buccaneering all the way to the twenty-first-century raids by Somali fishermen in the Straits of Aden. Maritime piracy invariably functions as the vehicle of the metaphor of media piracy, whether employed by those who lobby against it as a threat to states

and capital, or those who celebrate it in the spirit of libertarianism or anti-capitalism. Each party, of course, draws on a different cultural imaginary, either highlighting connotations of violence and illegality, or capitalizing on a long and popular cultural history of casting pirates as figures of resistance, from Defoe's *A General History of the Pyrates* (1724) to the notorious fictionalizations of Hollywood. In any case, the metaphor imports an affective and ideological dimension that must be reckoned with, and demands self-reflexive positioning against (or within) the dominant *récits* of heroic resistance or petty villainy. More generally, the trope needs to be handled with care because, while it is productive in underscoring the continuities of power's dealing with its others in a capitalist world system, it also understates the difference between maritime piracy that is framed around tangible goods and labour, and of cultures of the copy that invest in the infinite reproducibility of increasingly intangible content (cf. Lessig 2004: 64). Again, such differences may be bridged by focusing less on what piracy is, and more on what it does as a 'boundary object' which throws into relief its framing discourses. As Kavita Philip seminally puts it: 'Seeing pirates as boundary objects helps bring into focus the fields stabilizing on either side of the pirate, and thus to see as co-emergent the pirate figure along with the fields with which it is always imbricated' (Philip, Chapter 7, this book; see also Strathern (1999) for a larger anthropological grounding). The great advantage of sticking to piracy and the figure of the pirate in this sense is that it facilitates a larger historical perspective across the *longue durée* of globalization, and allows us to tie discussions of piracy to questions of modernity at large which also crucially inform our reading of the 'postcolonial'.

We have adopted our main title, *Postcolonial Piracy*, from Ravi Sundaram's seminal work on *Pirate Modernity* where it crops up in a single paragraph only, yet powerfully sets some of the core parameters of our project. Sundaram defines postcolonial piracy as a 'post-liberal (if not post-Marxist) cultural effect' which 'destabilizes contemporary media property, both enabling and disabling creativity, and evading

issues of the classic commons, while simultaneously radicalizing media access for subaltern groups' (Sundaram 2009: 111–12). For his specific interest in urban media practices in Delhi, he tends to set off 'postcolonial' modes from other modes of piracy by locating them in 'local networks of bazaar exchange and face-to-face contact, rather than individual online downloads' (112). Such a distinction, however, becomes increasingly difficult to maintain in view of more recent medial developments across the South (cf. Sundaram 2012). In its most basic sense, therefore, we take postcolonial piracy to encompass any culture of the copy in print, analogue or digital mediascapes across the global South, loosely associating our reading of the postcolonial with a tricontinental focus as propagated, for instance, by Robert Young (2003). At the same time, we draw on the postcolonial as a crucial mode of critique that challenges Eurocentric narratives of global modernity.

For the remainder of this introduction, we will expand on the nexus between piracy and the modern drawn up by Sundaram, and attempt to outline some of its wider historical and geopolitical resonances. A postcolonial critique of the current debate, we wish to propose, needs to engage with and intervene in the Eurocentric imaginary of modernity which underscores the very notions of 'property, capitalism, personhood' (Sundaram 2009: 111) that inform the discourse on piracy. Let us in the following, then, briefly attempt to 'rethink modernity' (Bhambra 2007) through the lens of global piracy.

Piracy and modernity

Debates about the disruptive force of media piracy and concomitant crises of cultural authority are hardly new, but reach back at least as far as the fifteenth century. Piracy was a formative 'boundary object', for instance, across early modern discourses in England from the introduction of the printing press in the 1470s, and shaped controversies which testify to not only a slow revolution of artistic production but

also a thorough reformulation of authorship. Up until about 1600, artistic authority for the literary and musical elite largely remained a function of social position defined by adequate employment, entailing that the core medium of choice for the English courtly '*musicus*' and 'maker' was the handwritten manuscript, a medium which ensured limited circulation and the social control of textual production. Modern questions of authorship, originality and ownership did not really matter in this late medieval model, at least not beyond the pragmatics of the (ephemeral) performance of manuscripts in institutional relations. Print culture and the capitalist market, then, were initially a highly ambivalent alternative for those who lacked or lost access to patronage or related ways of social authorization (cf. Gillespie 2006). In fact, the derogatory term 'compositor' or 'composer' was specifically devised by the late medieval elite as a means to discredit the modern competition from the presumably uneducated scribes, hacks and pirates of an age of print 'prostituted' by commerce (Rupp 2005: ch. 4). The troubled rise of the early modern composer and author, as a function of the increasing precariousness of aristocratic and clerical employment options and the rising opportunities of the bourgeois market, throws into ironic relief later discourses desiring to disentangle their legitimacy from their pirate others.

The composers and authors of the Gutenberg age of course devised, and were subject to, new modes of social control, partly in the interests of state censorship, but especially in view of the sudden mass reproducibility of printed material. Within the world of print, notions such as the originality of the 'work' or art, and of emphatic authorship tied to the person of the artist as sovereign property, were only gradually established and affirmed – in Foucault's (1977) famous reading, they were not fully conceptually and institutionally established in Europe until around 1800. And they were the result of multiple crises of authority which were thoroughly transnational in scope. As Adrian Johns's magisterial research into *The Nature of the Book* (1998) and *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (2010) demonstrates, print piracy, while endemic across the history of Western

modernity, was particularly effective not only in the social, but also in the geographical margins of markets. Thus, in the Anglophone world, particularly Scottish and Irish pirate publishers unsettled the authority of English printed matter in the seventeenth and eighteenth centuries, while, as Volker Grassmuck's contribution to this volume reiterates, the post-independence United States book market systematically failed to recognize British copyright throughout the nineteenth century. Piracy thus 'fueled the development of a deliberative public sphere … and the transfer of knowledge between more and less privileged social groups and regions' (Balázs 2011: 399), while at the same time driving the economic (and imperial) centres to more firmly assert and justify copyright control, from the 1557 Royal Charter of Incorporation of the Stationers' Company to the 1709 Statute of Anne, via the 1774 Copyright Case (in which the British House of Lords sided with Scottish renegade printer Alexander Donaldson's liberalist defence against the proposition of perpetual copyright) all the way to the international forays of the 1886 Berne Convention and the global regimes of TRIPS.

While there is little disagreement about the fact that, on the basis of such evidence, Western modernity and cultures of piracy are inextricably entwined, and that the global design of a copyright regime based on specific notions of 'property, capitalism, personhood' has emerged from the local histories of such entanglements, there is still more than one way of framing and telling this story. In the further course of our introduction, we wish to complicate predominantly Eurocentric stories of the legacies of piracy and modernity, including a relatively widely shared narrative (partly rehearsed, also, in contributions to this volume) which reads piracy as an essentially 'transitional' phenomenon, as a crucial phase in the establishment of peripheral markets which will, if not criminalized and more fully 'developed', naturally grow into the modern domain of copyright. We tend to be suspicious of such narratives precisely because of the underlying imaginary of the modern which underscores their *telos*.

Our critique of the piracy/modernity-nexus in this sense builds on a larger critique of the scope and place of modernity in the Western

philosophical and sociological imagination. Without being able to go into detail about the long legacy of Western conceptions of the modern from enlightenment discourses to the classical sociology of Durkheim, Marx and Weber, from Giddens or Luhmann all the way to, for instance, Eisenstadt's influential 'multiple modernities', we wish to follow Gurminder Bhambra (2007; cf. also Boatca et al. 2010) in fundamentally critiquing a tacitly shared proposition across the field that imagines Europe as the unique origin, and as the emphatically endogenous laboratory of the modern. Modernity, in other words, is typically attributed to a momentous transformation *within* European societies following the conceit of 'rupture and difference' (Bhambra 2007: 1), a conceit that not only silences historical and transcultural entanglements, but also underscores a teleology of modernization according to a diffusionist logic which sets Europe at the global centre from where modernity then gradually spreads out across the remainder of the planet via the joint trajectories of colonization, mission and trade.

Opposed to this reading, postcolonial critique has insistently foregrounded the fact that Europe did not establish its self-ascribed relation to modernity *before*, but crucially *through* imperialism and colonization. As Bhambra holds, 'colonization was not simply an outcome of modernity, or shaped by modernity, but rather, modernity itself developed out of colonial encounters, encounters which are hardly captured by the idea of "diffusion"' and continue to shape our world to this day (Bhambra 2007: 77). Walter Mignolo, drawing on Anibal Quijano's notion of the 'coloniality of power' (Quijano 2000), seminally expresses this in the twin concept of 'modernity/coloniality'. Coloniality, here, references the silenced 'darker side' (Mignolo 2011) or 'hidden logic of modernity, the logic that justifies its place as guiding light and point of arrival, on the one hand, and of disavowal and dependency on the other' for subaltern cultures and knowledges (Mignolo 2003: 441–2). Taking seriously this critique of modernity – a critique voiced not only in relation to Latin America but also from across the postcolonial planet (cf. e.g. Turnbull 2000; Chakrabarty

2000; Mbembe 2000) – entails piracy having to be conceived as inextricably tied not only to modernity, but also, on its darker side, to coloniality.

Piracy and coloniality

Let us briefly linger with the early modern Americas to illustrate the basic viability of thinking piracy through the entwined avenues of modernity/coloniality and follow Barbadian historian Hilary Beckles (1997), who declares the Caribbean contact zones of the sixteenth and seventeenth centuries as foundational sites of the modern. After all, the Caribbean imperial economy was since its inception built on a complex network of brokers, insurers and financiers, vast schemes of transcontinental labour recruitment, and operated the largest industrial complexes of the day, the sugar mills, which in many ways anticipated industrial mass production in Europe (cf. Williams 1994). And following C. L. R. James's seminal history of the Haitian Revolution, *The Black Jacobins* (1989), Beckles encourages us to read the Caribbean labour regime as promoting a radical 'proletarisation' of the enslaved worker which, more than a century before the Russian Revolution, gave rise to the first manifestation of a thorough philosophical as much as institutional renegotiation of modernity's regimes of 'property, capitalism, personhood'. A view from the Caribbean along such lines effectively questions modernity as the product of an endogenous process *within* Europe, later *exported* to presumably 'premodern' societies across the globe. Instead, it fundamentally encourages us to think of the conditions of modernity as negotiated within the violent laboratories across the colonial contact zones, from where they were (re)imported to the European metropolises only to be strategically purged of their 'other' local histories.

Modernity, to echo Paul Gilroy (1993), is hardly 'rooted' in the imperial centres, then, but is rather the product of innumerable 'routes' across a progressively colonized planet, and most adequately symbolized

by the innumerable ships which transported not only tangible goods and humans in various degrees of bondage, but also complex cosmogonies, ideologies and ideas. This conceptual move has intriguing resonances for our project, because if we allow ourselves to think of the imperial slave ship as the site where the battle for modernity has been fought out, as profoundly argued, for instance, by Ian Baucom's *Specters of the Atlantic* (2005), need we not also locate the pirate vessel at the heart of modernity, as a foundational if ambivalent trope which both shapes and refracts negotiations of the modern? After all, the 'boundary object' of piracy, on the one hand, crucially functioned to stabilize the identitarian discourses of Western modernity, as outlined, for instance, by Nicole Waller in her encompassing study *American Encounters with Islam in the Atlantic World*, exploring how the 'captivity crises' induced by privateering off the North African coast in particular triggered 'cultural scripts that move beyond the scope of local histories to establish a mapping of the world into economic, religious, and racial spheres' (Waller 2011: 2). On the other hand, as Lawrence Liang traces in this volume following Linebaugh and Rediker, the codes of early Atlantic buccaneering also institutionalized some of the first distinctive counter-cultures of modernity, crucially destabilizing the modern identitarian politics of nation, class, capital, religion or race by creating limited social spaces which, if only temporarily, 'established an alternative ethic and an alternate mode of being' (Liang, Chapter 2, this book).

A view from the coloniality of power in this vein does not stop at maritime piracy, of course, but encourages us to rethink the trajectories of modernity's conception of 'property, capitalism, personhood' further. It allows us, for instance, to foreground the imperial imaginary under-pinning John Locke's *Second Treatise of Government* (1689) which, as Adam Haupt points out in this volume, in many ways formed the philo-sophical template for the inception of copyright legislation by the 1709 Statute of Anne. A contrapuntal reading, to use Edward Said's phrase, of the rise of copyright which ties the 'work' of art to the personhood of clearly demarcated civil subjects by right of their invested labour, forbids us to isolate this logic from related logics at work in the violent

dispossessions of settler colonialism in the Americas, Southern Africa or Australia and New Zealand. It encourages us to interrogate how the foundational writ of *habeas corpus* underscored notions of intellectual as much as of human property in the discourses legitimizing (and striving to abolish) chattel slavery. It asks us to critically interrogate the cosmopolitan debates of the Enlightenment over the global circulation of both human and property rights for their underpinning ideologies and typologies of gender, class and, in particular, race. And finally, a contrapuntal reading from the perspective of coloniality also asks us to acknowledge, without denying the local validity and productivity of copyright, alternative local histories and epistemologies which frame notions of the self and its relation to the world.

Such reflections call up Michael Taussig's Benjaminian meditations on different 'cultures of the copy' in *Mimesis and Alterity* (1993), which propose that Western capitalism facilitated a culture of 'disenchantment' that is 'home to a self-enclosed and somewhat paranoid, possessive, individualized sense of self severed from and dominated over a dead and nonspiritualized nature … within a system wherein that self ideally incorporates into itself wealth, property, citizenship'. Taussig ventures to juxtapose this disenchantment with the 'sympathetic magic' of cultures he conceives of as essentially 'mimetic', informed by the notion of a 'protean self with multiple images (read "souls") of itself set in a natural environment whose animals, plants, and elements are spiritualized to the point that nature "speaks back" to humans' (Taussig 1993: 97). He advocates exploring precisely such alternative 'cultures of the copy' and their potential for 'post-capitalist utopias organized around the playful exchange of difference, weak chiefs, sharing, and what we may dare designate as a "human," and perhaps "yielding" relation to nature' (ibid.: 98) which may allow us to reframe the problem of piracy, as Marcus Boon proposes in his contribution to this volume, as relating less to questions of subaltern 'appropriation' than to questions of 'depropriation'.

Yet we may also bring the debates on piracy and modernity/coloniality back to the postcolonial present and interrogate, with Partha

Chatterjee, the larger viability of the presumably universal category of 'citizenship' across the global South. As Chatterjee famously maintains, in most postcolonial nation states the field of politics became 'effectively split' between what he refers to as 'civil society', a more often than not very narrow domain 'where citizens relat[e] to the state through the mutual recognition of legally enforceable rights', and a much wider domain of 'political society'. In political society, Chatterjee insists, 'governmental agencies dea[l] not with citizens but with populations' which critically fail to carry 'the ethical significance of citizenship' (Chatterjee 2011: 13–14). The multiple informal exchanges of such 'populations' across the South – for instance, of the urban poor whose access to housing, water, electricity or (unspectacularly in this context) media are more often than not 'illegal' according to the codes of law – may well be tolerated if in the interest of the state. Typically, their 'illegality' is explained as an *exception* to the order of 'property and the rights of proper citizens' in order not to fundamentally unsettle the rule of law. Conversely, Chatterjee argues, the populations of political society respond to this logic not by appealing to the law either, but by striving to form 'moral communities' which pressure governments to tolerate, again, popular exceptions (ibid.; cf. also Simone 2006 or Liang, Chapter 2, this book).

A critique of how postcolonial piracy, in Sundaram's terms, 'fundamentally disrupts the categories of debate of property, capitalism, personhood' (Sundaram 2009: 111), this is to argue, needs to engage with what it actually means to be a person, a citizen, a pirate, in the postcolony. What is called for, therefore, is a composite picture of locally grounded critiques which attend to distinct local histories and epistemologies as much as to the global designs of 'property, wealth, citizenship' which inform the capitalist world system. Or, put differently, a postcolonial critique of piracy needs to combine what Kavita Philip promotes as the genealogical analysis of piracy as a 'boundary object', with what Mignolo, following Gloria Anzaldúa, refers to as 'border thinking'. Border thinking invariably demands, for Mignolo, a 'pluritopic hermeneutics', a way of reading which

entails 'a critical reflection on knowledge production from both the interior borders of the modern/colonial world system … and its exterior borders' (Mignolo 2000: 11). The most vocal critiques of Southern piracy that dominate both the Western media and academic debates, we wish to argue, hardly adhere to such a programme. Instead, they tend to read and understand piracy within and against the monotopic narratives of modernity which we have tried to unsettle here. Let us now rehearse some of the major arguments.

Monotopic critiques of piracy

Our review of some of the major discourses about Southern piracy draws heavily on Ramon Lobato's attempt at a systematization of the field, three of whose 'Six Faces of Piracy' (Lobato 2008) we wish to briefly foreground. We are fully aware that this taxonomic reduction rather crudely simplifies a contingent field of debate full of nuances and ambivalences, yet we nevertheless believe that it is helpful to flag some of its most prominent cornerstones, not least in view of their susceptibility to postcolonial critique. The most common interpretation of piracy in this context is of course the conceptualization of piracy as *theft*, following the dominant logic of copyright within the capitalist world system according to which piracy is essentially imagined as a 'parasitic act of social and economic deviance' (Lobato 2008: 20). This view is supported by mainstream legal and political discourses across the Western world (cf. e.g. Choate 2005; Paradise 1999), and continues to be vocally lobbied by a whole range of industry associations and alliances which have, to date, also funded most of the research into pirate practices. The viability of such research has been critiqued in an encompassing and nuanced way by Joe Karaganis in his opening chapter to the timely collaborative, and very much policy-oriented, publication *Media Piracy in Emerging Economies* (2011). Karaganis outlines how industry research has typically foregrounded, without

making their methodology transparent, dramatic financial losses incurred by media piracy, driven enforcement campaigns across the globe, and advocated pedagogical measures in the interest of copyright.

What is interesting from a postcolonial angle is a gradual shift in the rhetoric of such anti-piracy campaigning especially in view of 'developing' markets in Asia and beyond. While media piracy has always been associated with criminal behaviour, Nitin Govil (2004) has seminally observed that following the events of 9/11, the rhetoric of the 'war' on global piracy became thoroughly entangled with the rhetoric of the war on terror. Kavita Philip embeds these findings in an analysis of larger shifts in Western media coverage, observing how an older, largely patronizing perspective on Southern piracy 'as annoying and inconvenient for western business, but one that will inevitably be cleaned up with the coming of full-fledged modernity to backward nations' gave way to a much more fundamental anxiety, an anxiety that is fuelled not least by the economic success of BRIC nations which, as Shujen Wang demonstrates in this volume, have in different ways shunned the prescribed road to modernity 'proper' by negotiating their way around strong copyright enforcement. In more recent media representations, the spectre of postcolonial piracy has thus begun to haunt nothing less than the whole 'Western way of life', fuelled by a rhetoric of crisis lamenting that '[t]he very technologies that appear to embody post-Enlightenment modernity and progress seem to facilitate the destruction of western civilization by those who "hate our values and freedoms"' (Philip 2005: 201).

Such discourses advocating copyright enforcement across the globe have come under attack, not least by interventions which oppose the social control of media in the name of *free speech*. The defence of *free speech* has gained particular momentum and a new geopolitical twist more recently with the upheavals caused by, among other events, the WikiLeaks affair (as briefly critiqued by Marcus Boon in Chapter 6, this volume) and Edward Snowden's revelations about digital surveillance practices across the Western world. Yet it also underpins a range of liberal critiques of strong copyright enforcement which reach back

as far as the inception of copyright itself (as indicated with reference to the 1774 Copyright Case), and which similarly gained a new quality and urgency with the digital revolution. The prevalent libertarian argument, here, is that copyright restriction imposed by states and monopolists blocks the free flow of ideas and the creative powers of late modern network societies in which all consumers are potential creators (cf. e.g. McLeod 2007; Strangelove 2005; Vaidhyanathan 2003). By criminalizing vital techniques of the digital age such as cut-and-paste, remixing, ripping or sampling, the proponents of this discourse argue, an older generation of policy-makers is stifling the creative potential of the coming generation; accordingly, they variously advocate an extension of fair-use regimes, thin protection or alternative copyright systems such as the Creative Commons model under which this very volume is licensed. In fact, we collectively agreed with our contributors to propose our project to its original publishing house not least on the grounds of its politics of simultaneous print and open-access electronic distribution, hoping to facilitate circulation within as many cultures of the copy as possible, and especially in the global South.

We are, in this sense, indebted to Lawrence Lessig in particular, the man behind Creative Commons and doyen of the free culture movement. Nevertheless, Lessig's model of free culture as underscored in his highly influential eponymous 2004 publication is also troubling from a postcolonial perspective, and indicative of the Eurocentric imaginary underpinning large sections of the libertarian copyright critique. As Kavita Philip and Lawrence Liang outline, Lessig's work post his interventions in *The Future of Ideas* (2001) is marked by a strategic distinction between piracy that is acceptable and desirable, and piracy that is 'wrong', in response to criticism, both indignant and enthusiastic, which interpreted free culture as unsettling both the law and the market. Good piracy, for Lessig, is defined by the 'transformative uses of creative work' (Lessig 2004: 156), whereas bad piracy does 'nothing but take other people's copyrighted content, copy it, and sell it' (63). This kind of piracy, Lessig ventures, 'is rampant and just plain wrong. It doesn't transform the content it steals; it doesn't transform

the market it competes in' (66) – and, strikingly, Lessig's rhetoric and examples locate it overwhelmingly in Asia. 'Asian' piracy figures tacitly as an oriental Other which potentially jeopardizes the libertarian pillars of free culture – the bourgeois subject, its right to property and the free market; or, as Philip concludes: 'Asian pirates serve as his limit case: the limit point of difference from bourgeois law … – abandon those lifelines and we fall into the pit of Asian sameness. We lose the difference … that makes us creative, successful, and technologically productive' (Philip 2005: 212).

Unsurprisingly, this logic is inverted in (neo)Marxist readings, which precisely reject the legitimacy of 'bourgeois law' and the capitalist world system which both the discourses opposing piracy as *theft* and the discourses defending 'good' piracy as *free speech* support. By framing piracy as *resistance*, the interventions in this field tend instead to conceive of the media as a 'system of control and exploitation that operates in the service of capitalism' and 'insist on the importance of *class*' (Lobato 2008: 28). Vital examples of this approach are, for instance, Ronald Bettig's seminal *Copyrighting Culture* (1996), or the *Global Hollywood* volumes co-authored by Toby Miller and colleagues (2002 and 2008). Bettig undertakes a detailed and compelling history of 'the political economy of intellectual property' which fundamentally critiques the entanglements of copyright and capital, and analyses in depth how the US government has, in conjunction with various industry associations, aggressively enforced a global copyright regime in its own economic interests. The authors of *Global Hollywood*, in turn, offer a profound materialist critique of the exploitative transnational labour and hegemonic distribution regimes of major film studios which are critically enabled by intellectual property legislation that 'prioritizes ownership over use, creators over audiences, and production over reception' (Miller et al. 2008: 226). Both approaches tend to value piracy as a viable mode of subversion and resistance within and against a hegemonic neoliberal and neocolonial world system.

To build on such analyses a classical Marxist critique of piracy as *resistance*, however, again creates a range of problems. More generally,

such a reading runs the risk of conflating in a 'totalizing rhetoric' (Lobato 2008: 29) a myriad of highly heterogeneous cultural practices, contexts and, not least, agencies and motivations. In *Shadow Economies of Cinema*, Ramon Lobato foregrounds, for instance, how systems of cinema across the globe may vary from distinctly local ventures to complex transnational circuits of production and distribution with very different cultural and economic imaginaries. Moreover, pirate networks of any size are hardly detached from the formal circuits of capital, but 'there is a great deal of traffic between the formal and the informal over time and space. … Formal economies can become informal and vice versa' (Lobato 2012: 41). The many realities of postcolonial piracy, in other words, do not quite add up with the historical narrative of classical Marxism.

Dipesh Chakrabarty attends to this problem from a different end in his critique of hegemonic historiography. In *Provincializing Europe*, he intricately flags out the tensions between the universal scope of post-Enlightenment narratives of history and subalternized local epistemologies, and he particularly grapples, from a dissident's perspective, with the undeconstructed Hegelianism of orthodox Marxism according to which all human progress must lead to the establishment of capitalism which is then sublated into communism. The historical determinism of this model, Chakrabarty argues, has dramatic consequences for local 'formations of self and belonging' outside of Europe, as it conflates and reduces them to an indistinct prehistory, 'posited by capital itself as its precondition' (Chakrabarty 2000: 63) in a unilateral, world-historical narrative. Rather than adhering solely to this monocentric *récit* (Chakrabarty's 'History 1'), Chakrabarty advocates that we instead also attend to such pasts and narratives (Chakrabarty's 'History 2') which 'do not lend themselves to the reproduction of the logic of capital', and which as such productively interrupt the 'totalizing thrusts' of the universal dialectical model (ibid.: 64, 66). Such readings, he argues, allow us 'to make room, in Marx's own analytic of capital, for the politics of human belonging and diversity' and 'giv[e] us a ground on which to situate our thoughts

about multiple ways of being human and their relationship to global capital' (67). It is in this spirit that we may arrive at a materially grounded, yet, in Mignolo's terms again, 'pluritopic' critique of piracy, a critique that acknowledges the ways in which its heterogeneous practices are necessarily tied to the logic of a capitalist world system, yet which insists that such practices are always refracted by local histories and epistemologies in 'provisional compromise' (Chakrabarty 2000: 70).

Towards a pluritopic critique of piracy

Thinking about postcolonial piracy in terms of a plurality of 'provisional compromises' between global designs of 'property, capitalism, personhood' and concrete local ways of 'being human' that are mediated through older and new technologies across the global South crucially allows us to move beyond the Eurocentric imaginaries of theft, freedom or resistance. While not denying their partial validity, a pluritopic hermeneutics invariably foregrounds the imbrication of universalizing narratives with alternative local epistemologies and imaginaries which complicate and exceed their scope. Piracy across the global South, in this reading, is certainly and most pressingly a consequence of a 'global pricing problem' in a world of '[h]igh prices for media goods, low incomes, and cheap digital technologies' as highlighted by Joe Karaganis in his vital policy-oriented intervention (Karaganis 2011: i). Yet piracy is always also more than that. Cultures of piracy across the globe, as we have tried to argue, have performed as crucial sites in which various ways of being modern have been negotiated and acted out. Moreover, the volatile infrastructures of postcolonial piracy have created their own materially grounded, provisional aesthetics. Brian Larkin, for instance, draws on cassette, video and cinema cultures in northern Nigeria to foreground how the aesthetics of postcolonial piracy are often marked by 'the ubiquity of technological breakdown and repair' and a regime of reproduction

which creates 'a set of formal qualities that generate a particular sensorial experience of media marked by poor transmission, interference, and noise' (Larkin 2008: 218–19, 233). Such reflections on the generative aesthetics of piracy productively trouble Lessig's seemingly neat distinction between 'transformative' and 'plain' copying. And while the more recent distribution of digital technologies is about to widely eliminate the degrading effects of copying and sharing across the South, the 'boundary object' of piracy continues ever more urgently to destabilize and reformulate conceptions of originality and authenticity, of creativity and authorship, of belonging and being. The many futures of cultural production in a global age are negotiated and acted out, yes, in Los Angeles or Berlin, but ever more urgently so in Cochin and Bamako, in Cochabamba and Campinas.

The following contributions offer a polyphonous collection of seminal voices from and about a range of regional and disciplinary contexts on which we have heavily drawn in our own attempt to conceptually frame this volume. It goes without saying that this frame hardly contains the plurality of arguments at stake, and that all our contributors productively exceed, and in some instances contradict, us as well as each other. In their entirety, however, the contributions powerfully underscore the need to find new ways of thinking and conceptualizing postcolonial piracy for a global age.

This collection sets out with a section of four essays that carve out the *Domain of postcolonial piracy*. It opens with two classical interventions, Ravi Sundaram's 'Revisiting the pirate kingdom' and Lawrence Liang's 'Beyond representation: the figure of the pirate', which in many ways set the conceptual challenges of the field. Sundaram mainly concentrates on a range of urban media cultures which have manifestly shaped modern India, yet remain largely outside of the imaginary of Western narratives of urbanism and globalization. Liang in turn powerfully questions the viability of legalistic and liberal discourses of the public domain for postcolonial populations, drawing on contemporary contexts across the South as well as unfolding a larger trajectory of the commons and dispossession that reaches back across the history

of modernity. The opening set is completed by Volker Grassmuck's 'On the benefits of piracy' which expands the field of inquiry to the nineteenth-century US book market, Nigerian video culture and the Brazilian Techno Brega circuit while pleading for a 'legalization of small-scale piracy', and finally Shujen Wang's '"Dreaming with BRICs"? On piracy and film markets in emerging economies'. Wang offers a detailed assessment of the different ways in which Brazil, Russia, India and China have sanctioned pirate markets of the economic under-ground and borderlands against various degrees of pressure from, in particular, the US, and how such markets tie in with formal economies in intricate ways.

Under the rubric *Reframing the discourse of postcolonial piracy*, the second set of four essays then offers reflexive interventions into the emergent field of postcolonial piracy studies itself, critically assessing the conceptual repertoire of its rhetoric, the scope of its analyses and the trajectories it opens up for future research. It begins with Ramon Lobato, who profoundly interrogates the conceptual validity and productivity of the term 'piracy' in the debates at stake, given the 'impossible heterogeneity' of the cultural phenomena it addresses, and given that the term seems to confine us to a 'copyright-centric critique of copyright … that cannot speak its own language'. Marcus Boon frames this problem in a different way in 'Depropriation: the real pirate's dilemma' when he exposes the pervasiveness of the concept of subaltern 'appropriation' in the philosophical trajectory of current critiques of piracy. In an analysis of phenomena as diverse as Occupy Wall Street, WikiLeaks and the music compilation *Music from Saharan Cellphones*, he proposes instead to reorient our discourses along the conceptual lines of 'depropriation' as a way to think beyond the logic of property and capital. In a meta-critical tour de force, Kavita Philip then expands the scope of current critique by embedding the discourses of piracy within a more encompassing study of the knowledge economies of modernity/coloniality. In 'Keep on copyin' in the free world? Genealogies of the postcolonial pirate figure', she advocates an intimate tracing of the ways in which the figure of the pirate has functioned as

a 'boundary object' serving to stabilize discourses and technologies of governmentality across history, in a genealogical perspective which ultimately reflects how the futures of pirate studies themselves are 'embedded in, shaped by, and co-constituted with the structures of power-to-come'. The section closes with Adam Haupt's 'Interrogating piracy: race, colonialism and ownership', which returns to the imperial imaginary underscoring John Locke's *Second Treatise* and the politics of commons enclosure in the genealogical spirit outlined by Philip; at the same time, the essay marks a transition to the final section of this volume by tracing the profound legacy of Locke in a closely contextualized case study framed around Solomon Linda's classic South African song 'Mbube'.

The volume closes with four case studies which illustrate the ambivalent *Work of postcolonial piracy* in different contexts of cultural production in urban Brazil, rural Bolivia, in the capital of Mali and in the Indian state of Kerala. Ronaldo Lemos's 'To kill an MC: Brazil's new music and its discontents' takes the violent death of funk carioca MC Daniel Pellegrine, a.k.a. MC Deleste, as a starting point for an intense meditation on the conceptual consequences of new modes of digital music production almost exclusively channelled via YouTube, Facebook, Twitter and 4Shared for notions of legality and originality, subjectivity and collectivity, social authority and authorship. Henry Stobart's '"Justice with my own hands": the serious play of piracy in Bolivian indigenous music videos' then sets an intriguing counterpoint to the web-based cultures of urban Brazilian musicking by focusing on rural Bolivian music cultures and the medium of the video compact disc. Stobart offers a compassionate and astute analysis of the ironic paradoxes of piracy that is informed by his friendship and collaboration with *originario* musician Gregorio Mamani, showing how the Bolivian pirate infrastructure is at the same time fundamentally enabling, in the basic absence of a formal music economy, yet also precariously disabling indigenous artists. Ryan Skinner pursues a related argument for the precarious music circuits of Bamako in his 'Money trouble in an African art world: copyright, piracy and the politics of culture

in postcolonial Mali'. He closely traces the gradual transformation of Malian postcolonial politics from state-centred cultural production with all its discontents to the neoliberal structural adjustment policies which resulted in a cultural economy of constant 'money trouble', an economy which forces artists and audiences alike to perpetually navigate between the 'perceived anarchy' of local piracy and the 'proscribed control' of a global rights regime. Last but not least, the volume comes full circle with Satish Poduval's contribution 'Hacking and difference: reflections on authorship in the postcolonial pirate domain' which ties back in with and expands on the crucial interventions of Sundaram and Liang in the first section. Poduval focuses on the boundary figure of the postcolonial (literary) hack in two Kerala-based instances, one historical in the context of leftist theatre, and one fictional in the context of the Malayalam film industry, to illustrate how in the Indian South piracy-as-mimicry has enabled an ambivalent 'rear-guard occupation of modernity' for those previously left out of its imaginary.

But no more parley, reader. Now that our motley crew is on deck, let us sink this editorship and all its provisional compromises. Enter, set sail and depropriate.

References

Balázs, B. (2011), 'Coda: A Short History of Book Piracy', in J. Karaganis (ed.), *Media Piracy in Emerging Economies*. New York: Social Science Research Council, 399–413.

Baucom, I. (2005), *Specters of the Atlantic: Finance Capital, Slavery and the Philosophy of History*. Durham, NC, and London: Duke University Press.

Beckles, H. M. (1997), 'Capitalism, Slavery and Caribbean Modernity', *Callaloo*, 20(4): 777–89.

Bettig, R. V. (1996), *Copyrighting Culture: The Political Economy of Intellectual Property*. Boulder, CO: Westview Press.

Bhambra, G. K. (2007), *Rethinking Modernity: Postcolonialism and the Sociological Imagination*. Basingstoke: Palgrave.

Boatca, M., Costa, S. and Encarnación Gutiérrez, R. (eds) (2010), *Decolonizing European Sociology: Transdisciplinary Approaches*. Aldershot: Ashgate.

Chakrabarty, D. (2000), *Provincializing Europe: Postcolonial Thought and Historical Difference*. Delhi: Oxford University Press.

Chatterjee, P. (2011), *Lineages of Political Society: Studies in Postcolonial Democracy*. New York: Columbia University Press.

Choate, P. (2005), *Hot Property: The Stealing of Ideas in an Age of Globalization*. New York: Alfred A. Knopf.

Foucault, M. (1977), 'What is an Author?', in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, trans. D. F. Bouchard and S. Simon. Ithaca, NY: Cornell University Press, 113–38.

Gillespie, A. (2006), *Print Culture and the Medieval Author: Chaucer, Lydgate, and Their Books, 1473–1557*. Oxford: Oxford University Press.

Gilroy, P. (1993), *The Black Atlantic: Modernity and Double Consciousness*. London: Verso.

Govil, N. (2004), 'War in the Age of Pirate Reproduction', in S. Sengupta, M. Narula, R. Vasudevan, R. Sundaram, J. Bagchi, A. Sharan and G. Lovink (eds), *Sarai Reader 04: Crisis/Media*. Delhi: Sarai/CSDS. Web.

James, C. L. R. (1989), *The Black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution*. London: Vintage.

Johns, A. (1998), *The Nature of the Book: Print and Knowledge in the Making*. Chicago, IL: University of Chicago Press.

—(2010), *Piracy: The Intellectual Property Wars from Gutenberg to Gates*. Chicago, IL: University of Chicago Press.

Karaganis, J. (ed.) (2011), *Media Piracy in Emerging Economies*. New York: Social Science Research Council.

Larkin, B. (2008), *Signal and Noise: Media, Infrastructure, and Urban Culture in Nigeria*. Durham, NC: Duke University Press.

Lessig, L. (2001), *The Future of Ideas: The Fate of the Commons in a Connected World*. London: Random House.

—(2004), *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin.

Liang, L. (2005), 'Porous Legalities and Avenues of Participation', in M. Narula, S. Sengupta, J. Bagchi and G. Lovink (eds), *Sarai Reader 05: Bare Acts*. Delhi: Sarai/CSDS. Web.

Lobato, R. (2008), 'The Six Faces of Piracy: Global Media Distribution from Below', in R. C. Sickels (ed.), *The Business of Entertainment*, Vol. 1: *Movies*. New York: Praeger Publishers, 15–36.

—(2012), *Shadow Economies of Cinema: Mapping Informal Film Distribution*. London: The British Film Institute.

Mbembe, A. (2000), *On the Postcolony*. Berkeley: University of California Press.

McLeod, K. (2007), *Freedom of Expression: Resistance and Repression in the Age of Intellectual Property*. Minneapolis: University of Minnesota Press.

Mignolo, W. (2000), *Local Histories/Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking*. Princeton, NJ: Princeton University Press.

—(2003), *The Darker Side of the Renaissance: Literacy, Territoriality & Colonization*. Ann Arbor: University of Michigan Press.

—(2011), *The Darker Side of Western Modernity: Global Futures, Decolonial Options*. Durham, NC: Duke University Press.

Miller, T., Govil, N., Maxwell, R., McMurria, J. and Wang, T. (2002), *Global Hollywood*. London: The British Film Institute.

—(2008), *Global Hollywood: No. 2*. London: The British Film Institute.

Paradise, P. (1999), *Trademark Counterfeiting, Product Piracy, and the Billion Dollar Threat to the US Economy*. Westport, CT: Greenwood Press.

Philip, K. (2005), 'What Is a Technological Author? The Pirate Function and Intellectual Property', *Postcolonial Studies*, 8(2): 199–218.

Quijano, A. (2000), 'Coloniality of Power, Eurocentrism, and Latin America', *Nepentla: Views From the South*, 1(3): 533–80.

Rupp, S. (2005), *Die Macht der Lieder: Kulturwissenschaftliche Studien zur Performativität weltlicher Vokalmusik der Tudorzeit*. Trier: WVT.

Simone, A. M. (2006), 'Pirate Towns: Reworking Social and Symbolic Infrastructures in Johannesburg and Douala', *Urban Studies*, 43(2): 357–70.

Strangelove, M. (2005), *The Empire of Mind: Digital Piracy and the Anti-Capitalist Movement*. Toronto: University of Toronto Press.

Strathern, M. (1999), *Property, Substance and Effect: Anthropological Essays on Persons and Things*. London: Athlone.

Sundaram, R. (2007), 'Other Networks: Media Urbanism and the Culture of the Copy in South Asia', in J. Karaganis (ed.), *Structures of Participation in Digital Culture*. New York: Social Science Research Council, 48–73.

—(2009), *Pirate Modernity: Delhi's Media Urbanism*. London: Routledge.

—(ed.) (2012), *No Limits: Media Studies from India*. Delhi: Oxford University Press.

Taussig, M. (1993), *Mimesis and Alterity: A Particular History of the Senses*. New York: Routledge.

Turnbull, D. (2000), *Masons, Tricksters and Cartographers: Comparative Studies in the Sociology of Scientific and Indigenous Knowledge*. New York: Taylor & Francis.

Vaidhyanathan, S. (2003), *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*. New York: New York University Press.

Waller, N. (2011), *American Encounters with Islam in the Atlantic World*. Heidelberg: Winter.

Williams, E. (1994), *Capitalism and Slavery*. Chapel Hill and London: University of North Carolina Press.

Young, R. J. C. (2003), *Postcolonialism: A Very Short Introduction*. Oxford: Oxford University Press.

Part One

Conceptions

The Domain of Postcolonial Piracy

Revisiting the Pirate Kingdom[1]

Ravi Sundaram

The body is a thing among things.
Maurice Merleau-Ponty, *The Visible and the Invisible*

In an essay entitled 'Theatrum Philosophicum', Michel Foucault made one of his now widely cited predictions – that this century may well be known as 'Deleuzian'. Less is known of the exact occasion of this statement – Foucault's discussion of Gilles Deleuze's two books, *Difference and Repetition* and *The Logic of Sense*. After Deleuze, Foucault suggested that 'the philosophy of representation – of the original, the first time, resemblance, imitation, faithfulness is dissolving; the arrow of the simulacrum released by the Epicurians is headed in our direction' (1977: 172). Since Plato's time, the relationship between the real and the copy has been framed where the simulacrum has existed almost entirely as a negative mode of comparison, a false claimant to the real. Plato's hierarchy was that of the model, the copy and the copy of the copy, designated as the simulacrum. In the *Republic*, Plato had displayed his hostility to the 'imitator' who, as the 'creator of the phantom, knows nothing of reality' (Nelson and Shiff 1996: 36). In *The Logic of Sense* Deleuze argues for the equality of representations, in a philosophy that abolishes classical distinctions between essence and appearance: 'The simulacrum is not a degraded copy. It harbors a

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positive power which denies the *original and the copy, the model and the reproduction*' (Deleuze 1990: 262).

  Plato's philosophical distinction had become significant by the seventeenth century when Western modernity refashioned itself through the lenses of creativity and authorship, tied to an emerging theory of cultural property. The establishment of a widespread discourse on authorship has by no means been easy. From the seventeenth century mass reproduction techniques inaugurated by print rendered Plato's philosophical distinction increasingly suspect through the proliferation of more versions of the Same and the Different.

Postcolonial urban proliferation[2]

The 'crisis of the real' referred to in *The Logic of Sense* marked Western cultural and philosophical debates in the 1970s. At the same time post-Fordist global production in the capitalist world economy set up vast networks of factories, semi-autonomous affiliates, distribution techniques, technological capabilities that soon moved regionally and in a non-linear fashion (see Arrighi 1994). This is a space–time cluster commonly collapsed in the phrase called 'globalization', a period that saw both urban expansion and crisis in all parts of the postcolonial world. Proliferation, endless proliferation marks the new postcolonial urban. Home workshops, markets, hawkers, small factories, small and large settlements of the working poor now spread all over the planned metropolis, or in regions where it would have been impossible some years ago. Productive, non-legal proliferation has emerged as a defining component of the new urban crisis in India and other parts of the postcolonial world. These urban proliferations, sometimes called 'informal', have remained ambivalent about the law. As Timothy Mitchell's work on Egypt (2006) shows, urban populations identified as

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[2] My use of the term *postcolonial* is completely pragmatic – to indicate a successor to the nationalist enterprise. The terms 'Third World' and 'South' make no sense today in their original formulation.

informal tended to stay away from legal regimes of property as the latter could potentially destroy local knowledges and bring the informals into the extractive monetary structures of urban government. In Delhi, Solomon Benjamin found out that the East Delhi neighbourhood of Vishwas Nagar, called a slum by planners, in fact emerged as the main centre of electronics hardware production in North India in the 1980s (Benjamin 2005: 242–54).

It is increasingly clear that this unhinged proliferation of urban life is enclosed in a world of media urbanism. Postcolonial cities are today also *media cities*,[3] a tag typically reserved for the 'global city'. Saskia Sassen and Manuel Castells have recognized that international technological networks of finance and communication produce new geographies of concentration and dispersal. Sassen (2001) argues that financial centres concentrate in certain core cities with a large, increasingly disenfranchised low-end workforce helping to provide services and back-up. Manuel Castells's (2000) network society thesis focuses on how a new space of flows draws producers of information goods everywhere into powerful communication networks. Elite urban enclaves service and house these classes, simultaneously marginal-izing other forms of labour in the city. Positioning in the new space of flows becomes part of the strategies of new info-elites. The global network society also produces a range of spatial entities of generic environments: software parks, outsourcing hubs and data parks. New technological urban peripheries emerge around global concentrations. Despite its obvious insights, global city literature has preferred to map its own geography onto that of mainstream development theory: here the postcolonial urban is implicated in a theory of the 'digital divide' where technological effects are concentrated in elite enclaves.

An increasing range of research from Mexico to Nigeria and now Asia suggests that, contrary to more *simpliste* digital divide arguments, postcolonial cities are also vibrant hubs for new media productions, spurred on by a range of low-cost infrastructures: mobile telephony,

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[3] A growing literature is beginning to document this. See Larkin 2004.

video and digital technologies and parallel distribution circuits.[4] This produces a media experience that assumes constant breakdown, recycled assemblages, serial dispersal and endless proliferation of multiple forms and sites. Breakdown and productive life are enmeshed in a dynamic constellation. Experiencing of this media city produces a complex hyperstimulus: an escalation of the senses along with the increasing speeds of the city, and a relentless circulation of things, images and people. Proliferation has produced a diversity of media experiences, but also unsettled classic boundaries of consumption and circulation, drawing urban populations into a dynamic but addictive loop.

With globalization, Indian cities saw unending waves of new commodified technological objects entering markets, homes and offices. Pirate production and circulation was a publicly acknowl-edged sphere in this new world of things. It encompassed most consumer products but was particularly significant in media goods whose surfaces spread in every part of the city. These goods took on life as counterfeits, fakes or copies, or, in popular language, the 'pirated', the 'local' or 'duplicate'. When the new media boom began in India and other parts of Asia around the introduction of the cassette deck, the VCR and the home computer, the old regime of media property and control went into a spin.

By the mid-1980s piracy had become technology's cultural kingdom of the Many, and the source of mass cultural ambiguity in the regime of authorship and originality conferred on things. This has increased rapidly with the coming of the digital era and high-quality repro-ductions. As with early modern print culture, piracy is again at the centre of the debate over access and authenticity. Low-cost digital reproduction in the late twentieth century both recalled and radically expanded early modern conflicts. In twentieth-century global terms, the radical 'everywhereness'[5] of this new reproducibility is not confined to the digital alone, but seems increasingly to allegorize the

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[4] Distribution now comes from a transformed and radically expanded bazaar that moves beyond the hegemony of older merchant communities and loses its 'traditional' shape.
[5] I owe this phrase to Nitin Govil. See Govil 2004.

production of industrial and consumer goods. Counterfeit culture is here to stay. Corporations have sought to defend their markets with brand protection and vast advertising budgets. In a world where Asian factories export vast quantities of consumer goods globally, a commodity sold as an expensive label in Paris could equally appear as a low-cost surplus item from an Asian factory in a street market in Lagos. Piracy affects debates on medicine, biotechnology, international trade disputes, trademarks, youth culture, indigenous knowledge and corporate 'bio-piracy', sovereignty and property. Piracy, along with terrorism, is now included in the favoured language of global fear with its consequent attractive/destructive semantic overflow. For liberals and old-style Marxists, piracy seems to allegorize an impure transgression, tainted by commerce and an inability to produce a discourse on itself. Pirate production of commodities and media objects fits neither a narrative of resistance nor normative critique, nor does piracy seem to fit received models of creativity or innovation. Piracy today produces a series of anxieties from states, transnational capital and media industries, and even among some liberal proponents of the public domain. The efflorescence of non-legal media production and circulation exists as a series of publicly articulated facts, constantly referred to in media panics, national security discourses and everyday conversations.

High-speed networks of the 1990s have seen the deployment by the media industry of tracking and controlling architectures that attempt to resolve the historic tension between intangible private property and its material circulation in the Thing – the very tension that has plagued the copyright regime from the outset. This has been paralleled by some of the most draconian laws against piracy, legal cases against individuals and small shops and raids by enforcement agencies against 'infringers'. The discourse against piracy as morally reprehensible and illegal is in a large part shaped by this campaign. A spectral zone of infringement statistics, pirate P2P (peer-to-peer) networks, factories in Southeast Asia and the supposed link between terrorism and piracy enacts the antipiracy campaign on a global scale. The very expansion of contemporary copyright's power has been challenged at each step – by

hackers who break every digital encryption used by the industry, by peer-to-peer networks that dodge enforcement and provide a platform for users to share media files, and most importantly by hundreds of millions of ordinary buyers of pirated media who seem not to share the media industry's vision of the world today.

I want to suggest that there is more to piracy than its illegality or economic potency, destructiveness or radical alterity. The debate around authorship and the shrinking public domain that has emanated from Western critiques of the property regime is an important one, but limited by its axis: the split personality of modern liberal individualism and personhood that modernity inaugurated. In their critique of the current property regime, public domain theorists have variously mobilized the category of the information commons, the right to share and reinterpret cultural material, and a domain of creative authorship through collaborative P2P networks. These are surely important and significant resources for a critique of the current property regime. However, as Lawrence Liang points out in his excellent critique, there is an embarrassed silence on piracy in the entire public domain debate (see Liang, Chapter 2, this book).[6]

Piracy's absence from this debate is significant,[7] perhaps because it fundamentally disrupts the categories of the debate of property, capitalism, personhood and the commons that have moved the debate in the past decade. Postcolonial piracy is typically a post-liberal (if not a post-Marxist) cultural effect. Piracy destabilizes contemporary media property and, working through world markets and local bazaars, both disrupts and enables creativity, and evades issues of the classic commons while simultaneously radicalizing access to subaltern groups in the Third World. Postcolonial piracy works more through dense local networks of exchange and face-to-face contact, rather

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[6] Liang argues that, in the eyes of the liberal public domain, piracy neither suggests a model of creative authorship, nor does it fall within the normative claims of the public domain. For Liang, legalism and liberal constitutionalism limit the application of mainstream public domain discourse in postcolonial contexts of unmarked populations.

[7] See Boyle 1997; Benkler 2006; Lessig 2004.

than individual online downloads.[8] In an earlier essay in *Third Text*, I termed this phenomenon a pirate or recycled modernity, unconcerned with modernity's classic search for originality (Sundaram 1999). More pragmatic and viral than the avant-garde or tactical, pirate culture allowed the entry of vast numbers of poor urban residents into media culture. The metaphor of the virus suggests parasitic attachments to larger structures, with rapid replication, disruption and transformation of official networks through non-linear communication. 'Recycling' is not a process of more of the same (i.e. simple replication), but works as a complex difference engine – each copy is different from its predecessor, through variation and recombination. Piracy therefore occupies a field the edges of which move all the time, margin to centre, international to local. Governments and industry have been publicly repelled and secretly fascinated by media piracy, a sure sign of the latter's corporeal power. This is piracy's great public secret – and the reason for the relative ease with which it has withstood severe attacks from industry-sponsored enforcement campaigns.[9]

For urban populations long used to more stable sites like the cinema theatre and the radio, piracy's decentralized proliferation induced a narcotic disorientation of the senses. Populations conceived by state media policy as spectators and listeners now entered piracy's landscape of infinite attractions, where images, sounds and objects moved rapidly through networks of proliferation: small shops, bazaars, friends. Piracy escapes the boundaries of space, of particular networks, of form, a before and after, a *limit*. Though it has complex strategies of deployment and movement, piracy is like no other form of expression, and respects no formal barriers. The lines between the surface and the inside, original and copy that transfixed the Western modernist archive and its postmodern reformulations are subject to question in piracy.

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[8] Online downloads through P2P networks have been increasing among middle-class internet subscribers in India.

[9] I do not deal with the complex process of enforcement in this essay, but for a wider discussion see Sundaram 2009.

What appears is a subjectless subjectivity; there is no being behind doing, or, as Nietzsche said, *the deed is everything*.[10]

The cassette assemblage: North India 1980

In January 1984 the journalist Ayesha Kagal travelled around India to examine the spread of video, which had been introduced to the country on a wide scale barely a year earlier. Kagal painted a picture of booming makeshift video theatres and thriving cassette libraries in small towns and villages all over the country. Showing the latest releases from Hindi and regional cinema, as well as a reasonable selection of pornography, video drew people from all walks of life – youth, working people, businessmen, women and children. The classic landscape of picturesque India – the great cattle fair in Puskhar in Rajasthan, the hill station in Panchgani in central India, Leh in Ladhakh – all bore witness to the turbulence unleashed by video: closing film theatres, bankrupting distributors and placing a film industry under siege. 'We're sunk', film industry producer Gul Anand told Kagal. 'Cinema simply can't face the competition. Our prints are bulky, our processing charges are going up while the prices of cassettes are going down and will drop further … I sometimes feel the 35 mm projector is going to be a museum item' (Kagal 1984). The main problem for video was identified as piracy – libraries and theatres sourced the latest movie from an international circuit almost immediately, bypassing local laws and film industry prohibitions. This was then distributed through low-cost VHS cassettes – in local video libraries and makeshift theatres. New parallel infra-structures of distribution arose rapidly – cable networks, video libraries and small video theatres. A significant expansion of the media public was under way, at the same time as the decline of older cinema theatres and exhibition spaces.

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[10] I refer to the cultural experience. To be sure there are loosely organized pirate networks and coalitions; their staying power has been limited due to harassment and raids by the police.

The situation in the audio market was even more dramatic. Audio cassette technology had spread rapidly and easily by the early 1980s, spawning an army of small music producers all over the country. Conservative estimates, which tend to privilege the legal industry (including smaller players), show that the turnover of the music business increased *twentyfold* in the decade of the 1980s (Swamy 2001). The music scholar Peter Manuel hazarded a guess of 250 producers in North India alone based on his research – a figure that *excluded* pirate and unregistered players. Small and medium players ripped through the main monopolies such as HMV and opened up a large hitherto untapped market of regional and local music and, as in the case of video, also set up a low-cost geographically diverse distribution network. The spread of cassettes in the 1980s as a dominant form was rapid. Peter Manuel's standard work on that period summarizes the situation well: 'By the mid-1980s cassettes had come to account for ninety-five per cent of the recorded music market. The recording-industry dominance formerly enjoyed by GCI dwindled to less than fifteen per cent of the market, as over three hundred competitors entered the field' (1992: 63). The share of film music dropped to a minority position in the market, replaced by a combination of regional, devotional and non-film pop (Manuel 1992). Manuel's study of that period calls this the cassette 'revolution' where a mix of new producers and technologies responding to regional and local genres overturned the classic music monopolies and the star system of singers they created. Small labels, argued Manuel, were responsive to local tastes and now offered their diverse audiences an equally diverse range of musical forms. In ownership, in content and in the circulation of a musical form, argued Manuel, cassettes democratized the audio experience. New artists emerged as a new pool of talent came into the business all over the country, some of whom entered the music star system in the 1990s. Despite Manuel's own ethical discomfort with piracy, there was no hiding the fact that pirate production was a critical part of the emergent world of audio production. Says Manuel, 'Until the late 1980s pirate producers dominated the industry in terms of

turnover and profits, and they continue to claim a significant share of the market' (1992: 78). Piracy's structure of law-bypassing techniques marked almost all emergent enterprises in audio.[11]

The video explosion and the audio cassette boom stand out, but not just for the rapidity of their expansion in Indian media history. They marked new parasitic media geographies, a vast spatial expansion of media life. Drawing from a growing infrastructure of small enterprise and emerging classes of entrepreneurs, cassette culture of both audio and video let loose a series of conflicts around piracy – between large and small companies, between pirates and copyright enforcement detectives, and between large and small pirates. As a form that bypassed the law, media piracy was not unique to social and cultural forms in postcolonial India. Nor was piracy new, for it dated back to the coming of print. By shifting the material and spatial registers of copy culture into an uncertain sphere of disturbance, the cassette era opened up a new phase in Indian media history.

Piracy produced a novel form of panic in the media industry, which had always been used to a certain manageable chaos. Piracy suggested not just a permanent loss of space and corporate markets for the industry, but also a model of dispersal where 'distribution' took on a productive form. Distributor pirates also produced more media, piracy bred further piracy. This was a breakdown of cultural management impossible for the industry to fathom – even to this day. Industry panic in the 1980s went through a series of cycles: initially the film industry declared noisy war on video piracy. No person in the Bombay industry was allowed by the main association to sell national video rights. The implication was that, by default, any video cassette sold in the country was 'illegal'. Regular press campaigns, court battles, delegations to Delhi to convince the government to change copyright laws to incorporate video, and an industry-wide strike against 'piracy' marked the first half of the 1980s. Behind all the façades of unity the

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[11] Innovative replication of film music was central to the audio boom, along with the commodification of local and regional music.

industry was actually deeply divided, with many producers wanting to break rank and sell video licences to local distributors. The association was already tearing at the edges and there was a growing demand to move to an 'adjustment' with the new network.

    After a bruising battle, analogue cassettes finally entered the industry's definition of a market segment in the 1980s, with rights management, regional distribution and a staggered temporal cycle where the cassette would come in after the film had its initial run. The idea was that with adequate management the industry could expand its profits and produce a new widening of publicity. The model, if it could be called that, provoked immense anxiety about leakage and non-compliance right from the outset. In the event, these were reasonable intimations.

A landscape of people and things

By the late 1980s and early 1990s Indian cities were swarming with small entrepreneurs and migrants who took part in the pirate trade, along with older communities of traders. In Delhi they flocked to the small factories of East Delhi and the media markets of Nehru Place, Lajpat Rai market and Palika Bazaar. Some became cable operators, others joined the booming music business, and still others tried their hand in the computer trade. Lamington Road in Bombay, Burma Bazaar in Chennai and National Market in Bangalore were other similar media markets that developed at that time. By the 1990s travel to Southeast Asia by small businessmen in Delhi and other cities to source computer parts and electronic goods was standard;[12] in Delhi's Old City a whole business of travel agents grew up around booking tickets for Asian travel for small business. The shifting cultural landscape of the media networks built in the 1980s and 1990s was in remarkable contrast to

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[12] In 1999, on a trip for an architectural conference to Taiwan, I met two Delhi small businessmen who did this regularly. They showed me their suppliers' directory and a list of small budget hotels in Southeast Asia printed in the Old City of Delhi. Bangkok, Singapore, Taiwan, Hong Kong and Shenzen were on the travel circuit. The Taiwan connection began with T-series importing equipment from there for its factories in the 1980s.

the more abstract state-sponsored discourse around computers during the Rajiv Gandhi era, which sought to graft new technology onto a modernized nationalist model. Popular knowledge about breakdown, assembly, duplication, hardware, software dominated conversations in the pirate zone of this period, shot through with an almost counter-tactical model – assembly rather than attack, evasion rather than resistance. In his work on Nigerian video Brian Larkin argues convincingly that pirates produced a viral infrastructure of media, generating both the speed of globalization and the noise of postcolonial cultural production: used equipment, assemblages, decentralization. At a time when the world economy has seceded from Africa, piracy has brought a globalization of recycled technological artefacts to Nigeria, and has provided media products to a subaltern population: Indian and Hollywood films, Hausa dramas and Islamic religious cassettes. Says Larkin, 'Instead of being marginalised by official distribution networks, Nigerian consumers can now participate in the immediacy of an international consumer culture – but only through the mediating capacity of piracy' (2004: 297).

In the early years of piracy in Delhi a complex network of production sites, which produced low-cost hardware for TV and music networks, connected media markets and local dealers in the neighbourhood. Today copying is part of a vast Asian network of procurement. Bombay films, for example, are sourced from Dubai and Malaysia, mixed in Pakistan, and sent on the internet and by courier to India. Master disks (from which more copies can be made) are made in factories outside Delhi (safe from enforcement raids). Sales agents then go to neighbourhoods on scooters with album covers and pitch to local shops. In the case of mainstream releases this entire operation takes 24 to 48 hours before people have access to it through the local cable network or neighbourhood shops. To be sure, pirate practices ranged from the straightforward reproduction of mainstream film/audio releases, remix and remake of audio/video, local and regional music and video. The latter were part of a more complex mutation, sometimes feeding off successful film and audio releases, but usually dispersing into a series

of multiplicities, where the cultural 'supplement' takes on a life of its own, making new connections and staging new disruptions.

The puzzle of the 'original'

'Is this an original?', asked an article in the Bombay music industry magazine *Playback and Fast Forward* in 1988, referring to the confusion among buyers of audio cassettes as to whether the international brand (Sony, TDK) stamped on most blank cassettes was indeed the original (56). The magazine went on to conduct a test and found that just about all cassettes branded and pirated were in fact produced in India, despite international labels. 'And whether it's HMV, CBS, MIL or Weston or any of the pirated music available on the streets, all cassettes are 100 per cent Indian' (ibid.). *Playback* was in fact addressing the anxieties of a turbulent landscape of media life in the first half of the 1980s when piracy was the dominant form through which populations experienced new media. These were the wild years of the cassette era, when a cluster of piracy, local media production and neighbourhood copy shops set the benchmarks for media culture at the edge. For most early users, it mattered little that the cassette was not 'original'; it simply had to be available.

From the late 1980s companies began rapidly catching up with copy techniques: price cuts, strengthening of distribution and design changes to mimic pirate aesthetics. With the movement to digital in the mid-1990s, this situation became even more fluid, and producers, shop owners, discerning consumers and enforcement agents produced complex but temporary classifications to distinguish between original, pirate and local. What emerged was a materiality that disclosed popular ideas of authenticity and surface within the context of a bazaar economy well-nigh integrated in a regional global technological constellation.

In the 1990s, when pirate distribution and reproduction of mainstream film and music releases were localized, the differences between the 'original' and its copy were twofold: the latter typically

preceded the original release and was marked by a modest cover, screen printed or even handwritten. By 2002 the entry of larger players into the pirate business took mainstream releases away from the locality, but the quality of the cover and the disk improved substantially. Digital printing and cardboard designs came in, and camera prints, a phenomenon of early piracy, now declined in market share, with more high-quality reproductions coming from Dubai and Pakistan. While the hierarchy of master disk and copy has remained in the pirate market, it is something that has been subject to considerable techno-cultural flux since 2000. In the past decade shop owners in Palika Bazaar and Lajpat Rai market in the Old City have prided themselves on identifying 'original' and 'pirate' versions. Pirate CDs were distinguished not just by their early release time, and their slim cover, but by a particular holographic sheen on lower quality disks.

Piracy has emerged as the perceived culture of the urban edge, inflected with a certain materiality that ranks it differently from the 'original'. This edge space is marked by surface effects: over-informationalized and tacky designs, a specific quality of inlay cards and CD covers. Strangely, this perception carries over to sections of the media industry that sell to the pirate market along with legal releases – in the case of a flop or for tax evasion. In an interview with media researcher Ankur Khanna, Meghna Ghai of Mukta Arts candidly described this process, as allegedly followed by rival company Eros:

> So Eros releases limited copies of the official DVD (as per the contract), as well as larger numbers of the pirated version which are priced at one-fourth the cost of the official DVD. Special care is taken to ensure that the pirated DVD possesses all the characteristics of what is perceived to be the prototypical pirated disc. In other words, an attempt is made to deliberately downgrade the packaging of the disc so that it subscribes to a certain notion of a pirated disc cover: soft sleeves (as opposed to a hard case) containing high grade colour printouts of original disc covers. The disc itself is of exactly the same quality as that of the original.
>
> (Khanna 2005: 285)

Piracy remains a zone of infinite attractions for users, for pirates, and for the very people who are its imagined antagonists – the property holders of the media industry.

Surfaces

The pirate surface rested on a particular corporeal economy of emotions and things – assuming a tactile movement of the city dweller between touch, vision and operation of media objects. In short, the surface of the media object was not simply a window that exposed a broader set of exchanges on subjectivity and representation. The surface further 'bled' into multiple media objects (CDs, cassettes, videotapes) and screens (TV, computer and mobile phone), deploying its concentration of commerce and information to produce a space of apperception that paralleled the street signs of the city. From the late 1980s Indian companies were selling technology that allowed local cable operators to insert neighbourhood advertising in film and video releases. This technology had become fairly refined by the 1990s, producing a cluttered viewing screen, bordered with advertising and transgressing the classic rules of disembodied television spectatorship, which used to separate the commercial from the main feature. This video's informa-tionalized, overcommodified frame typically enters the home through the local cable network.[13] Viewers trained their senses to adjust to the cable video screen crowded with moving local advertising, the price of partaking in the pirate aesthetic. The claustrophobic space of the screen existed in a force field with crowded urban spaces in the city, producing a periodic warping of media experience.[14] The commodified mingling of surfaces and objects recognizes no limits today: paper flyers in local newspapers, television channels that implore their viewers to call

[13] See Larkin (2004) for a fascinating enquiry into the Nigerian experience of pirate video.
[14] The recent crowding of the mainstream TV screen with moving information and adver-tising in US and Indian TV networks was actually introduced in the pirate video in India way back in the 1990s.

in on shows or text their opinion, impossible-to-remove stickers on walls and newspapers, SMS and text solicitations, a hyperstimulus that presumes an active anthropology of the senses – of readers, consumers, viewers, participants.

Piracy was the wild zone of this constellation, sometimes occupying the centre stage as in the 1980s and then moving to the edge as in recent years when the media corporations moved rapidly to try to discipline and stabilize the arrangements of space and image through authorized sites like malls and multiplexes. Piracy's disruptions ranged from media property, secular cultural arrangements, older image economies, media distribution, stardom and consumption – the very fabric of urban social life. The a-spectacular nature of the pirate zone is the key to the corporeal constellation. Piracy set up a zone of attractions that drew from the vernacular and the modern, the regional and more mainstream cultural fare. Piracy's participants did not suffer that paralysis of disembodiment that Debord had so famously claimed that the spectacle produced.

One can say that piracy is that practice of proliferation after the demise of the classic myth of modernism. Piracy exists in commodified circuits of exchange, only here the Same disperses into the Many. Dispersal into viral swarms is the basis of pirate proliferation, disappearance into the bazaar's hidden abodes of circulation is the secret of its success and the distribution of profits at various points of the network. Piracy works within a circuit of production, circulation and commerce that also simultaneously suggests many simultaneous time zones – Paul Virilio's near instantaneous 'time of light', the industrial cycle of imitation and innovation,[15] the retreat of the commodity from circulation and its re-entry as another. Media piracy's proximity to the market aligns it to both the speed of the global (particularly in copies of mainstream releases) and the dispersed multiplicities of vernacular and regional exchange.

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[15] In the small industries of East Delhi there was usually a six-month lag before products were copied by competitors.

In cinema the pirate market follows the journey of the film closely. If a film does well at the box office, the more likely are the pirate editions and supplements. Speed is central to the race between distributor and pirate. Just as distributors now plaster the market with many prints in simultaneous time, so pirates release camera print prequels and high-quality sequels. The race between industry and copier is a small part of the cultural story of the pirate story. The larger story is one of endless imitative frenzy: media company copying company, remixed versions in local music and cinema. While media companies fight it out in court, outside copyright's formal legal sphere a vast cultural universe of small regional cinema re-releases and remixes is produced. 'True copies' of the original are filtered through the 'noise of the real' (Gaines 2006) – pirates cut longer films, insert advertisements and sometimes add censored scenes to releases. Each version becomes a new one, with camera prints in the first release, advertisements in the next and hundreds of versions of popular film and audio hits.[16] This proliferation of near-copies, remastered versions, re-visions refracts across a range of time–space shifts, moving between core and periphery of the media-city almost phenomenologically, rather than spatially. Versions of popular numbers are produced by the pirate market, fade from the big city and return in devotional music, or local videos from the states of Bihar, Haryana and Western UP – back to the city, brought by migrants and travellers. In short, piracy does not dwell only in objects or spaces, it enacts them momentarily. Its materiality consists in its mix of place, time and thing, a mix that dissolves and reconstitutes itself regularly. Piracy *an sich* seems to have no end, just as it had no particular point of beginning.[17] Piracy produces a surplus of cultural code which fractures the surfaces of media spectacle through a tactic of dispersal. For the new Indian elites alarmed at the ruination of the Asian growth dream,

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[16] The research by Bhagwati Prasad (2003) showed that there are at least 37 versions of the explicit tune *Kaante Laaga*, ranging from dance to devotional forms.

[17] 'This indefinite life does not itself have moments, close as they be to one another, but only betweentimes, betweenmoments' (Deleuze 2001: 29).

there has been a nervous, attempted flight from piracy to controlled spaces of consumption – multiplexes, malls and branded stores.[18]

In place of a spectacular urbanism, or the classic site of alterity, pirate culture suggests a constant overflow and an unhinging from contemporary property regimes. Its combination of bazaar commodification and a-spectacular techniques posits a new urban edge, which evades both classic radical redemptive hopes and the discipline of modern capital. Piracy is a desire, a promise and a threat, depending where you stand in the world today.

References

Arrighi, G. (1994), *The Long Twentieth Century: Money, Power and the Origins of Our Times*. London: Verso.

Benjamin, S. (2005), 'Touts, Pirates and Ghosts', in M. Narula, S. Sengupta, J. Bagchi and G. Lovink (eds), *Sarai Reader 05: Bare Acts*. Delhi: Sarai/ CSDS. Web.

Benkler, Y. (2006), *The Wealth of Networks: How Social Production Transforms Markets and Freedom*. New Haven, CT: Yale University Press.

Boyle, J. (1997), *Shamans, Software and Spleens: Law and the Construction of the Information Society*. Cambridge, MA: Harvard University Press.

Castells, M. (2000), *The Rise of the Network Society: Economy, Society and Culture*, London: Blackwell.

Deleuze, G. (1990), *The Logic of Sense*, trans. M. Lester and C. Stival. New York: Columbia University Press.

—(2001), *Pure Immanence: Essays on a Life*. New York: Zone Books.

Foucault, M. (1977), 'Theatrum Philosophicum', in D. F. Bouchard (ed.), *Language, Counter-Memory, Practice: Selected Essays and Interviews*. Ithaca, NY: Cornell University Press, 165–96.

Gaines, J. (2006), 'Early Cinema's Heyday of Copying', *Cultural Studies*, 20(2/3): 227–44.

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[18] Delhi alone is building 47 malls with multiplexes. In addition, controlled media delivery direct-to-home satellite platforms are being retailed to middle-class customers.

Govil, N. (2004), 'War in the Age of Pirate Reproduction', in S. Sengupta, M. Narula, R. Vasudevan, R. Sundaram, J. Bagchi, A. Sharan and G. Lovink (eds), *Sarai Reader 04: Crisis/Media*. Delhi: Sarai/CSDS. Web.

Kagal, A. (1984), 'As the Video Virus Spreads', *Times of India*, Bombay, 22 January.

Khanna, A. (2005), 'Interview with Meghna Ghai of Mukta Arts', in M. Narula, S. Sengupta, J. Bagchi and G. Lovink (eds), *Sarai Reader 05: Bare Acts*. Delhi: Sarai/CSDS. Web.

Larkin, B. (2004), 'Degraded Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy', *Public Culture*, 16(2): 289–314.

Lessig, L. (2004), *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin.

Liang, L. (2007), 'Beyond Representation: The Figure of the Pirate', in P. Jaszi, M. Woodmansee and M. Biagioli (eds), *(Con)texts of Invention*. Chicago, IL: University of Chicago Press, 167–80.

Manuel, P. (1992), *Cassette Culture: Popular Music and Technology in North India*. New Delhi: Oxford University Press.

Merleau-Ponty, M. (1968), *The Visible and the Invisible*, trans. A. Lingis. Evanston, IL: Northwestern University Press.

Mitchell, T. (2006), 'The Properties of Markets: Informal Housing and Capitalism's Mystery', Institute for Advanced Studies in Social and Management Sciences, University of Lancaster, Cultural Political Economy Working Paper Series, Working Paper no 2. Web.

Nelson, R. S. and Shiff, R. (eds) (1996), *Critical Terms for Art History*. Chicago, IL: University of Chicago Press.

Playback and Fast Forward, May 1988.

Prasad, B. (2003), 'Piracy: Judte Rishte, Phaylta Bazaar', *PPHP Laghupatrika*. Delhi: Sarai.

Sassen, S. (2001), *The Global City: New York, London, Tokyo*. Princeton, NJ: Princeton University Press.

Sundaram, R. (1999), 'Recycling Modernity: Pirate Electronic Cultures in India', *Third Text*, 47: 59–65.

—(2009), *Pirate Modernity: Media Urbanism in Delhi*. London: Routledge.

Swamy, H. (2001), 'In the Big Music Bazaar', *Times of India*, 21 July.

Beyond Representation

The Figure of the Pirate[1]

Lawrence Liang

In civilizations without boats, dreams dry up, espionage takes the place of adventure, and the police take the place of the pirate.
Michel Foucault, 'Of Other Spaces'

The English live with the turmoil of two incompatible passions: a strange appetite for adventure and a strange appetite for legality.
Jorge Luis Borges, 'Chesterton and the Labyrinths of the Detective Story'

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'.
Section 441, Indian Penal Code

[1] Reprinted with permission from Lawrence Liang (2010), 'Beyond Representation: The Figure of the Pirate', in Gaëlle Krikorian and Amy Kapczynski (eds), *Access to Knowledge in the Age of Intellectual Property*, New York: Zone, 353–75.

> *Thus our first step has been to remember the proletariat body; we*
> *have tried to translate it out of the idiom of monstrosity.*
>   Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra:*
>   *Sailors, Slaves, Commoners, and the Hidden History of the*
>   *Revolutionary Atlantic*

The transformation of intellectual property law from an esoteric legal subject to a topic of daily conversation and debate has occurred in a relatively short span of time. Over the past few years, the aggressive expansion of property claims into every domain of knowledge and cultural practice has interpellated almost everyone, from the academic to the musician, into the heart of the debate. No account of the contemporary moment would be complete without an examination of the dominance of the copyright sign or the effect of the small print of the trademark notice on our lives. In many ways, the mere act of looking at, reading, listening to, making, understanding or communicating any objects that embody thought, knowledge or feeling is as fraught with danger and anxiety today as the appropriation of material wealth or trespassing onto private property were through much of human history (Bagchi et al. 2005: vi).

The anxiety and conflict are certainly not restricted to a set of geographical locations, but the nature of conflict gets configured differently as we move from the United States and Europe to parts of Asia and Africa. In the United States, the crisis is represented in terms of the shrinking of the public domain and of the commons by the extension of copyright, the linking of file sharing and peer-to-peer activities with the global war on terror, and the emergence of a new breed of criminals in the form of students sued by music companies for downloading MP3s online. In South Africa, the government is bulldozed by pharmaceutical corporations who have attempted to prevent it from declaring statutory licences that will make AIDS drugs more accessible, and in many parts of Asia, the proliferation of cheap technologies of media reproduction creates a parallel economy that threatens the monopoly of old media players (Cullet 2001). The concern over the expansionist

tendency of intellectual property has also motivated a rearticulation of the importance of the commons of knowledge and cultural production. This is exemplified by various phenomena among the increasing popularity of non-proprietary modes such as free software and open content. A number of these concerns historically have emerged from the experience of Europe and the United States. But when one attempts to translate the terms of the intellectual property debate into the contemporary experience of countries in Asia, Latin America and Africa, it is difficult to locate any easy indexical reference to ideas such as 'the digital commons'.

In a similar vein, scholarship on the concept of the public domain has opened out the debate on intellectual property and has forced us to pay closer attention to the political economy of information and the cultural politics of copyright. It has also sought to foreground public-interest considerations within international intellectual property policy. The terms established by work on the public domain enable the articulation of alternative normative claims to contest stricter intellectual property standards and the reintroduction of the public interest into intellectual property policy. They have also been very useful in challenging moves towards the greater criminalization of infringements on intellectual property rights. However, here again, while the scholarship on intellectual property and the public domain has been highly inspiring and influential for work in South Asia, it offers no easy fit with the concerns of daily life in that region and the role that intellectual property and the conflicts surrounding it play there.

The concept of intellectual property in many of these countries has been unfolded through the dual tropes of the triumphalist fantasy of harnessing intellectual property 'to catch up with the West' and an account of paralysing fear and images of the ruin, destruction and violence that surround the reality of intellectual property infringement. The latter is best exemplified by the sharp conflicts and anxieties over the prevailing mediascape (from non-legal software to cheap DVDs) that are a part of the contemporary urban experience in most countries. The dominant account of the unfolding of the new-media

experience in these countries is also marked by the hyperprofiling of the act of piracy and the emergence of the figure of the pirate (Cullet 2001).

It would seem almost paradoxical to suggest, as the title of this chapter does, that there is a representational problem that emerges with respect to the figure of the pirate in contemporary discourse. If accounts in the mainstream media are anything to go by, it would seem that the figure of the media pirate is everywhere, and the problem would seem to be one of overrepresentation. However, we are not concerned with the way in which the pirate is narrated as a figure of illegality by the usual suspects, such as Jack Valenti (the long-time president of the Motion Picture Association of America), or the RIAA (the Recording Industry Association of America), or, closer to home, the Indian Performing Rights Society, all of whom have argued for a more stringent enforcement of copyright. My focus instead is on the role of the pirate in the debate on intellectual property and the public domain that has emerged over the past few years to challenge the hegemonic account of intellectual property.

While the critical scholarship on intellectual property has been vital in the framing of an alternative paradigm, a quick survey of the range of debates also reveals the relative absence of any serious engagement with the world of quotidian non-legal media consumption and circu- lation – or media piracy. This is surprising, given that intellectual property plays itself out in everyday life through an extraordinary focus on the pirate. What is it about the nature of piracy that creates this uncomfortable silence around it? Or is it possible that there is instead something about the way in which the critical responses to intellectual property have been framed that makes it impossible for them to deal with piracy or for piracy to redeem itself? Perhaps we will have to start asking different kinds of questions if we are to understand the status of the pirate in contemporary intellectual property debates and move beyond it.

Let's first look at the various ways in which the figure of the pirate enters the contemporary discourse of intellectual property. In the

predominant logic of intellectual property enforcers, the pirate is demonized, seen as the ultimate embodiment of evil. That evil takes a variety of forms, from terrorism and the criminal underworld to causing the decline of the entertainment industry and the evading of taxes. The figure of the pirate as criminal invites the legal attention of the state and of private enforcers. In recent times, the criminalized figure of the pirate has also become the subject of media attention, and rarely does a day go by without some sensational account of a raid.[2]

At the other end of the spectrum, that is, among those who work on limiting the expansion of intellectual property rights and on defending the public domain, the figure of the pirate is treated with embarrassed silence or outright disavowal. In Richard Stallman's work, for instance, it is very clear that piracy is as unacceptable to the free-software movement as it is to copyright enforcers. The significant difference is that they would not argue for more criminalization or stronger enforcement and would have a more charitable understanding of the phenomenon, based on their reading of political economy (Lessig 2004: ch. 4).

Scholars such as Lawrence Lessig and others have responded to the debate on intellectual property by looking beyond the binaries of legality/illegality that are set up by traditional copyright law; but when it comes to piracy there still has been no effort to accommodate the concept of piracy within the accepted discursive parameters of the debate. What, then, is the exact problem of piracy and why can it not be accommodated within the terms of public-domain theorists? Surely it cannot be just the fact that it is tainted by illegality, since many other acts, including downloading music, are also tainted by illegality. Yet

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[2] A statement by the US Department of Transportation states that 'they run computer manufacturing plants and noodle shops, sell "designer clothes" and "bargain basement" CDs. They invest, pay taxes, give to charity and fly like trapeze artists between one international venue and another. The end game, however, is not to buy a bigger house or send the kids to an Ivy League school – it's to blow up a building, to hijack a jet, to release a plague, and to kill thousands of innocent civilians' (2003: 2). For a scathing critique, see also Govil 2004. This statement has been similarly followed up by the Indian copyright enforcers, led by the former commissioner of police, Julio Rebiero, who have claimed that music piracy funds jihadist terrorists (see Rangaraj 2003).

there are ways in which these acts find redemption, while the pirate cannot. Is the problem peculiar to the nature of this particular illegal act, the domain within which it operates, and the subjectivities that it interpellates?

The resistance to the concept and practice of piracy seems to be affected by several factors. First, it is seen as compromised because it is a commercial enterprise. Since piracy operates within the logic of profit and within the terms of commerce, it cannot claim the sort of moral ground that other non-legal media practices can. For critics of the copyright regime dominated by media conglomerates, it would be an embarrassment to admit that they are supporting a non-legal commercial enterprise. Their stance against piracy may therefore stem from either a strategic or an ethical position. The strategic stance against piracy may, for instance, be adopted by people who do not *per se* have any serious objections to piracy, but who recognize that it would be counterproductive, in their struggle against stricter intellectual property regimes, for them to be seen as espousing commercial piracy. On the other hand, there are a number of advocates for the free-software movement, including Stallman and Lessig, who would argue that even if a certain law exists and we do not agree with it, either we have to reform the law or create an alternative legal paradigm. However, if the law exists, we cannot encourage the violation of such a law.

Another reason for the suspicion of commercial piracy, in this case in relation to entertainment, stems from the fact that what is pirated often pertains to the domain of pleasure. Unlike access to affordable medicines and access to learning materials, piracy that provides people with low-cost DVDs, MP3s and other copyrighted content seems to lack pragmatic justification and simply fulfils consumers' desires. We will examine this in some detail later.

Yet another critique of commercial piracy is that, unlike young musicians who illegally download, then remix the music to produce new music, those who undertake piracy for purely commercial ends are unable to redeem their actions by claiming that they encourage and

support further acts of creativity. Instead, in the case of commercial piracy, there is a slavish making of copies without any transformative redemption.

Finally, any justification of piracy is seen to fall within larger accounts of the collapse of the rule of law. Scholars working on understanding the phenomenon of piracy are accused of romanticizing illegality, and a sympathetic look at piracy is equated with support for anarchy and lawlessness.

Because piracy thus has not been able to be accommodated within the terms of public-domain theory, we need to understand how the terms of representation that public-domain scholarship sets for itself operate to effect this exclusion. Although the public domain has emerged as the most viable alternative to the expansion of intellectual property, the question is whether the public domain is the only way by which we can understand both the contemporary conflicts around intellectual property and the limits of the approach with regard to accounting for the status of piracy. Can the world of the public domain and the world of the pirate be narrated as though there is a seamless web that should necessarily tie the two?

In many ways, advocates for the public domain deploy classical terms of representation that they borrow from either political or cultural theory. These terms include the classical categories of citizenship, resistance and creativity (see Coombe 1998a, 1998b; Benkler 2003). One of the problems that we have when we try to understand piracy is that it often does not fit within any of these existing categories, and there is a positivity or excess in the body of the pirate that cannot be disavowed. As we have noted, the only manner in which the copyright infringer is rescued from the accusation of being an illegal pirate is through an act of redemption, for instance, by showing that his or her acts of infringement actually result in an increase in creativity, and this redemption is formalized in doctrines such as the idea of 'transformative authorship'. But what happens to entire realms of non-transformative authorship or 'Asian piracy', which does not necessarily transform anything, but merely reproduces ceaselessly using cheap technologies?

The high priest of open content and the founder of the Creative Commons movement has this to say:

> All across the world, but especially in Asia and Eastern Europe, there are businesses that do nothing but take others people's copyrighted content, copy it, and sell it – all without the permission of a copyright owner. The recording industry estimates that it loses about $4.6 billion every year to physical piracy (that works out to one in three CDs sold worldwide). The MPAA estimates that it loses $3 billion annually worldwide to piracy. This is piracy plain and simple. Nothing in the argument of this book, nor in the argument that most people make when talking about the subject of this book, should draw into doubt this simple point:
>
> This piracy is wrong. …
>
> The copy shops in Asia, by contrast, are violating Asian law. Asian law does protect foreign copyrights, and the actions of the copy shops violate that law. So the wrong of piracy that they engage in is not just a moral wrong, but a legal wrong, and not just an internationally legal wrong, but a locally legal wrong as well.
>
> (Lessig 2004: 63–4)

How do we read this as part of an account of the public domain? While one can understand that Lessig would have to be careful about the ways in which he pitches a reform of copyright law within the context of the United States, it is also difficult not to miss the linkages in this paragraph to older accounts of illegality in Asia. In many such accounts, the urban experience in Asia – and in Latin America – has been narrated in terms of its preponderant criminality and illegality. This is particularly true not merely in the context of the colonial imagination, but also in the ways that cities and everyday life in Asia are understood. The United States has always narrated itself through the tropes of constitutionalism and the rule of law, but with the arrival of the internet, all of a sudden, the language of criminality and illegality that was used to account by contrast for much of the world arrives home in the ordinary form of the criminalization of students

downloading music. Clearly, one cannot have an account of such pervasive illegality in a country that prides itself on its constitutional tradition and its emphasis on the rule of law.

Consequently, one narrative strategy is to redeem the acts of ordinary American citizens through the discursive construction of an Other – in this case an Asian Other. The categories of the public domain serve as the neutral ground on which the two kinds of pirates are pitted, and the terms of reference of this public domain are the received notions of creativity and innovation.

Underlying much of copyright's mythology are the modernist ideas of creativity, innovation and progress. The narrative conjunction of these ideas is represented as universal, and indeed, it is shared by both advocates of stronger copyright and advocates of the public domain (Birnhack 2001: 3). By offering themselves as alternative accounts of the idea of progress and creativity, arguments for the public domain merely seek to provide a counterfactual: while copyright aspires to promote creativity, it actually fails to do this, and excessive protection has actually resulted in a decrease of creativity or a threat to creativity.

The difference between scholars who advocate for the public domain and copyright advocates lies in their understanding and interpretation of the idea of the creative. Lessig insists that we should protect some illegal works, based on the criterion of 'transformativity', but the creative subject invoked here is in fact a very particular kind of subject – a disembodied classical liberal subject. The public domain is represented as a space in which everyone can participate as citizens bearing equal rights. The linking of public-domain theories to the freedom of speech and expression is not accidental, and the model of the public domain as the sphere of rational communication borrows from existing accounts of the public/private divide (Boyle 1996; Zimmerman 1992; Benkler 2001).

Many postcolonial scholars have seriously contested the category of the citizen as the universal bearer of rights, and the representative capacity of the citizen to participate in the public sphere as an unmarked individual remains mythical, at best. In India, for instance,

the creation of the category of the citizen subject demanded a move away from the oversignified body of the individual marked by religion, gender, caste and so on to an unmarked subject position, 'the citizen', a category based on equality and access and guaranteed rights within the constitutional framework. But the majority of the people in India are only precarious citizens who often do not have the ability to claim rights in the same manner as the Indian elite do. Instead, the manner in which they access the institutions of democracy and 'welfare' is often through complex negotiations and networks and often is marked by their illegal status (Chatterjee 2001).

In their work on 'rowdy sheeters' – individuals with a criminal record, or 'rap sheet', as it's called in the United States – Vivek Dhareshwar and R. Srivatsan suggest that 'some bodies – like the "rowdy" or the "lumpen" – will not be disincorporated', that is, made to speak and act as a citizen, 'so tied are [*sic*] their shameful positivity to their bodies' (Dhareshwar and Srivatsan 1996: 223). Thus, the project of disincorporation into citizenship almost immediately creates a discursive Other, the illegal citizen who refuses to shed his or her social excesses or who just cannot do so. Thus, while citizenship and modernity are normatively constructed as highly desirable and the grand project wills everyone into a state of modernity, there arises from the start a clear lack or inability in the bulk of the population to occupy this space. So what happens when people fall off these official maps and plans? How do they find their way back into official memory and create for themselves avenues of participation? There is a great deal of work to be done on engaging with how people create vibrant spaces outside of official plans and spaces, and, more often than not, these spaces are marked by their high degree of illegality.

Pirates are among those unable to shed these illegal excesses and play a role in or become a part of a reconstituted public domain. Pirates cannot play a role there, because they cannot claim the representative status given to the transforming creator within the productive public domain. There are very few possibilities for the pirate to occupy the normative terms established in the public domain for the creative

citizen. And yet, despite this, a look at both history and the present indicates that there is a certain stubbornness on the part of those who do not find a representative space in the public domain – those who refuse to disappear and instead coexist at the margins of civil society and the law and at the margins of the narrative dominated by the creative, innovative citizen. Historically, for instance, there is an entire realm that is inhabited by figures such as the trickster, the copier, the thief and the pirate, figures who inhabit a marginal site of production and circulation (Mason 2003). If we move away from the normative account of the creator citizen and engage with an entire set of practices that renders any straightforward representation impossible or difficult, what intellectual horizons open out? As with any journey into unfamiliar terrain, it might be useful to have a few maps charted during previous moments of anxiety to help guide us. As with any maps, these are only tentative and provisional guides.

The simplistic opposition between legality and illegality that divides pirates from others renders almost impossible any serious understanding or engagement with the phenomenon of piracy. Following Nietzsche, we should perhaps advocate the virtues of slow reading. The dizzying speed with which one is forced to respond to issues in the era of globalization can sometimes hinder any reasoned response. The first task for us is to avoid the Enlightenment blackmail, a variant of which in recent times has been the blackmail of 'You are either for terrorism or support the war on terror'. In other words, before we jump into making normative policy interventions, which often draw black-and-white distinctions, we need to explore the various shades and depths of grey. We would only ask for patience from the scholars of the public domain and ask the same careful attention that they pay to understanding the larger politics of copyright when they look at the phenomenon of piracy.

Let us reformulate our object of enquiry. Let's take for granted the illegal status of piracy, but let's not stop there. Instead, it might be more useful for us to ask not what piracy is, but what piracy does. The shift in focus from the discursive and moral representation of the illegal

deed to the wider social world in which the deed is located allows us to bring to light the nature of the law that names a particular act as an illegal one.

And the naming of the deed as an illegal act indeed prevents us from reflecting on the nature of the act. When we look, for instance, at the act of sharing, it is an act immediately invested with a sense of virtue. But the same act when rendered through the prism of private property becomes an act of infringement and a crime. The debate between morality and ethics is now a familiar one, and indeed, it might even be argued that the law's monopoly over official definitions of morality does not render obsolete the question of whether an act can still be considered in terms of ethics.

The shift away from what piracy is to what piracy does enables us to consider on the same plane its linkages to the normative considerations for which public-domain advocates argue and that they are often unable to achieve. The best example is in the area of cheap books. While public-domain advocates try to reform copyright law to enable more educational exceptions, pirated books and unauthorized photocopying that is the order of the day accomplishes what they cannot. Rather than looking at the neat spaces created by the opposition between the 'legal' and the 'illegal', it might be more fruitful to consider the spaces in which piracy plays itself out, the transforming urban landscapes and the specific histories of the nooks and crannies that render this space an illegal one, along with the accumulated histories of regulation, tactics and negotiations that render this topography intelligible.

Definitions of legality do not exist in a vacuum, and they are constituted through specificities and relationships, even as they attempt to define constitutive legal and social relations.[3] Similarly, stories of law and legality have to find a space in which they resonate, and often they exist as abstract, unintelligible murmurs. For instance, when the story of copyright piracy is narrated, it is usually through the language of

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[3] For an account of the everyday life of law and social relations, see Silbey and Ewick (1998).

statistics and figures and the narrative strategy of excess, designed to induce a 'shock and awe' response at the alarming rate of piracy and illegality that exists, especially in non-Western countries, and it rarely succeeds in its desired effect.

To understand why these stories don't work in some contexts, we will have to travel to distant cities such as Delhi and Sao Paulo and perhaps even walk through the more unfamiliar byways of familiar cities such as New York. The discipline of urban studies has made the idea of 'the illegal city' familiar to us. One reads, for instance, that an average of 40 per cent and in some cases 70 per cent of the population of major cities lives in illegal conditions. Furthermore, 70 to 95 per cent of all new housing is built illegally (Durand-Lasserve and Royston 2002; Jacobson 1994). How do we understand this older idea of illegality alongside the new illegality of the mediatized city? The task will be to pose the question of how the older form and the newer form integrate and intertwine – to interrogate our classical liberal assumptions of legality and highlight the limitations of any study based on a strictly legal understanding of contemporary urban practices.

Writing about the modernist project of planning, James Holstrom and Arjun Appadurai note:

> modernist planning does not admit or develop productively the paradoxes of its imagined futures. Instead it attempts to be a plan without contradictions or conflict. It assumes a rational domination of the future in which its total and totalizing plan dissolves any conflict between the imagined and existing society in the enforced coherence of its order. This assumption is false and arrogant as it fails to include as its constituent element, the conflict, ambiguity and indeterminacy characteristic of actual social life.
>
> (Holstrom and Appadurai 1996: 165–6)

The information era props up a master plan similar to that of modernist planning. The institutional imagination of the era relies on the World Trade Organization (WTO) as the chief architect and planner and copyright lawyers as the executive managers of this new plan, while the

only people who retain their jobs from the old city are the executors of the old plan, the police force and the demolition squad. Just as one cannot understand land tenure in terms of the classical liberal concept of legality alone, any attempt to understand the complex networks of economic and social relations that underlie the phenomenon of piracy will have to engage with the conflict over control of the means of technological and cultural production in the contemporary moment of globalization. The ways in which the illegal media city emerges and coexists alongside the vibrant, innovative and productive debris of the older city and the schizoid relationships between legality and illegality in postcolonial cities suggest that we may need to turn the gaze of the law from the usual suspects of legality to legality itself and to the relations that underlie its existence (Liang 2005).

The transformation of the urban experience in the past few years and the proliferation of the labyrinth experience of media forms have made pirate cultures a significant part of the experience of our contemporary era. What is perhaps different about the media experience in non-Western countries is the fact that there are no clear lines between the old and the new media, between physical and virtual experience, and often, the virtual extends from high-end shopping malls to low-end cybercafés to pirate markets. This comfortable moving to and fro between different mediatized spaces creates a sensorial experience in which different classes actualize the global experience differently.

Piracy transforms the technological experience, which traditionally has been rooted either in monumentalist visions of development (the discourse on information and communication technologies for development) or in the aspirational imagination of the elite in India (Bangalore's aspirations to be Singapore), and it provides an entry point for a much wider array of people to experience on their own terms the 'information era'. The cheap CD or DVD supplements the experience of cyberspace while at the same time being rooted within diverse spaces in the city. Even as the urban landscape is being transformed and older media spaces such as movie theatres give way to high-rise malls with multiplexes, and even as the spaces of traditional mass media begin to

shrink because of their prohibitive prices, you see the emergence of a widely distributed chain of the circulation of media commodities that challenges the regime of intellectual property. The crisis of intellectual property is narrated into the crisis of South Asian cities in general, and interventions in implementing property rules sit alongside lamentful pleas for reworking urban imaginations. The critical difference between this world of everyday media and the celebratory approach of radical new-media activists or scholars of the public domain is that the world of a quotidian media experience does not articulate itself in the terms of resistance or appropriation. Piracy obviously does not stake a claim in the world of official creativity, either. It remains what it is: a culture of the copy that exists alongside livelihood and labour, profit and pornography.

Rethinking creativity: Pirate infrastructures

A world of everyday media that transforms our contemporary experience and yet paradoxically does not make a claim to creativity as it is commonly understood invites us to revisit our ideas of creativity's relation to the copy.[4] The reproducible work that brings into play a network of circulation also inaugurates a series of cultural possibilities and readings.

Roland Barthes and Michel Foucault have already enabled us to shift our understanding of the locus of originality and creativity from the text and look for it instead in the process of consumption. What would happen if we also extended the search for creativity into the domain of circulation? The production and circulation of the ubiquitous pirate DVD, that prized commodity of pirate aesthetics, helps us understand

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[4] Ravi Sundaram (2007) has suggested that it might be fruitful for us to revisit the histories of the copy, from early print culture to the forger in art history through the crisis in aesthetic experience precipitated by the 'age of mechanical reproduction' as a way of understanding the current transitions and conflicts. It is also a useful way in which to understand the general anxiety about the consumption and circulation of cheaply reproduced media commodities.

the possibility of creative acts outside the domain of what is tradi-
tionally considered 'creative'.

To do so, we need to consider the conditions under which DVDs,
these new products of digital reproduction, are pirated and circulated.
Brian Larkin's work on piracy in Nigeria, for example, forces us not
merely to look at and listen to the onscreen content of videos, but also
to focus on those conditions of appropriation and circulation. Larkin
demonstrates the critical importance of paying attention to the infra-
structures of production in developing countries, where the process
of cultural production is tied to the relative lack of infrastructure
and becomes the basis for the transformation of the conditions of
production by generating a parallel economy of low-cost infrastructure.
He says that

> a cycle of breakdown, repair, and breakdown again is the condition
> of existence for many technologies in Nigeria. As a consequence,
> Nigeria employs a vast army of people who specialize in repairing and
> reconditioning broken technological goods, since the need for repair
> is frequent and the cost of it cheap.
>
> (Larkin 2004: 305)

This economy of recycling, which Ravi Sundaram describes as 'pirate
modern' (2005: 47), becomes the arena for all sorts of technological
innovation and extends further to experiments with cultural forms
such as parodies, remixes, cover versions and so on. In a sense, Larkin's
invocation of the importance of infrastructure contrasts with the
obsessive fixation with content that one sees in most Western accounts
of creativity, although in fact, on a metaphorical level, infrastructure
frequently gets the figure of the pirate invoked in Western discourses
as a way to understand the public domain of ideas, with references
to 'the well of ideas', 'bridging the information gap', 'the information
superhighway' and so on. In piracy, however, the content also has to
be filtered through the regime of its own production. Piracy imposes
particular conditions on the recording, transmission and retrieval
of data. Constant copying erodes data storage, degrades image and

sound, and overwhelms the signal of the media content with the noise produced by the means of reproduction. Larkin says that since pirated videos are often characterized by blurred images and distorted sound, they create a kind of material space 'that filters audiences' engagement with media technologies and their senses of time, speed, space, and contemporaneity. In this way, piracy creates an aesthetic, a set of formal qualities that generates a particular sensorial experience of media marked by poor transmission, interference, and noise' (Larkin 2008: 218–19). Larkin uses the question of pirate infrastructure to open out the debate on intellectual property and to foreground the importance of addressing the question of content while looking at the legal aspects of culture. If infrastructures represent attempts to order, regulate and rationalize society, then breakdowns in their operation and the rise of provisional and informal infrastructures highlight both the failure of that ordering and the recoding that takes its place.

When we subject the material operation of piracy and its social consequences to scrutiny, it becomes clear that pirate infrastructure is a powerful mediating force that produces new modes of organizing sensory perception, time, space and economic networks (Larkin 2004). Doing so also forces us to acknowledge the material linkages between content and infrastructure. One of the significant approaches used by scholars of the public domain is an emphasis on the ability to create new content building on existing works. This overemphasis on the creation of new content raises the question of who uses the new content and what the relationship is between such content and the democratization of infrastructures. In most cases, the fall in price of computers and other electronic goods and the increase in access to materials via the increase in photocopiers and the general infrastructure of information flows are not caused by any radical revolution such as free software or open content, but by the easier availability of standard, mainstream commodities such as those produced by Microsoft and Hollywood. When Stallman and others castigate people for pirating Hollywood's productions, it is only because they are in the position of being able to disavow the global economy. But for many people, finding their

place within the global economy includes engaging with a world of counterfeit commodities, replicating the global economy's output.

We can play the game of seizing the higher moral ground and speak of the real information needs of these people, or we can provide crude theories of how they are trapped by false consciousness. Or better yet, we can move away from these judgemental perspectives and look at other aspects of globalization, such as the impact that the expansion of the market for these grey-market goods has on the general pricing of goods, on the spread of computer/internet-technology culture, on lowering the price of consumables such as blank CDs and DVDs, on the popularity of CD writers and so on. I find it a little strange and messianic that people who preach about access also preach about the kinds of access that should be allowed.

Pleasurable transgressions

Such prohibitions take many forms. As I noted before, one of the objections to piracy seems to lie in the fact that it is associated more with the world of pleasure and desire than with meeting 'pure needs'. Let me begin to discuss this objection in greater depth with an interesting story about the intersection between the world of desire, subjectivity and the experience of piracy. It is a typical example of interventions in the field of the digital divide. An NGO in Bangalore that works in the field of information and communication technologies for development was conducting a workshop on accessing the internet for the information needs of rural women working to empower other poor rural women in India. The facilitator guided the women through the basics of the internet, including how to access information relevant to their work, which ranges from providing access to credit to promoting women's health. The training was highly appreciated, and all the women volunteers seemed to be enjoying themselves while fiddling with the computers and exploring the internet. At the end of the

training, when the NGO started cleaning up the computers, including the browsing histories and the cached copies of the sites accessed, they were a little aghast to find that most of the women volunteers had been surfing pornography – and a range of pornography at that. So while the trainers were holding forth eloquently about the real information needs of the poor, the poor were quite happy to access their real information needs.

The links between pleasure, desire, aspiration and trespassing have always been complicated, and the closer that the transgressive act is to the domain of pleasure, the more difficult it seems for it to be redeemed socially. Thus, while one finds easier justifications for transgressions that deal with questions of livelihood and survival, and in the case of intellectual property, easier justifications for transgressions that appeal to claims to free speech and access to information, when the matter involved is about new subjectivities and pleasurable transgressions, the issue gets framed very differently. In particular, the terms set up by existing scholarship on the public domain end up excluding the ability to engage with practices guided not as much by necessity as by curiosity. The rhetoric of inclusiveness that is implicit in discourse on the issue of the public domain is necessarily accompanied by the prospect of exclusion, an exclusion that relies on either piety or pedagogy. What happens when we move towards the realm of non-legal media practices, where all of a sudden the transgression is highly pleasurable, but not in any way connected to the essential character of what Gayatri Spivak calls the 'subaltern subject' (1988: 284)? The sheer proliferation of these practices, both within the elite and also by the traditional subaltern classes, forces us to question our own assumptions about the terms in which people engage with the global economy of information and go about finding their place in the global economy. What critical conceptual resources can we draw on to address the question of pleasurable transgressions and subjectivities that resist easy framing?

Jacques Rancière paves the way for us to start thinking seriously about the hidden domain of aspiration and desire of the subaltern

subject while at the same time thinking about the politics of our own aspirations and desires. Rancière examines an unexplored aspect of the labour archive of nineteenth-century France: small, obscure and short-lived journals brought out by workers in which they were writing about their own lives. But they were not necessarily writing about their work, and if they were, they were not writing about it in glorified terms, but with immense dissatisfaction. For the most part, however, they were interested in writing poetry, writing about philosophy and indulging in other pleasures in which non-workers or intellectuals were entitled to indulge. Of course, from the other side of the class divide, intellectuals have been fascinated with the world of work and the romance of working-class identity. Rancière asks, 'what new forms of misreading will affect this contradiction when the discourse of laborers in love with the intellectual nights of the intellectuals encounters the discourse of intellectuals in love with the toilsome and glorious days of the laboring people?' (1989: x–xi). Rancière's motley cast of characters includes Jerome Gillard, an ironsmith tired of hammering iron, and Pierre Vincard, a metal worker who aspires to be a painter – in other words, people who refused to obey the role sketched out for them by history and who wanted to step across the line and perform the truly radical act of breaking down the time-honoured barrier separating those who carry out useful labour from those who ponder aesthetics. Rancière says:

> A worker who has never learned how to write and yet tried to compose verses to suit the taste of his times was perhaps more of a danger to the prevailing ideological order than a worker who performed revolutionary songs. … Perhaps the truly dangerous classes are not so much the uncivilized ones thought to undermine society from below, but rather the migrants who move at the borders between classes, individuals and groups who develop capabilities within themselves which are useless for the improvement of their material lives and which in fact are liable to make them despise material concerns.
>
> (Rancière 1988: 50, quoted in Reid 1989: xxix)

The moral dictates that govern the lives of the poor are not imposed only by the state ('Don't steal', 'Don't beg') but equally by those who theorize the lives of the poor ('Be aware of your class', 'Don't get trapped by false consciousness'). And when people start moving out of the frame of representation that has been so carefully and almost lovingly crafted for them, they either have to be shown their true essence or their transgressions have to be brought within the terms of their representative class. Thus, when Victor Hugo was shown a poem written by a worker, his embarrassed and patronizing response was, 'In your fine verse there is something more than fine verse. There is a strong soul, a lofty heart, a noble and robust spirit. Carry on. Always be what you are: poet and worker. That is to say, thinker and worker' (Rancière 1989: 13). This is a classic instance of what Rancière would term an 'exclusion by homage' (2004: xxvi). Thus, the aspirations and desires of the poor have to be 'something more than fine verse', and the information needs of the poor have to be something more than wanting to watch a film or even dreaming of becoming a filmmaker. These injunctions certainly tell us more about the fantasies of the state and of the intellectuals than they do about people engaging in the fulfilment of their aspirations and desires, and we may do well to start rethinking the terms in which the scholars of intellectual property engage the language of access.

Revisiting the history of the commons and dispossession

Prominent among the terms employed in recent scholarship on intellectual property and the public domain has been the metaphor of the modern commons and the threat that it faces from this limitless expansion of intellectual property. More often than not, the commons is allegorized as a mythical ideal governed by principles of sharing, access and collaboration that was lost after the first enclosure movement. The argument proceeds to caution against a similar enclosure, a

second enclosure movement in the realm of information ecology that threatens to privatize every aspect of information, thereby threatening creativity. The invocation of the commons is indeed a useful starting point in discussions of intellectual property regimes, but it would be incomplete if we did not acknowledge the histories of contestation, conflict and violence that accompanied the first enclosure movement and its subsequent history.

Social historians of crime, for instance, have rigorously alerted us to the intertwined histories of property and criminalization. It may therefore be insufficient for us to invoke the commons only in allegorical terms, and it may be more fruitful to look at current conflicts as part of a wider historical continuum in a way that inter-rogates the nature of contestation over the definition, the contours and the enforcement of what constitutes 'property'. The history of the commons is also a history of criminalization and of the definition of the ideas of trespass and encroachment.

In *The Many-Headed Hydra* (2002), as a way of thinking about the challenges faced by the world of capital, Peter Linebaugh and Marcus Rediker begin with an invocation of the twin myths of the Hydra and Hercules' task of slaying it. Confronted with the monstrous, many-headed water snake, the Hydra, Hercules found that as soon as he cut off one head, two grew in its place. With the help of his nephew Iolaus, he used a firebrand to cauterize the stump of the beast's neck. Thus they killed the Hydra. Hercules then dipped his arrows in the blood of the slain beast, whose venom gave his arrows a fatal power.

Using the allegory of the Hydra to characterize the various obstacles that capital has faced and, like Hercules, overcome from the eighteenth century to the present, Linebaugh and Rediker start with the material organization of many thousands of workers into transatlantic circuits of commodity exchange and capital accumulation and then proceed to look at the ways in which they translated their cooperation into anti-capitalist projects of their own. The first enclosure movement resulted in the expropriation of the commons, freed large territories for capitalist agriculture, logging, mining and speculation in land, and

at the same time created a vast army of the dispossessed, who were then freed to become wage earners in new industrializing areas at home or abroad or who were criminalized by harsh laws that imposed penal servitude in the colonies. Those dispossessed from the land also became the bulk of the workforce for the new engine that transported commodities across continents, the ship. Sailors and ships linked the modes of production and expanded the international capitalist economy. The ship was also the site of the coming together of diverse forms of labour and of diverse labourers from different ethnicities, bound together by a pidgin tongue. The solidarity of this motley crew, like many others in the era, was forged by their shared situation of dispossession and their shared labour.

Linebaugh and Rediker document in detail the very difficult conditions under which these sailors worked and the dangers to which they were constantly exposed, which at the same time created the conditions for solidarity among those who would challenge the smooth flow of capital: pirates. The first pirates in this sense were often 'the outcasts of the land' who mutinied against the conditions of their work and created an alternative order challenging the division of labour and capital. In fashioning what Linebaugh and Rediker call their 'hydrachy', these buccaneers often drew from the memory of utopias created by theoreticians in which work had been abolished, property redistributed, social distinctions levelled, health restored and food made abundant. By expropriating a merchant ship (after a mutiny or a capture), pirates seized the means of maritime production and declared it to be the common property of those who did its work. Rather than working for wages using the tools and larger machinery owned by a merchant capitalist, pirates abolished the wage and commanded the ship as their property, sharing equally in the risks of common adventure.

Piracy's redistribution of wealth was considered to be a massive international problem, and pirates were declared to belong to no nation. In fact, piracy emerged as one of the earliest crimes of universal global jurisdiction in a time when nation states were still carving out

their own local absolute sovereignties. But piracy was not merely a problem of the failure of the implementation or enforcement of the laws of property. Piracy also established an alternative ethic and an alternate mode of being. Piracy was democratic in an undemocratic age and egalitarian in a highly unequal age. Linebaugh and Rediker provide various accounts of instances in which the pirate ship inverted all rules of social hierarchy and in which, for brief spells, the laws of private property were suspended to allow for experimentation with alternative social imaginaries, even if only very briefly.

Summarizing the characteristics of this hydra of the era of early capitalism, Linebaugh says:

It was landless, exploited. It lost the integument of the commons to cover and protect its needs. It was poor, lacking property, money, or material riches of any kind. It was often unwaged, forced to perform the paid labours of capitalism. It was often hungry, with uncertain means of survival. It was mobile, *transatlantic*. It powered industries of worldwide transportation. It left the land, migrating from country to town, from region to region, across the oceans, and from one island to another. It was *terrorized*, *subject to coersion*. Its hide was calloused by indentured labor, gallery slavery, plantation slavery, convict transportation, the workhouse, the house of correction. Its origins were often traumatic: enclosure, capture, and imprisonment left lasting marks. It was *female* and *male*, *of all ages*. (Indeed, the very term *proletarian* originally referred to poor women who served the state by bearing children.) It included everyone from youth to old folks, from ship's boys to old salts, from apprentices to savvy old masters, from young prostitutes to old 'witches.' It was *multitudinous*, *numerous*, and *growing*. Whether in a square, at a market, on a common, in a regiment, or on a man-of-war with banners flying and drums beating, its gatherings were wondrous to contemporaries. It was *numbered*, *weighed*, and *measured*. Unknown as individuals or by name, it was objectified and counted for purposes of taxation, production, and reproduction. It was *cooperative* and *labouring*. The collective power of the many, rather than the skilled labour of the one produced its most forceful energy. It moved burdens, shifted earth, and transformed the landscape. It was *motley*, both

dressed in rags and multiethnic in appearance. Like Caliban, it originated in Europe, Africa, and America. It included clowns, or cloons
(i.e., country people). It was without genealogical unity. It was *vulgar*.
It spoke its own speech, with a distinctive pronunciation, lexicon, and
grammar made up of slang, cant, jargon, and pidgin – talk from work,
the street, the prison, the gang, and the dock. It was *planetary*, in its
origins, its motions, and its consciousness. Finally, the proletariat was
self-active, *creative*; it was – and is – alive; it is onamove.

<div align="right">(Linebaugh and Rediker 2002: 332)</div>

It is in the struggles of these multitudes that Linebaugh and Rediker
see the hidden history of revolutionary ideas of freedom, entitlement,
dignity and everything else claimed in the name of rights and
citizenship. The multitude was limited neither by the narrow allegiances
of ethnicity nor by the vulgar claims of nationhood, and yet ironically,
the moment of the formal institutionalization of a number of these
rights was also the moment that resulted in the exclusion of the very
class that had suffered to gain them.

Linebaugh and Rediker say that:

[T]he new revolts created breakthroughs in human praxis: the Rights
of Mankind, the strike, the higher-law doctrine, that would eventually
help to abolish impressments and plantation slavery. They helped
more immediately to produce the American Revolution, which ended
in reaction as the Founding Fathers used race, nation, and citizenship
to discipline, divide, and exclude the very sailors and slaves who had
initiated and propelled the revolutionary movement.

<div align="right">(Linebaugh and Rediker 2002: 328)</div>

There is perhaps a lesson to be learned here for those of us interested in
looking at the linkages between the multitudinous experience of living
through the consolidation of intellectual property. Intellectual property
is also created through transnational networks of new forms of capital
and labour, made in virtual vessels that pass each other in the global
night on the high seas of data. The tall ships of our times fly many
flags of convenience. They are the software sweatshops, the media

networks, the vast armadas of the culture industries and the lifestyle factories. They produce high-value primary commodities, stars, stories, sagas, software, idols, lifestyles and other ways of ordering meaning in an increasingly chaotic world. Typically, even though they sell the fantasies of place and identity in an increasingly enmeshed world, they are produced in a global everywhere and delivered through electronic pipelines everywhere, when necessary, more or less instantaneously, through telecommunication networks.

Their ubiquity and their global reach are also hallmarks of their greatest vulnerability, for like their precursors the tall ships of the new economy are freighted with cargo that is just as vulnerable to attacks of piracy. The new electronic pirates are located in the interstices of the global culture economy, which are the nodes that make the network viable in the first place. We cannot imagine a global media industry without the technology that made possible the phenomenon known as peer-to-peer networking on intranets, but it is precisely the same technology on the internet that renders any attempt to police the distribution channels of media content in the interests of proprietary agencies almost impossible. Just as the piracy of the past disturbed the equilibrium composed of slavery, indentured labour, the expropriation of the commons, the factory system and penal servitude, the electronic piracy of the present is destined to wreck the culture industry, either by making the economic and social costs of policing content prohibitive or by ushering in a diversity of new protocols for the use, distribution and reproduction of cultural and intellectual content that will make the whole enterprise of making vast sums of money out of the nothing of data and culture a difficult business (Raqs Media Collective 2003).

Conclusion

Any account of the conflicts over access to knowledge and culture in the contemporary world will have to be aware of the complicated

terrain that knowledge occupies. Our examination of the figure of the pirate has been an attempt to chart out the ways in which familiar issues of political economy, inequity and reform meet with aspirations, desires and creativity in unlikely encounters in unexpected spaces. As scholars and activists interested in a more just information order, it might well be the case that we need to abandon any simple, one-size-fits-all approach to reforming the public domain. We need instead to be aware of the fact that there can be no accounts of access that are not simultaneously accounts of exclusion, and it is in the awareness of this productive tension that we may be able to engage with a wider set of practices through which people can access knowledge and culture.

References

Bagchi, J., Liang, L., Sundaram, R., Krishnaswamy, S. and Vohra, S. (eds) (2005), *Contested Commons, Trespassing Publics: A Public Record*. Delhi: Sarai/CSDS. Web.

Benkler, Y. (2001), 'Siren Songs and Amish Children: Autonomy, Information, and Law', *New York University Law Review*, 76(1): 23–113. Web.

—(2003), 'Through the Looking Glass: Alice and the Constitutional Foundations of the Public Domain', *Law and Contemporary Problems*, 66(1): 173–224. Web.

Birnhack, M. D. (2001), 'The Idea of Progress in Copyright Law', *Buffalo Intellectual Property Law Journal*, 1(3): 3–58.

Boyle, J. (1996), *Shamans, Software and Spleens: Law and the Construction of the Information Society*. Cambridge, MA: Harvard University Press.

Chatterjee, P. (2001), 'On Civil and Political Societies in Postcolonial Democracies', in S. Kaviraj and S. Khilnani (eds), *Civil Society: History and Possibilities*. Cambridge: Cambridge University Press, 165–79.

Coombe, R. (1998a), *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*. Durham, NC: Duke University Press.

—(1998b), 'Critical Cultural Legal Studies', *Yale Journal of Law and the Humanities*, 10(2): 463–86.

Cullet, P. (2001), 'Patents Bill, TRIPS and Access to Health', *Economic and Political Weekly*, 36(43): 4049–51. Web.

Dhareshwar, V. and Srivatsan, R. (1996), '"Rowdy-sheeters": An Essay on Subalternity and Politics', in S. Amin and D. Chakrabarty (eds), *Subaltern Studies*, vol. IX. New Delhi: Oxford University Press. Web.

Durand-Lasserve, A. and Royston, L. (eds) (2002), *Holding Their Ground: Secure Land Tenure for the Urban Poor in Developing Countries*. London: Earthscan.

Govil, N. (2004), 'War in the Age of Pirate Reproduction', in S. Sengupta, M. Narula, R. Vasudevan, R. Sundaram, J. Bagchi, A. Sharan and G. Lovink (eds), *Sarai Reader 04: Crisis/Media*. Delhi: Sarai/CSDS. Web.

Holsten, J. and Appadurai, A. (1996), 'Cities and Citizenship', *Public Culture*, 8(2): 187–204.

Jacobson, A. J. (1994), 'The Informal Economy: The Other Path of the Law', *Yale Law Journal*, 103: 2213–14.

Larkin, B. (2004), 'Degrading Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy', *Public Culture*, 16(2): 289–314.

—(2008), *Signal and Noise: Media, Infrastructure, and Urban Culture in Nigeria*. Durham, NC: Duke University Press.

Lessig, L. (2004), *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin.

Liang, L. (2005), 'Porous Legalities and Avenues of Participation', in M. Narula, S. Sengupta, J. Bagchi and G. Lovink (eds), *Sarai Reader 05: Bare Acts*. Delhi: Sarai/CSDS. Web.

Linebaugh, P. and Rediker, M. (2002), *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic*. Boston, MA: Beacon Press.

Mason, J. H. (2003), *The Value of Creativity: The Origins and Emergence of a Modern Belief*. Aldershot: Ashgate.

Rancière, J. (1988), 'Good Times, or Pleasures at the Barriers', in A. Rifkin and R. Thomas (eds), *Voices of the People*. London: Routledge & Kegan Paul, 45–94.

—(1989), *The Nights of Labor: The Workers Dream in Nineteenth-Century France*, trans. J. Drury. Philadelphia, PA: Temple University Press.

—(2004), 'A Personal Itinerary', in A. Parker (ed.), *The Philosopher and His Poor*, trans. J. Drury, C. Oster and A. Parker. Durham, NC: Duke University Press, xv–xviii.

Rangaraj, R. (2003), 'Music Piracy and Terrorism', *Chennai Online*, 28 September. Web.

Raqs Media Collective (2003), 'Value and its Other in Electronic Culture: Slave Ships and Private Galleons', in A. Medosch (ed.), *DIVE*. Liverpool: FACT. Web.

Reid, D. (1989), 'Introduction', in J. Rancière, *The Nights of Labor: The Workers Dream in Nineteenth-Century France*, trans. J. Drury. Philadelphia, PA: Temple University Press, xv–xxxvii.

Silbey, S. and Ewick, P. (1998), *The Common Place of the Law: Stories from Everyday Life*. Chicago, IL: University of Chicago Press.

Spivak, G. C. (1988), 'Can the Subaltern Speak?', in C. Nelson and L. Grossberg (eds), *Marxism and the Interpretation of Culture*. Chicago, IL: University of Illinois Press, 271–313.

Sundaram, R. (2005), 'Recycling Modernity: Pirate Electronic Cultures in India', in A. Abbas and J. N. Erni (eds), *Internationalizing Cultural Studies: An Anthology*. Malden, MA: Blackwell, 43–50.

—(2007), 'Other Networks: Media Urbanism and the Culture of the Copy in South Asia', in J. Karaganis (ed.), *Structures of Participation in Digital Culture*. New York: SSRC Books, 49–72.

US Department of Transportation (2003), Office of Safety and Security, 'Transit Security Newsletter', 36 (May). Web.

Zimmerman, D. L. (1992), 'Information as Speech, Information as Goods: Some Thoughts on Marketplaces and the Bill of Rights', *William and Mary Law Review*, 33(3): 665–740.

On the Benefits of Piracy[1]

Volker Grassmuck

Introduction: Piracy in paradise

In *Das Kapital* Marx addresses an economic chicken-and-egg problem: money is transformed into capital which produces surplus value which is again transformed into capital. However, accumulation of capital presupposes surplus value which presupposes capitalist production which requires capital. 'The whole movement, therefore,' he writes,

> seems to turn in a vicious circle, out of which we can only get by supposing a primitive accumulation (previous accumulation of Adam Smith) preceding capitalistic accumulation; an accumulation not the result of the capitalistic mode of production, but its starting point. … This primitive accumulation plays in Political Economy about the same part as original sin in theology. Adam bit the apple, and thereupon sin fell on the human race. Its origin is supposed to be explained when it is told as an anecdote of the past.
>
> (Marx 1887: 500)

For Marx, primitive accumulation – I prefer the term '*original* accumulation' which is closer to Marx' German '*ursprünglich*' – takes on two distinct forms. In the bourgeois struggle against the old feudal system it

refers to the separation of the producer from the means of production, the expropriation of farmers from their means of subsistence. In the process that takes its classical form in England, large masses of people were suddenly and forcefully torn from the land and thrown onto the labour market as 'free' proletarians.

The second form started with the colonization of the globe:

> The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signalised the rosy dawn of the era of capitalist production. These idyllic proceedings are the chief momenta of primitive accumulation.
>
> (Marx 1887: 527)

In our supposedly postcolonial times one might assume that these are anecdotes of the past.

Communication systems and parasites (Serres 1981), shipping and naval piracy, copyright and its infringement, capitalism and its looting of the South are systemically, intrinsically linked. They cannot be separated. From a public policy point of view, therefore, eradication of piracy (just as that of drugs) cannot be a meaningful goal; it must rather strive to strike a balance between its benefits and its harms. The public debate on piracy, however, continues to be dominated by the emphasis on its damaging nature, and therefore by arguments in favour of its eradication. Starting from the example of the unauthorized publication of works by foreign authors in nineteenth-century USA, this chapter will argue the case for the benefits of piracy in developing economies. Through the contemporary examples of an emerging video film industry in Nigeria and popular dance music in northern Brazil, it will present the case for the legalization of small-scale physical copyright piracy in developing nations.

Book piracy in nineteenth-century America

After declaring itself independent from the English colonial motherland, the USA was an underdeveloped country on the periphery of the world. During the nineteenth century it transformed itself into a leading industrial power. How did the US do it? asks historian Doron Ben-Atar, and he points to the phrase 'Yankee ingenuity'. 'Yankee' originates from the Flemish word 'Janke' for smuggler, pirate. In his ground-breaking study *Trade Secrets* (2004), Ben-Atar shows how the US laid the foundation for its success by systematically resorting to piracy. By the time the US had become the world's largest technology exporter however, its legacy of piracy had been erased from national memory and the country had become one of the loudest advocates of enforcing intellectual properties laws worldwide (Ben-Atar 2004: 214).

Although Ben-Atar's piracy study focuses on technology, his insights are equally illuminating in the context of copyright. In the eighteenth-century US, domestic copyright laws were weak and the US did not sign the core international treaty until more than 100 years after its promulgation. In 1783, Congress recommended that the states pass copyright laws granting a 14-year ownership of rights for books written by citizens of the United States. 'The resolution explicitly denied protection to foreign authors, thus encouraging the unauthorised reprinting of mostly British authors in North America' (Ben-Atar 2004: 125–6). It was only in 1891 that the US allowed foreign authors to obtain copyright protection if they met certain conditions. Economist Zorina Khan has studied the effects of this policy. Her conclusion is as follows: 'The results suggest that the United States benefited from copyright piracy and that its intellectual property regime was endogenous to the level of economic development' (Khan 2007: 2). She continues:

> The reading public appears to have gained from the lack of copyright which increased access to foreign works. American authors and the public were able to obtain foreign books at prices that were lower than

in European markets, and this aided the expansion of a mass market
and economies of scale in publishing in the United States.

<div style="text-align: right">(Ibid.: 28)</div>

In other words, piracy was instrumental in originally establishing the
infrastructure on top of which a legitimate media market for both
domestic and foreign works subsequently developed.

The way in which US publishers of foreign authors dealt with the
situation is most instructive, because today's copyright maximalists
would have us believe that in the absence of copyright protection no
sustainable market could develop. A publisher, even if he or she does
not have to pay royalties, needs to make a large fixed investment that
he cannot recoup if the sales of the book are low due to competing
publishers printing the same book. Unrestricted competition would
also lead us to expect prices to be driven down to marginal cost. To
avoid such ruinous competition, nineteenth-century US publishers
developed several strategies, such as being first on the market with a
particular product, and saturating that particular area of the market
with its products (Khan 2007: 21). A consequence of such races
was poor-quality books which were more likely to contain mistakes
and intrusive revisions. Sloppy proof-reading, printing and binding,
abridgements and lack of errata seem to have been common; Carey and
Lea's edition of Sir Walter Scott's *The Pirate* (orig. 1821), for example,
omitted an entire chapter (Khan 2007: 21). In this sense piracy
harmed the readers. Khan also notes, however, that this tendency was
countered by some publishers building up a reputation for quality. In
an increasingly demanding market, quality began to outweigh speed as
the most significant selling factor (ibid.: 22).

But speed did remain crucial. In order to be the first to get new
titles from England, publishers employed agents to send them to
the US. They also started to buy early proofs to gain advantage over
competitors. In order to secure early proofs, publishers made signif-
icant payments to foreign authors in the form of royalties or lump sums
(Khan 2007: 3). For example, the publishing firm Ticknor and Fields

(the precursor of Houghton Mifflin) sent several unsolicited payments over the years to Tennyson taken from the profits made on his poetry reprints. Such payments were recognized by reputable publishers as 'copyrights', even though they were not enforceable by law.

Collusion among competitors was another strategy adopted to reduce risk and establish what Khan calls artificial or synthetic copyrights. In England, publishers of works in the public domain, such as those by Shakespeare and Fielding, had formed strictly regulated cartels in order to share the risk of recouping investments, and in the 1840s publishing houses in the US began to follow this model. A publishing code of 'trade custom' or 'courtesy of the trade' was established, and these 'synthetic copyrights' were transferred and sold among booksellers and publishers through contracts that were honoured even in the absence of legal protection.

This extra-legal system also ensured payments to foreign authors who also directly and indirectly benefited from the original accumulation of media infrastructure through piracy, i.e. the expansion of the market and increase in the literary and academic population in the US. They discovered that they could turn their piracy-aided popularity into astonishing earnings from lectures and readings. Still today, this shift from a product- to a service-based economy may be seen in many areas where copyright law plays no or only a marginal role, such as in free software, free music or, as we shall see, in Nigerian video films and Brazilian Tecnobrega music.

If copyright-free foreign authors and their US publishers were able to establish a beneficial and sustainable media environment for themselves and US readers, what about native US authors? Those most strongly in favour of protecting foreign copyright in the USA argued that undercutting and unfair competition from cheap foreign works harmed the development of domestic literature and deterred US citizens from choosing writing as a career in the first place. Fiction was indeed dominated initially by foreign authors. This changed, however, after the 1830s with the emergence of such authors as James Fenimore Cooper, Henry Wadsworth Longfellow and Nathaniel Hawthorne. If

cheap foreign books indeed had a harmful effect on native authors one would expect to see a marked increase in published US authors only after 1891. Instead, Khan finds a rather gradual decline in foreign author books sold, until by the early twentieth century Americans comprised the majority of best-selling authors in the country.

If there was significant benefit and no identifiable harm, the question arises as to why in 1891 the US implemented foreign copyright protection at all. Ben-Atar sees the striving for legitimacy as a crucial factor. There was widespread international condemnation of the US's refusal to recognize foreign authors' copyrights. The struggle inside the US was driven by US authors of international reputation, by some universities and by European authors like Charles Dickens. On the opposing side were publishers, printers, typographers, bookbinders and paper producers (Khan 2007: 8). In Khan's analysis the decisive factor for the change in law was the gradual evolution of US culture that resulted in internationally competitive literary products and shifted the trade balance. The USA's new cultural capital provided the incentive for the recognition of international copyrights (ibid.: 30).

Khan concludes that effective intellectual property institutions are dependent on a country's level of economic and social development. Another decisive factor is the state of media technology. Lawrence Lessig draws a line from the original accumulation of media infrastructure through piracy into the twentieth century: 'Every important sector of "big media" today – film, records, radio and cable TV – was born of a kind of piracy' (Lessig 2004: 53). After the phonograph had been invented the record companies took the music from its composers; when radio started the stations in turn took the music recordings; and when cable TV started its operators took television programmes, in all three cases without permission or payment. In all these cases, as Lessig recounts, a legal solution was eventually found: compulsory licences for music recordings and cable TV, and collective management for radio. By this point the USA was no longer a developing nation; nevertheless, each emerging media system benefited from an initial period of piracy that, in the case of cable TV, lasted for almost 30 years.

As Ben-Atar remarked, the United States has now come full circle: from pirate nation to primary exporter of IP with more than half of all global copyright and patent revenues being earned there. It is now the driving force behind compelling developing countries to adopt its own standard of copyright regulations through WIPO, WTO, bilateral trade agreements and unilateral measures under Special 301. Yet, as the case of the early American book market highlights, and as Khan, along with several other scholars, argues, laws and enforcement mechanisms concerning the protection of intellectual property rights are relevant to the needs of already developed countries, 'whereas newly industrialising societies (at least initially) may not benefit from their adoption or may need to tailor patent and copyright polices to fit their own specific circumstances' (Khan 2007: 3). It is against this background that the two contemporary examples of the Nigerian film industry and Brazilian pop music will be considered.

Video film piracy in twentieth-century Nigeria

Nigeria, too, was a British colony from 1901 to 1960. During that time, foreign companies introduced movies, cinemas and television. This, combined with a dynamic native culture of story-telling, travelling theatre, popular literature and television, shaped the emergence of the video film industry of the 1990s. Another crucial ingredient was the reproduction and distribution infrastructure of piracy.

In support of the anti-apartheid struggle in South Africa, the Nigerian government exerted pressure on foreign companies that had relations with the apartheid regime. This coincided with the government's attempt to gain control over its own infrastructure, which led to the Indigenisation Decree of 1972. Among other foreign assets, about 300 cinema houses were nationalized (Aderinokun 2004). In response, the Motion Picture Association of America (MPAA) stopped distributing Hollywood films to Nigeria which,

thanks to piracy, actually increased their availability (Larkin 2004: 294).

The oil crisis of 1973 came to the aid of Nigeria, which was by then the fifth largest oil producer in the world, making the country and some of its consumers wealthy. VHS recorders, introduced in 1976, became a widely desired status symbol. By 1979, the oil boom was over; the economy collapsed, the currency was devalued. Under the regimes that followed, the security situation deteriorated so much that people did not dare go out at night and came to prefer home-based entertainment. As a consequence, cinemas had to close, and the sale and rental of pirated video films filled the gap. When the International Monetary Fund (IMF) came to the rescue it imposed a Structural Adjustment Programme (SAP) that came into effect in 1986 and involved removing subsidies from public services, devaluing the Naira and privatizing public infrastructure, including that of the Television Authority. This policy not only increased the level of poverty throughout the country, but caused the collapse of the country's cultural production: 'SAP introduced a pervasive social dislocation which hasn't been fully accounted for, such that film-making, film exhibition, in fact, the entire system of cultural production – music, live theatre, book publishing and so on – totally collapsed' (Adesokan 2006). It was during that time that the duplication and distribution infrastructure for pirated movies and music was fully established – as a direct result of the IMF policy.

At this point Nigeria established itself as an important node in the networks of the unofficial global economy, allegedly becoming the largest market for pirated goods in Africa (Larkin 2004: 297). By the early 1990s piracy had helped lay the foundation for the original accumulation of Nigeria's media capital and infrastructure. The groundwork was laid for the emergence of a video film industry that was termed Nollywood, and which today is the second largest in the world in terms of annual production, ahead of Hollywood and second only to Bollywood.

Most sources name the consumer electronics retailer Kenneth Nnebue in Onitsha and director Chris Obi-Rapu as the founding

fathers of Nollywood. In 1991, Nnebue produced a Yoruba video for a mere 2,000 Naira (c. €30), earning him a fortune (Künzler 2006: 7; Haynes and Okome in Haynes 2000: 55). A year later, as urban legend has it, he was faced with a large stock of blank video cassettes that he had bought in Taiwan. He figured that he could significantly increase sales if he recorded something onto them. So he reinvested the profits from his first movie and produced another one called *Living in Bondage* (Künzler 2006: 7; Igwe 2006: 4).

This second film tells the story of a man in Lagos who is promised great wealth by a magic cult if he sacrifices his wife. After the ritual murder he begins to prosper. But the spirit of his wife haunts him and drives him mad (for a more extensive synopsis see Haynes and Okome in Haynes 2000: 79). This story is not only instructive for the cultural universe of Nigeria with its tension between village and city life, the hope for a magic short cut to wealth and the final exorcism in a Pentecostal church, but is also rich in implications for the industry that this pioneering movie has spawned. Shot in Igbo, *Living in Bondage* sold 20,000 copies within days. It was later released with English subtitles and eventually sold around 750,000 copies.

While it is evident that it is easier to sell value-added, pre-recorded cassettes than blank ones, it is less clear why Nnebue did not simply copy popular foreign movies onto them. What made him switch sides from film pirate to film producer and to inadvertently become the midwife of Nollywood? Was it the urge to foster national culture, or more selfish economic incentives? Was the profit margin on his 1991 movie so phenomenal that he could hope to earn more from creating an original work than from copying that of others?

Charles Igwe is a banker by training and now a film producer. Together with his wife Amaka Igwe he runs the African Film and Television Program Market, provides financial consultations to the movie industry, runs a replication plant and one of the biggest distribution companies in Nigeria. His explanation for the success of *Living in Bondage* is as follows: 'It was a story being told by our people to our people. That was key!' (Igwe 2006: 5).

Igwe implies that an audience hungering for local cultural expressions made the returns on investment in an original Nigerian film larger than that in a master copy of an Indian or American movie. Duplication and marketing costs are the same for both, but while foreign films are still readily available 20 years after the start of Nollywood, their relative market share has dropped due to the massive popularity of Nigerian products. *Living in Bondage* uncovered a huge untapped market demand.

With consolidation comes professionalization. In the early days, few people had formal training. Often the same person would write the script, produce and direct the film, and play one of the roles. Since 2003, job specialization and training has increased (Künzler 2006: 7). Professional associations for film producers, directors, cameramen and distributors like the Kano Cassette Sellers Recording and Co-operative Society Ltd have been established. There are now specialized video magazines, trade fairs and festivals, such as the Abuja International Film Festival and the African Movie Academy Awards (AMAA). International recognition is also increasing. In 2004, Nollywood was featured at international film festivals, such as Berlin and Rotterdam.

All figures relating to Nollywood are unreliable but there are strong indications of an explosive rise in production. UNESCO cinema statistics show that in 2009, 987 feature-length films were produced in Nigeria, compared to 1,200 in India and 694 in the US. According to Igwe the value of the local core market in 2005 was US $4 billion. He adds that this figure should be multiplied by *20* to take into account the 'supply problem', i.e. piracy (Igwe 2006: 5, 13).

A film industry that has its roots in piracy must itself expect to fall victim to it. It employs many of the same strategies as the book industry in the nineteenth-century US to deal with the challenge. The main strategy is speed in distribution. New films earn their money in the first few days after release. If not enough copies are available to meet the demand, the pirates fill the gap. Hence, Igwe calls piracy 'a supply problem' (Igwe 2006: 13). The response of the industry is to expand duplication capacities and to decentralize distribution so that

new releases are available everywhere across the country. The shift from VHS to optical disks and from CD burners to pressing plants is considered crucial by Igwe to this strategy.

Cartelization requires a trade community that honours non-legal contracts and agreements. This exists to a degree in the Islamic north of Nigeria. Transactions between producers and marketers here are made on a commission basis, leading Larkin to speak of 'a complex balance of credit and trust' (Larkin 2004: 295). It was also here that the first trade associations of filmmakers and of cassette sellers were formed that managed a degree of self-regulation (e.g. by restricting the number of films released per month).

Price discrimination by added value and quality is another important strategy employed. Producers shrink-wrap cassettes and disks to prove they are 'original' copies, thus allowing them to build a reputation among consumers who may then decide whether to go for the cheaper but possibly defective pirate product or the original quality copy. They also include raffle tickets to encourage people to buy the genuine product (Nathan 2002).

As we have seen, foreign authors in nineteenth-century America earned significant amounts from readings and lectures. Similarly, Nigerian film producers shift from product to performance. Larkin mentions that 'videomakers often try to recoup their expenses by arranging screenings at cinema halls all over the north before releasing the video for general sale' (Larkin in Haynes 2000: 230). And, just as in the US example, the Nigerian video film industry increasingly calls on the government to strengthen copyright enforcement. 'We have possession of our markets now and I think the government has now come to realize that there is real value in protecting that body of work and providing a system that allows who creates [*sic*] things to exploit what they have created profitably' (Igwe 2006: 11). Again, the piratic phase of original accumulation seems to be naturally transitional, leading to legal regulations appropriate to the specific media environment.

Music piracy in the world of Tecnobrega, Brazil

As a final example of the beneficial effects of piracy on creative production, we will now take a look at a specific music culture in Belém, the capital of the northern Brazilian state of Pará. Tecnobrega is electronic dance music that, just like Reggae and Hiphop, has emerged from the periphery of society and the traditional market. In the beginning it was given no radio coverage and it still seems unlikely that it will ever have the backing of a major record company. It was therefore forced to find a distribution channel open to this kind of musical innovation: street vendors who otherwise sell pirate music or video CDs.

Tecnobrega is played at *aparelhagens*, sound system parties which take place in the poor outskirts of Belém, the biggest of which attract more than 5,000 people every weekend. 'Aparelhagem' refers to the sound system equipment, the group of musicians and DJs operating it and the party itself. Technology is at the core of the *aparelhagem* phenomenon which dates back to the 1950s. Rubi, a member of the largest *aparelhagem* Tupinamba, who is approaching 60 and is still with the scene, says the parties were always huge with lots of lighting. In the 1980s, TV walls were the main attraction. In the 1990s, the technology escalated; the bass speakers became so powerful that vinyl and even CD players would jump, so the DJs had to switch to laptops. Today a party without lasers, a hydraulic stage, smoke machines and other special effects will not attract an audience. There are about 400 *aparelhagens* of all sizes in Belém. The small ones play in bars or in the streets. Sometimes businessmen invest in the creation of a new sound system (personal communication, November 2005).

Tecnobrega musicians record their music in a studio. The genre mixes a 1980s drum box beat with elements of the cheesy popular music of Pará called Brega and with virtually any other kind of music, past and present, that the musician happens to like. It goes without saying that the rights for these samples are not cleared. In many cases the same person composes and records the music and performs it

during the party. He then gives the master recording to the street vendors, either directly or to intermediaries who compile collections of songs, replicate the disks and then provide the street vendors with their goods. Legitimate and pirate music CDs are both sold at the same price of R$3.00 (€1.00). No revenues from sales make their way back to the artists. Composers and musicians do not explicitly release their works under a free licence, but wide distribution is welcomed as a form of advertising for the live performances where Tecnobrega artists earn their living. The relation between musicians and vendors is genuinely convivial (for a unique insight into the world of Tecnobrega see Cunha and Godinho 2009).

The party organizers hire the *aparelhagens* who set up their own equipment and play the show. Organizers make their money from the entrance fee, and from selling drinks and merchandise like T-shirts. The bands also sell their own CDs and DVDs at the parties, sometimes of live recordings of the set the audience has just heard, at a premium price. More than 400 new CDs are released in this way every year, writes Ronaldo Lemos (Lemos 2007: 36). Interviews conducted by the Open Business project overseen by Lemos revealed that, while some artists had tried and failed to make it through traditional channels, 88 per cent of artists in the Tecnobrega scene had never had any contact with record companies (ibid.: 40).

Tecnobrega has become a significant economic factor in the poor state of Pará, moving about US$5 million a month through Belém's economy, according to the study directed by Lemos. The main strategy of dealing with an environment without copyright enforcement in this case is performance over product. This is complemented by price discrimination where the disks sold at the parties by the bands themselves have an added experience value over equivalent products sold by the pirates.

Legalizing small-scale physical copyright piracy

Piracy allows audiences, which are exposed to advertising for global culture products but cannot afford them, to participate in the global information society. The buyers are not ideologically driven; if their options are to see a movie through pirated means or not to see it at all, the decision is easily made. Readers in the nineteenth-century US acquired access to foreign books, twentieth-century viewers in Nigeria to foreign films, and contemporary listeners in Brazil to a wide range of music, and all were eventually able to witness a wealth of native expressions whose emergence was aided by piracy.

Publishers and producers were able to benefit from the original accumulation of media capital, infrastructure and market realized through piracy. They managed to create a market for creative goods in the absence of enforceable copyright law. The strategies they employed include a race to be first on the market, price discrimination by quality and added value, cartelization and trade rules, and performance over product. Such mechanisms of informal copyright have recently gained considerable interest in the academic debate (Fauchart and von Hippel 2006; Loshin 2007; Kretschmer et al. 2009).

Native authors, too, benefit from the infrastructure and the economy of scale achieved by piracy. The connection between the reception and creation of cultural works is worth further exploration. Lawrence Liang observed that the changing dynamics in pirate markets in China and India have recently led to the availability of films not only from Hollywood but also from other cultures, as well as independent films, art-house, documentary and experimental films. This in turn has inspired thousands of people in China to line up to join art schools. He cites a Chinese curator saying: 'When you can buy Tarkovsky for a dollar, you will obviously produce many more artists.' Liang thus proposes that: 'It is only a matter of time before young people inspired by the new cinema that they see via the grey market fancy taking a shot at becoming the next Jonathan Caouette' (Liang 2006).

I argue that this is at play in all three of our cases. As Charles Igwe argues, the first Nollywood movie was a story 'being told by our people to our people. … What is most important is that movies aren't just business, they are cultural expression' (Igwe 2006: 5). The observation of the importance of local demand for local forms of cultural expression disproves the idea of a global levelling of differences through the dispersion of hegemonic culture industry products. There is certainly a flow of US American, Indian, European, Japanese and Chinese movies and music that reaches the most remote corners of the planet. But it leaves something to be desired; there is a *genius loci* that cannot be absorbed by globality: a linkage of place, language, ethnicity, religion, stories, songs that is permeable to outside influences but creates a network of interactions out of which new cultural forms are born, forms for which there is no space neither in the multinational culture industry nor in its pirate double, and that are able to bring forth and sustain a local environment for cultural expression.

In the nineteenth-century USA, foreign authors were able to obtain payments from US printers. Foreign film companies are now able to generate profits from Nigeria after multiplexes for the middle class are being built on the basis of the Nollywood film boom. Foreign bands playing in Brazil could, just as their Tecnobrega colleagues do, utilize the street vendor networks for advertising their shows.

For the pirates themselves, of course, piracy is profitable. Pirates are not ideological; they are businesspeople like any other. They take whatever opportunity arises to match demand with supply, following an economic logic. From a public policy perspective, nurturing cultural innovation and diversity is a value in and of itself. Major economic earnings which are almost equal to that of the nation's largest industry – in Nigeria, Nollywood is said to be second to the oil industry, in Belém, Tecnobrega is apparently second to the rubber industry – is another positive factor. Piracy itself and the original creative expression it supports create jobs, and even if the pirates do not pay taxes, by spending their earnings they do contribute to the overall economy.

On the negative side of piracy, the main problems arise from the fact that the activity is illegal and therefore more profitable than if it were not. The claim that piracy attracts organized crime is plausible. People in money laundering, the trades in arms, drugs and human beings become entangled in copyright infringement. This introduces a culture of violence and sets up new forms of serfdom, especially of the street vendors. Illegality also attracts the suppression of piracy by the police. Street vendors are the most exposed and vulnerable link in the system, the ones most affected by police raids. If they receive their goods from organized crime groups on commission, confiscating their goods only serves to drive them further into slavery. They are also the most dispensable for the piracy trade; even if they are imprisoned, there are numerous others to fill their place. The big guys in the big business of piracy, just like in any other business, rarely, if ever, get caught.

Hence, if copyright piracy has such significant advantages for the access to knowledge and creative works as well as for creativity and innovation, and the negative sides arise from its illegality – why not simply legalize it?

A remarkable precedent of drawing a line between activities deemed tolerable by society and those that cause serious harm is the de facto legalization of soft drugs in the Netherlands. The pragmatic policy rational behind it is that when a widespread practice cannot be eradicated it should be tolerated and controlled rather than continuing with attempts to suppress it. Where soft and hard drugs have tended to be treated as part of the same problem, the official sanctioning of marijuana in the Netherlands effectively served to separate the two. It has also created legal and taxed jobs in coffee shops and youth centres, and, no less importantly, has established substantial revenue from tourism.

Legalizing the small-scale physical reproduction and sales of works without permission from and compensation of their creators would have the same beneficial effects. If anyone who can afford consumer-grade copying equipment were permitted to sell copies, piracy

would become unattractive to organized crime. It would remove power relations and violence intrinsic to the business. It would create respectable jobs, offering a real service to audiences, even if street vendors are unlikely to start doing their accounts and paying taxes overnight. One could imagine people taking out Grameen-style micro-loans to buy two VCRs or a CD burner and start a family replication business.

As Khan and Lessig have indicated, the relation between pirate and non-pirate business models depends on economic, social and technological development. It is therefore to be expected that decriminalized piracy will pass through several stages before consumers themselves begin to buy products that reflect the new values and priorities of their shifting economic circumstances. With a growing middle class the number of people who can afford books, music and movies at a price that allows for the remuneration of artists will rise. This eventual self-selection by consumers is the basis of the price discrimination by quality, reputation and added value found in all three cases discussed.

Furthermore, once original forms of creative expression emerge on the basis of the infrastructure of legalized piracy, their creators will likely start calling for a meaningful level of copyright protection. This was the case in both the US and the Nigerian examples, but so far there is no indication of such demands from the Brazilian Tecnobrega world where money is earned predominantly from performances. If artists feel that they are harmed by one form of piracy or another they have an incentive to call for and recognize an adequate level of copyright of their own will. It is also possible that a stable situation arises where the poor serve the poor by means of legalized piracy, while the middle and upper classes sustain the production of creative works.

It is important to point out that the case for legalizing piracy put forward here does not imply abolishing copyright altogether, and it contains three caveats. The case argued here concerns copyright matter only; it goes without saying that the issues are very different for medicine, car parts and other forms of non-copyright counterfeit products. Second, it refers to physical piracy in the form of books,

analogue tapes and optical disks that can be replicated with readily available technology and that is a relevant means for providing access to knowledge until the internet becomes widely available. With the internet the issues become quite different and call for different solutions which fall beyond the scope of this chapter (cf. Grassmuck 2011). The third caveat is that legalization should be restricted to small-scale piracy.

Where to draw the line between small and not so small scale? For optical disks there is a clear difference between burning and pressing. While the former uses consumer technology the latter requires industrial plants and capital investments that possibly attract organized crime. While there are millions of burners in Nigeria, there are only four mastering facilities and 15 optical disk plants (IIPA 2008). These should be fairly easy to control. In addition, cleanroom technology, stampers and raw materials required for the process could be controlled at source.

Two questions remain. Why should authors or rather the copyright industries from the North be made to pay for this, or, rather, dispense with revenues that are unenforceable anyway? This raises the counter question: Why should their products be treated any differently from local creative works like Tecnobrega music or Nollywood movies? The national treatment principle stipulated in the Berne Convention should mean that Robbie Williams has to compete with Tupinamba in the same national environment on local terms. One could point to the US itself which, until 1891, unilaterally claimed 'development assistance' from European nations by not recognizing foreign copyrights. More generally, one could mention the centuries-long plunder of the South, a debt which the North is now repaying with the best (and unfortunately also the worst) it has to offer. In fact, those who are screaming most loudly are those who likely have the least to lose. As our examples have shown, people in the US most of all wanted to read US authors, people in Nigeria primarily want to watch Nigerian movies, people in Brazil want to listen to music rooted in their own culture.

And finally: could it be done? No and yes. Most countries have bound themselves to international instruments like the Berne Convention and TRIPS that would prevent them from legalizing piracy. The Dutch example again points to a solution. The Netherlands has signed several international drug control treaties. It keeps its anti-drug laws on the books while limiting their enforcement to certain offences. Technically, cannabis is still illegal but in reality the country benefits from its decriminalization. A similar arrangement could be found for decriminalizing small-scale piracy.

Legalizing small-scale piracy would achieve short-term relief for street vendors from the effects of criminalization, a mid-term effect of establishing an infrastructure of media distribution that the market has failed to create in Nigeria, as in many other developing countries, and a long-term effect of nurturing domestic cultural production that can then serve to transform the pirate networks and help developing cultural economies compete in the international arena with the cultural products of the North.

References

Aderinokun, T. (2004), 'The Economics of Nigerian Film, Art and Business', *Africa Update*, 6(2): The Nigerian Film Industry. Web.

Adesokan, A. (2006), Interview in *New Nigerian Cinema*, January. Web.

Ben-Atar, D. (2004), *Trade Secrets: Intellectual Piracy and the Origins of American Industrial Power*. New Haven, CT: Yale University Press.

Cunha, V. and Godinho, G. (dirs) (2009), >*brega/sa*. Web.

Fauchart, E. and von Hippel, E. (2006), 'Norms-Based Intellectual Property Systems: The Case of French Chefs', MIT Sloan Working Paper 4576–06, *Social Science Research Network*. Web.

Grassmuck, V. (2011), 'A Copyright Exception for Monetizing File-Sharing: A Proposal for Balancing User Freedom and Author Remuneration in the Brazilian Copyright Law Reform', in Berkman Center for Internet & Society (ed.), *Rethink Music: A Briefing Book*. Boston, MA: Berkman Center for Internet & Society. Web.

Haynes, J. (ed.) (2000), *Nigerian Video Films*. Athens, OH: Ohio University Center for International Studies.

Igwe, C. (2006), 'The Nigerian Film Industry', presentation at the seminar 'The Rise of People's Cinema', 11 May, Centre for Technology and Society of Fundação Getulio Vargas Law School, Rio de Janeiro. Web.

International Intellectual Property Alliance (IIPA) (2008), 'Special 301 Report: Nigeria'. Web.

Khan, B. Z. (2007), 'Does Copyright Piracy Pay? The Effects of U.S. International Copyright Laws on the Market for Books, 1790–1920', Research paper: Department of Economics, Bowdoin College and National Bureau of Economic. Web.

Kretschmer, M., Singh, S. and Wardle, J. (2009), *The Exploitation of Television Formats*. ESRC-funded Project and Digital Resource, Bournemouth University. Web.

Künzler, D. (2006), 'The Nigerian Video Industry as an Example of Import Substitution', paper presented at the Sociological Institute of the University of Bergen (Norway), 30 October. Web.

Larkin, B. (2004), 'Degraded Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy', *Public Culture*, 16(2): 289–314.

Lemos, R. (2007), 'From Legal Commons to Social Commons: Brazil and the Cultural Industry in the 21st Century', Working Paper, No. 80, Centre for Brazilian Studies, University of Oxford. Web.

Lessig, L. (2004), *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin.

Liang, L. (2006), 'Pirate Aesthetics', *Magazine of the Steirischer Herbst Festival*. Web.

Loshin, J. (2007), 'Secrets Revealed: How Magicians Protect Intellectual Property without Law', *Social Science Research Network*. Web.

Marx, K. (1887), *Capital*, vol. I, trans. S. Moore and E. Aveling. London. Web.

Nathan, J. (2002), 'No-Budget Nigeria', *Filmmaker Magazine*. Web.

Serres, M. (1981), *Der Parasit*. Franfurt am Main: Suhrkamp.

UNESCO (2010), *Cinema Statistics*. Web.

'Dreaming with BRICs?'[1]

On Piracy and Film Markets in Emerging Economies

Shujen Wang

[T]he story of the century will be the inexorable rise of emerging economies.

The Economist (2011: 84)

Introduction

Both emerging markets and grey markets are temporally and spatially ambiguous, defying fixed expectations and definitions. As a grey and informal market, piracy occupies an interesting space in which the products circulated are not illegal in and of themselves (as opposed to black market goods such as narcotics) (Creer 2004); it is the ways in which, and the areas in and through which, they are produced, distributed, sold and used that raise questions. Likewise, emerging economies are by definition in-between economies, between development stages or economic systems. They are in transition and occupy a more or less fluid in-between place temporally. What makes piracy

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[1] 'Dreaming with BRICs' is the partial title of Wilson and Purushothaman's oft-cited Goldman Sachs report that predicted the rise of these four emerging economies in the next few decades (2003: 1).

markets in emerging economies worthy of note is the inextricable relationships between pirate markets and their formal counterparts and the role different stages of development play in the functioning and operation of these markets.

   Piracy and development share an intricate relationship. The spread of piracy is part of the development of globalization and regionalism. The transition into a free market economy that benefits the growth of a formal economy and the production and distribution of goods in emerging markets also inevitably helps the circulation and production of illicit goods. A form of parasitic capitalism, given its dependency on the formal economy and the existing infrastructure, piracy siphons off the formal markets, but what is rarely discussed is how it also fuels the growth of the formal economy. The top-performing emerging economies with high respective piracy rates, the BRIC (Brazil, Russia, India and China) markets, provide a particularly interesting backdrop against which the dynamics between the formal and the informal play out.

BRIC

In 2001 Goldman Sachs's chief economist Jim O'Neill first coined the term BRIC (O'Neill 2001; Kowitt 2009), and in 2003 Goldman Sachs published its now oft-cited research entitled 'Dreaming with BRICs: The Path to 2050', predicting that the BRIC economies combined could account for over half of the current size of the G6 by 2025, and outgrow them by 2050 (Wilson and Purushothaman 2003: 2). The irony with regard to 'BRIC' is that it was not only a Western banker on Wall Street who coined the term, but it was also done as a reaction to the 9/11 attacks. In an interview, Jim O'Neill noted his realization after the 9/11 attacks that globalization was not going to be about 'the Americanization of the world', but rather 'it showed you couldn't run the world properly without having these guys more involved' (Kowitt 2009). Global powers and power relationships are shifting in post-9/11 international reality.

As the most populated and fastest-growing markets in the world, the BRIC countries carry increasingly significant weight and negotiation prowess, which is beginning to reduce the size of the American as well as other Western economies (Wince-Smith 2007).

Also in 2003, the US film industry saw that for the first time international revenues outperformed its domestic box-office returns, earning 50.2 per cent of the total revenue. In 2011 the international market grew even higher to account for 58.4 per cent of the total revenue, with China and Russia, half of the BRIC economies, leading the pack in both box-office performance and infrastructure/screen growth (Hancock 2012). China's box-office, for example, rose past US$2 billion for the first time in 2011 (a 29 per cent increase over 2010), while the Russian box-office revenue measured US$1.16 billion (a 20 per cent growth from 2010). In 2010 all four BRIC countries constituted the top foreign territories, with China witnessing a 64 per cent increase from 2009, Russia seeing a 56 per cent increase, and Brazil increasing 30 per cent (A. Stewart 2012).[2] Finally, and very significantly, in 2012 China replaced Japan to become the world's largest market for Hollywood movies outside the US.[3] And for the first time in a decade, not a single Russian film made it to the top-ten list in Russia in 2012, the fifth largest film market in the world. The list, instead, was dominated by Hollywood movies (Holdsworth 2013). Both occurrences signalled a clear dominance and overwhelming popularity of American movies in these two transitioning former communist countries. These performances are stunning in and of themselves, but they are even more dramatic, and ironic, when viewed against the piracy backdrop.

Just as the formal box-offices in these top-performing emerging economies continued to see record-breaking growth, their shadowy

[2] To catch the buzz of the excitement over the BRIC markets, the Hollywood trade journal *Variety* presented 'The BRIC Summit' on 15 June 2012 in association with the Association of Film Commissions International (AFCI) Locations Show, exploring 'how the fast-growing film and TV economies of Brazil, Russia, India and China are critical to the ongoing growth of the entertainment industry' (*Variety.com* 2012).

[3] In 2012, the Chinese market rose 31 per cent to US$2.75 billion, and the Russian market rose 8 per cent to US$1.24 billion. See Abrams (2013) and Holdsworth (2013).

informal counterparts, the pirate markets, also maintained their upward ascension trend. In 2013 all four BRIC countries remained on the United States Trade Representative (USTR) Special 301's Priority Watch List and the (regular) Watch List for high piracy offences and weak antipiracy enforcements.[4] India, for example, had been placed on the Priority Watch List for 20 straight years (continuously since 1994), while Russia remained on the same list for 17 straight years (continuously since 1997). Brazil was placed on the Priority Watch List from 2002 to 2006 and was downgraded to the Watch List in 2007, remaining there ever since. Meanwhile, China was named the Priority Foreign Country in 1991, 1994 and 1996, subject to potential investigation under the Section 301 provisions of the Trade Act of 1974, and has been placed on the Priority Watch List since 2005. In 2012 and 2013 China was also subject to a special monitoring programme under Section 306 of US trade law (as it was from 1997 to 2004, and in 2006).[5]

The 2012 USTR Report is particularly significant because the American intellectual property (IP) industries were the top export sector (at 60 per cent) in the US economy and employed a high number of workers domestically (40 million American jobs) (Reuters 2012). These numbers are even more important when viewed in the context of the recent economic downturn. Despite the 2008/9 economic recession and the high piracy rates that had supposedly caused losses to the copyright industries, the copyright industries instead outperformed the rest of the US economy (Siwek 2011).[6]

Given these parallel developments (i.e. high piracy rates and the record-breaking, formal box-office increases in BRIC), one has to ask if

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[4] Under Special 301 provisions, USTR has created a 'Priority Watch List' and 'Watch List' documenting IPR protection, enforcement or market-access problems existing in trading partner countries. Countries placed on the Priority Watch List receive bilateral attention concerning IPR problems. Any country that is named a Priority Foreign Country is a country with 'the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products', subject to a potential investigation under the Section 301 provisions of the Trade Act of 1974 (IIPA 2012: 53).

[5] See various IIPA reports for this section.

[6] Siwek (2011) estimated that the core copyright industries' dollar share of the US economy was at 6.4 per cent between 2007 and 2010.

there is any connection between piracy and formal market growth. Has visual disk piracy since the 1990s successfully cultivated another generation of viewers for the formal film market just as video cassette piracy did in the 1980s? Has users' pirate-product consumption increased their demand for legitimate products? What is the significance of the contexts of emerging economies in both the informal and formal global movie market growth? Is piracy a legitimate business model, as one Sony executive once suggested (see later discussion)? What are the cultural, theoretical, legal and policy implications of grey economies in emerging countries?

With the buzz over BRIC in the past decade, it is surprising that only a handful of law studies have examined copyright issues in BRIC as a cohort[7] and even fewer studies have been conducted on media piracy and related matters in BRIC.[8] Owing to space restrictions, this chapter will only attempt to provide a preliminary contextual look at piracy matters in BRIC, addressing common issues pertaining to these countries. More specifically, this chapter will examine the complex relationships between piracy and global film markets. It will look at how the growth of the BRIC box-office revenues and their parallel high movie-piracy rates have raised questions about and shed light on global cultural flows, and have begun to shape global film discourse and challenged/redefined the boundaries between the formal and the informal, the licit and the illicit.

BRIC: Emerging economies as a collective force?

Representing 40 per cent of the world's population and 15 per cent of its GDP, BRIC economies, when combined, are a force to be reckoned

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[7] Robert C. Bird is one of the few legal scholars to have specifically written comparatively on IP matters in BRIC.
[8] The major research volume edited by Joe Karaganis (2011b) is one of the very few collections that examine piracy in the context of emerging economies. The volume includes individual country studies on Brazil, Russia and India, and not BRIC as a cohort.

with. But is the BRIC bloc a collective force, or is it a group of disparate countries? After all, the four countries have diverse histories, cultures and political and economic backgrounds. As Patrick Stewart (2012) pointed out, while they may lack a common vision, the BRIC countries have two things in common: their emerging economic powerhouse status and their resentment of a West-dominated global economy. In June 2009 the four leading emerging economies called their first summit as a group in the Russian city of Yekaterinburg for an 'increased role in global financial institutions by emerging economies and developing nations' (*Deutsche Welle* 2009). The summit turned into an annual occurrence after 2009, adding South Africa in 2011 to form 'BRICS'. The 2012 summit in India was particularly noteworthy. For the first time the group went beyond its macroeconomic focus to also include discussions of issues surrounding development, urbanization and cultural cooperation, acting clearly as a new geopolitical force (P. M. Stewart 2012).

While the BRIC economies fit the definition of an 'emerging economy', their unique status does set them apart from other emerging economies. As mentioned, emerging economies are those in-between, transitional economies. They are 'low-income, rapid-growth countries using economic liberalization as their primary engine of growth' (Hoskisson et al. 2000: 249). In general, there are two categories into which emerging economies fall: developing countries in Asia, Latin America, Africa and the Middle East, and transition economies in the former Soviet Union and China. On the one hand, BRIC countries are emerging economies since they meet the above criteria; on the other hand, they are not typical emerging economies. They are *sui generis*, possessing negotiation leverages that other emerging countries do not have: large populations, strategic geopolitical power, large geographic areas, and all but Brazil are nuclear powers (Gibbons 2010). While they may hold stronger bargaining leverages than those with lesser prowess, the BRIC economies do provide interesting examples of what other emerging economies could follow in their own respective IP negotiation relationships with the West, especially the US.

IP protection is high on the US trade negotiation agenda not only because of the importance of the IP industries to the US economy, given its role as a key export industry as mentioned earlier, but also because it could help reduce the US trade deficits (Yu 2006).[9] Although all four countries have updated their respective IP laws and strengthened enforcements, piracy rates remain high. Given BRIC's status as attractive markets for US exports and their respective high piracy rates, perceived or real, the US has had to extend repeated trade pressures towards the BRIC governments. All four countries have been successful in their own ways in resisting pressures from the US while negotiating. Likewise, just as the BRIC countries have different negotiation and resistance strategies, the US has also handled the copyright trade negotiations with BRIC differently depending on its relationship with each country.

The US, for example, has treated Russia far more leniently in copyright issues than it has the other BRIC countries, especially China (Neigel 2000; Bird and Cahoy 2007). To reduce the serious trade deficit with China, the US has threatened China multiple times with trade sanctions over its IP violation and enforcement issues. To support the Russian government following the Soviet Union's collapse, conversely, the US government became a strong supporter of the Yeltsin government by helping Russia strengthen its economy. The fact that the US does not view Russia as a major consumer market the way it does the Chinese, Indian and Brazilian markets also means that copyright issues with Russia, while crucial, are not as pressing as those with the other markets. Finally, to encourage the Russian disarmament effort, the US has adopted a milder approach towards Russia than it has towards China. Thus, for Russia, it is its intricate political significance

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[9] Yu made the observation of some parallel developments in Sino–US trade negotiations in the 1980s and the 2000s during which IP protection issues became a key negotiation point. The first Bush and the Clinton administrations threatened China with economic sanctions, trade wars and opposition to China's WTO entry to induce China to strengthen its IP protection and enforcement.

that has enabled it to resist US pressure in reforming its intellectual property rights (IPR) protection and enforcement efforts.

For China, its strategy has been what legal scholar Peter Yu called the 'Cycle of Futility' (2006: 904).[10] Whenever the US threatened China with sanctions, China would always engage in counter-threats of sanctions, negotiating and reaching an agreement at the eleventh hour. India, on the other hand, used what Bird and Cahoy (2007: 410) described as 'procedural slowness' to prolong and delay legislation and enforcement in reaction to the US's demands. They have also been slow to enact IPR regulations.

Brazil was one of the leading countries (along with India) in protesting the linking of trade to intellectual property at GATT (see discussion in the next section). While it ultimately and reluctantly became a TRIPS (Trade-Related Aspects of Intellectual Property Rights) signatory, it remained resistant to US pressure, especially in the area of pharmaceutical protection (Bird 2005).

Trade, copyright and development

Signed upon the establishment of the World Trade Organization (WTO) in Marrakesh, Morocco, on 15 April 1994, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) means that the global copyright governance has expanded into the arena of global trade, signalling the 'further intersection of legal, technological and knowledge structural streams' (May 2000: 67).

As is well acknowledged, access to free or cheap technology and knowledge diffusion are essential tools with which developing countries are able to 'catch up' and narrow the gap between themselves and industrialized countries (Yueh 2007: 442; Richards 2008). Others

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[10] See also Peter Yu (2005), when he first coined the term. In his 2006 essay he did a follow-up analysis of the situation and made further recommendations.

have echoed that strong IPR protection often inhibits economic developments (Schiappacasse 2003).

In an interesting 2010 essay, Llewellyn Gibbons argued that, to reach the developed stage, every country would have to go through a free-riding period, pirating intellectual property of the more developed countries. In going through the three stages of development, namely dissemination, absorption and innovation, it is common for piracy to be part of a growing economy as it matures into a developed state. In other words, one could say that appropriating IP, not protecting it, helps development (Volper 2007).[11] The US, for example, relied on IP appropriation, not protection, for its early economic growth.

It is then easy to understand why developing countries are, in general, more in favour of having the World Intellectual Property Organization (WIPO), as opposed to TRIPS, as an IPR forum. WIPO's one-nation, one-vote decision-making mechanism works in developing countries' favour much more so than TRIPS's deep integration programme and supranational harmonization requirements, through which the exclusive territoriality of the nation is challenged (Wang 2005; Endeshaw 2002). As Peter Yu (2007: 7) explained, the turn from WIPO to TRIPS is the transformation from an *international* intellectual property regimen to a *global* one. With the earlier international IP treaties, such as the Berne or Paris Conventions, countries were focusing on 'minimum standards' or the 'protection floor', whereas TRIPS imposed a 'supranational code' on the weaker WTO members. It is no wonder then that many view the establishment of TRIPS as a reordering of international relations and the further eroding of developing countries' standing. Thus the linking of IP issues with trade and the fear of potential trade sanctions are an effort to ensure that developing countries not only adopt the expansion of IP but also enforce it (Endeshaw 2010).

Interestingly, the copyright and piracy rhetoric both in the West and in BRIC follows a development-centred North vs. South trajectory,

[11] Volper (2007: 324) noted that appropriation is necessary for China to transform from a 'made in China' country to one that boasts 'invented in China'.

where the West views the BRIC economies as having the strength
and sufficient economic as well as technological growth to participate
in global innovation, and therefore they should protect intellectual
property rights. In the meantime, BRIC and other emerging economies
have argued for an open-access route, resisting the coercion from the
West whose aim they perceive is to maximize profits while not under-
standing the development needs of the developing countries (Bird and
Cahoy 2007).

Grey and informal: Ambiguities

The line between the formal and informal economies is never clear-cut.
In fact, the formal and the informal economies are mutually beneficial.
As a shadow economy, piracy does rely on existing formal economic
infrastructure (as mentioned earlier), but it also provides jobs and other
sources of revenues to local businesses and governments. Enforcement
that requires local government collaboration proves to be difficult to a
degree because of the unspoken benefits piracy provides. It is reported,
for example, that the Chinese economy has become dependent on
revenues coming from piracy. As much as one-third of China's GDP,
for instance, comes from piracy and counterfeiting (Haber 2006). One
of the reasons for China's inconsistent enforcement efforts has, then,
in part to do with the positive effects piracy exerts on local economy,
as pirate industries support local employment as well as legitimate
businesses. These include, both directly and indirectly, transportation,
hotels, restaurants, and other service and entertainment businesses
(Harris 2008; Hunter 2007). In that sense, pirate and other informal
economies solve problems that globalization cannot. Furthermore,
piracy provides employment and income for goods otherwise inacces-
sible to those directly or indirectly participating in pirate operations,
improving the quality of life for many.
    It is apparent then that the same market economy that facilitates
the production, distribution and sale of products worldwide also helps

the circulation of illegal ones. As Movius (2002) pointed out, piracy is a by-product of these marketization processes and the accompanying uneven development of both supra- and subregionalism. The flexibility of piracy means that it is able to accommodate large numbers of dispossessed populations, due to uneven developments in these emerging economies, while relieving the social unrest that uneven developments inevitably produce.

Similarly, Adrian Athique (2008) showed in a fascinating study the intricate and entangled relationships between the formal and the informal film markets in India. The close connections that existed among some of the informal economies (e.g. a disorganized film industry and the black money underworld) eventually linked to, and, in fact, led to, the establishment of the formal overseas Bollywood film markets. While in both the Chinese and the Indian cases the relationships between the formal economy and the informal economy, and their respective relationships to the government are extremely complex and disparate, in both cases pirate markets are directly connected to the state and the formal market.

Also in India, the growth of pirate markets is positively linked to the growth of formal film markets because of the transformation of the exhibition sector. The building of multiplexes in urban areas has caused the industry to raise ticket prices and to cater to higher-income audiences whose preferences are to watch more globalized Bollywood fare and international/American releases (Liang and Sundaram 2011). The higher movie ticket prices have driven poorer audiences increasingly to pirate markets.

Furthermore, the kinds of pirate 'on-demand' or 'demand-driven' distribution strategies respond directly to dispersed and niche audiences' needs in both the domestic and overseas markets (Athique 2008: 703). Aided by new technological innovations, pirates thus create distribution networks that are far more efficient and effective than their vertically integrated Hollywood counterparts' networks, which rely on a critical mass. Anne Sweeney, Co-Chair of Disney Media Networks and President of Disney-ABC Television Group, acknowledged the

success of the pirate networks and urged the major studios to view piracy as a 'business model', serving the consumers' need not only for 'in-demand content', but also for 'on-demand' content, competing with their formal counterpart through 'quality, price and availability' (Kiss 2006). As the opening epigraph to this chapter shows, content consumption, whether pirated or not, encourages more content consumption. In other words, 'content consumption drives increased content consumption' (Tarnoff 2012). As Tarnoff puts it, it is not about piracy, it is about which business models will work in the twenty-first century in tapping the entertainment content market. Clearly, consumers in both the emerging markets and in the West want widely available (i.e. on all platforms for all devices) on-demand content at a competitive price point. The piracy model provides just that, as Anne Sweeney has pointed out. If one can no longer dictate pricing based on production costs, one has to work with the new consumption patterns to ensure that buyers purchase the content.

Similarly, in the computer software market, there are the network and lock-in effects that make piracy a welcome situation, especially in unsaturated markets (Cosovanu 2003).[12] While film markets operate differently, one may also argue that film-watching habits are something that piracy can help develop (as the epigraph to this chapter indicates). The argument that piracy cultivates movie habits is not unfounded. Reports show, for example, that while some illegal downloaders do attend movies less frequently, more downloaders in fact increase the frequency with which they go to movies (Lyman 2010). Not all unpaid consumption displaces paid consumption. Free information samples sometimes stimulate paid consumption, helping consumers determine the value of the said product by generating a buzz around it (Shapiro and Varian 1999; Danaher and Waldfogel 2012).

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[12] The user is locked into a particular platform or software once it is adopted. To avoid switching costs the user is likely to continue to use the same network of platforms or software. Anecdotally, Microsoft has expressed that it did not mind its products being pirated in China, since it would create precisely this kind of lock-in and network effect, and would develop and cultivate a market for its products, which is important in an untapped market.

A convincing example is the formal release of *Robocop 3* in China. The film is one of the most successful Columbia releases in China and one of the first groups of videos ever to be released in China. The catch is that *Robocop 1* and *2* had never been released in China formally, but the pirate consumption of the first two films had established a market and created a demand for the new instalment. Similarly, to utilize pirates' efficient distribution routes and networks, for example, Warner Brothers used a former pirate company as its legal licensee to distribute its home videos in China (Wang 2003).

Media piracy has always been connected with technological developments. BRIC countries are interesting examples because of their hardware and software production capabilities. China, for example, has been producing cheap region-free DVD players and burners that create both the supply of and demand for pirated contents (Karaganis 2011b). In other words, the cheaply made Chinese hardware has created demand for software and content. China became the source of many of the pirated goods that are circulated in these emerging economies and beyond (Mathews and Vega 2012). Even in the porous Tri-Border Area (i.e. Triple Frontera, the borders of Brazil, Paraguay and Argentina) in Brazil, for example, where pirate products are trafficked, Chinese immigrants are increasingly those in control of local commerce and the nodes of global piracy networks (Rabossi 2012; Mizukami et al. 2011). In other words (as the Indian example attests to), diasporic flows are closely tied to global piracy networks (Liang and Sundaram 2011).

Finally, in Russia, as it is in other emerging economies, piracy is a result of the transformation of local cinemas from a popular entertainment form accessible to the masses, to fancy multiplexes in urban centres that drove up ticket prices and turned films into luxury goods inaccessible to many viewers. The high price of imported DVDs relative to local income levels, furthermore, also creates demand for pirate goods. The limited selection of legal goods on the Russian media market, meanwhile, creates a demand for pirated media contents. The complex licensing process for imported goods in Russia further

contributes to the growth of piracy in Russia, where the majority of consumers are active participants in the pirate economy. In other words, it is the 'differences in perceived legality to differences in perceived quality' that define pirate product consumption in Russia (Sezneva and Karaganis 2011: 166). Piracy, then, begs the question of legality versus licitness, and illegality *vis-à-vis* illicitness, since the meanings are perspectival and fluid.

Abraham and Schendel (2005: 4), for example, distinguish between the legal and the licit, viewing 'legal' as what states consider legitimate and 'licit' as something that people involved in transnational networks consider legitimate. To many, the illicit trade is an alternative, partially visible global system. It is a parallel system to its formal counterpart. In other words, some of these transnational flows may be illegal because they violate laws or policies, but they are viewed as 'acceptable' by those who participate one way or another in such activities (Abraham and Schendel 2005: 2). This dynamic grey area of *illegal but licit* provides the most interesting case for the study of piracy. It is in the land of the underground and the borderland that rules are rewritten and rearticulated. In other words, piracy occupies two unstable identities of the underground and the borderland. Described as the 'third space', this is the space in which activities that are legally banned but socially sanctioned and accepted take place.

Conclusion

While BRIC countries share similar parallel developments regarding their robust formal film market growth and high piracy rates, it is clear that the particular cultural, socio-economic and political contexts in which these developments take place are different. That being said, ultimately, piracy is an issue of disparity, influenced by the processes of globalization and uneven market developments which define the current state of the emerging economies. Because software and entertainment products are priced out of local markets, piracy becomes

necessary for the diffusion of these products, creating media access. In both Joe Karaganis' timely edited volume of *Media Piracy in Emerging Economies* (2011b) and Ravi Sundaram's seminal *Pirate Modernity* (2009), the crucial issues of media access and of global pricing are viewed as some of the roots to piracy that currently exist in developing countries. Furthermore, the fact that technology prices have fallen faster than local incomes have risen has resulted in an infrastructure for digital media consumption which major media companies have not reacted to, thus creating a platform for pirate media consumption (Karaganis 2011b).[13]

Piracy in emerging economies thus accentuates clearly the paradoxical nature of capitalism. As Ribeiro has so rightly pointed out, while piracy can be subversive in interrupting capitalistic reproduction, it is positively linked to capitalistic growth since it is organic to capitalistic production and distribution needs, and to the 'fetishized (re)production of social identities and of distinction under the edge of electronic and computer capitalism' (Ribeiro 2012: 233). The same free market developments in transitional emerging economies that benefit the formal market growth also enhance the production, flow and distribution of illicit goods. The movements of people further facilitate and enlarge the scope, locations, demand and movements of these goods. It is what Ribeiro termed 'economic globalisation from below' (2012: 221). Given that these parallel and alternative processes are below the 'radar of the state', they are able to solve problems that globalization from above is unable to (Mathews and Vega 2012: 5).

Consequently, the key to piracy problems happens also to be the key to the MPAA's success: industry profitability depends on the free movement of products through ancillary and parallel markets (Lewis 2007). As the Bollywood example shows, the informal film economy and underworld black money have not only helped establish the thriving overseas diasporic Bollywood film market; the capacity of

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[13] What may prove to be interesting in the case of China is that some of the major studios have a different pricing strategy to attract precisely that pocket of consumers by lowering the price of legitimate DVDs (Wang 2010).

piracy has also built new markets and fostered 'increased levels of habitual film consumption', bringing up a new generation of South Asians on pirated video cassettes and VCDs (Athique 2008: 706). Just as video piracy was crucial for the development and expansion of worldwide entertainment markets in the 1980s, as Tom O'Regan has argued (Athique 2008), likewise, one could argue that media piracy has helped the growth of the legitimate film markets in former communist countries such as China and Russia and in other emerging economies. The effects are beyond just the availability of entertainment. This generation of new film lovers has in turn rejuvenated and expanded the legitimate film market. It is clear that the shadow economy has played an important role in the development of a cultural industry.

Finally, while the BRIC economies may not be some of the poorest countries in the world, they could be other developing countries' proxy in the area of global copyright governance and negotiations. Each country's strategy in negotiations with the US and in resisting the US's pressure and sanction threats can be textbook examples for other developing countries (Bird and Cahoy 2007). All four as a result have preserved their respective national sovereignty to a certain extent and may be used as a model for other developing countries for how to balance national sovereignty as well as economic and developmental interests and global IP requirements.

References

Abraham, I. and van Schendel, W. (2005), 'Introduction: The Making of Illicitness', in W. van Schendel and I. Abraham (eds), *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalisation*. Bloomington and Indianapolis: Indiana University Press, 1–37.

Abrams, R. (2013), 'Hollywood Figuring out China B.O.', *Variety.Com*, 17 January. Web.

Athique, A. (2008), 'The Global Dynamics of Indian Media Piracy: Export Markets, Playback Media and the Informal Economy', *Media, Culture & Society*, 30: 699–717.

Bird, R. C. (2005), 'Defending Intellectual Property Rights in the BRIC Economies', *Social Science Research Network*. Web.

Bird, R. C. and Cahoy, D. R. (2007), 'The Emerging BRIC Economies: Lessons from Intellectual Property Negotiation and Enforcement', *Northwestern Journal of Technology and Intellectual Property*, 5(3): 400–25.

Cosovanu, C. (2003), 'Piracy, Price Discrimination, and Development: The Software Sector in Eastern Europe and Other Emerging Markets', *The Columbia Science and Technology Law Review*, 5: 1–38.

Creer, G. (2004), 'Note and Comment: The International Threat to Intellectual Property Rights Through Emerging Markets', *Wisconsin International Law Journal*, 22: 213–43.

Danaher, B. and Waldfogel, J. (2012), 'Reel Piracy: The Effect of Online Film Piracy on International Box Office Sales', *Social Science Research Network*. Web.

Deutsche Welle (2009), 'First BRIC Summit Concludes', 16 June. Web.

Economist, The (2011), 'BRIC Wall', 398(8729): 84.

Endeshaw, A. (2002), 'The Paradox of Intellectual Property Lawmaking in the New Millennium: Universal Templates as Terms of Surrender for Non-Industrial National; Piracy as an Offshoot', *Cardozo Journal of International and Comparative Law*, 10: 47–77.

—(2010), *Intellectual Property in Asian Emerging Economies: Law and Policy in the Post-TRIPS Era*. Surrey: Ashgate.

Gibbons, L. J. (2010), 'Do as I Say (Not as I Did): Putative Intellectual Property Lessons for Emerging Economies from the Not so Long Past of the Developed Nations', *Social Science Research Network*. Web.

Haber, J. (2006), 'Motion Picture Piracy in China: Rated Arrrgh!', *Brooklyn Journal of International Law*, 32: 205–29.

Hancock, D. (2012), 'International Movie Market Continues to Increase Lead Over US', press release, 5 April, *IHS iLibrary*. Web.

Harris, D. (2008), 'The Honeymoon is Over: Evaluating The U.S.-China WTO Intellectual Property Complaint', *Fordham International Law Journal*, 32(1): 96–187.

Holdsworth, N. (2013), 'Russian Box Office Surges 8%', *Variety.Com*, 17 January. Web.

Hoskisson, R. E., Eden, L., Chung Ming, L. and Wright, M. (2000), 'Strategy in Emerging Economies', *The Academy of Management Journal*, 43(3): 249–67.

Hunter, K. C. (2007), 'Here There Be Pirates: How China Is Meeting Its IP Enforcement Obligations Under TRIPS', *San Diego International Law Journal*, 8: 523–58.

International Intellectual Property Alliance (2012), IIPA 2012 Special 301 Report on Copyright Protection and Enforcement: Brazil'. Web.

—(2013a), 'IIPA 2013 Special 301 Report on Copyright Protection and Enforcement: Brazil'. Web.

—(2013b), 'IIPA 2013 Special 301 Report on Copyright Protection and Enforcement: China'. Web.

—(2013c), 'IIPA 2013 Special 301 Report on Copyright Protection and Enforcement: India'. Web.

—(2013d), 'IIPA 2013 Special 301 Report on Copyright Protection and Enforcement: Russia'. Web.

—(2013e), 'Appendix C: Chart of Countries Special 301 Placement (1989–2012) and IIPA 2013 Special 301 Recommendations'. Web.

Karaganis, J. (2011a), 'Rethinking Piracy', in J. Karaganis (ed.), *Media Piracy in Emerging Economies*. New York: Social Science Research Council, 1–74.

—(ed.) (2011b), *Media Piracy in Emerging Economies*, New York: Social Science Research Council.

Kiss, J. (2006), '@ Mipcom: Piracy Is A Business Model, Says Disney Co-Chair Anne Sweeney', *PaidContent.org: The Economics of Content*, 10 October. Web.

Kowitt, B. (2009), 'For Mr. BRIC, Nations Meeting a Milestone', *CNN Money*, 17 June. Web.

Lewis, J. (2007), '"If You Can't Protect What You Own, You Don't Own Anything": Piracy, Privacy, and Public Relations in 21st Century Hollywood', *Cinema Journal*, 46(2): 145–50.

Liang, L. and Sundaram, R. (2011), 'Chapter 8: India', in J. Karaganis (ed.), *Media Piracy in Emerging Economies*. New York: Social Science Research Council, 339–98.

Lyman, J. (2010), 'Analysts Question MPAA's Findings on Film Piracy', *CRMBuyer*, 15 June. Web.

Mathews, G. and Alba Vega, C. (2012), 'Introduction: What is Globalisation from Below?', in G. Mathews, G. L. Ribeiro and C. Alba Vega (eds), *Globalisation From Below: The World's Other Economy*. London and New York: Routledge, 1–16.

May, C. (2000), *A Global Political Economy of Intellectual Property Rights: The New Enclosures?* London: Routledge.

Mizukami, P. N., Castro, O., Fernando Moncau, L. and Lemos, R. (2011), 'Chapter 5: Brazil', in J. Karaganis (ed.), *Media Piracy in Emerging Economies*. New York: Social Science Research Council, 219–304.

Movius, L. (2002), 'Imitation Nation: Is Piracy-Crazed China a Nightmare Vision of the Future, Or Just a Developing Country Going through Some Severe Growing Pains?', *Salon.Com*, 8 July. Web.

Neigel, C. (2000), 'Piracy in Russia and China: A Different U.S. Reaction', *Law and Contemporary Problems*, 63(4): 179–200.

O'Neill, J. (2001), 'Building Better Global Economic BRICs', *Goldman Sachs Global Economics Paper*, 66, 30 November. Web.

Rabossi, F. (2012), 'Ciudad Del Este and Brazilian Circuits of Commercial Distribution', in G. Mathews, G. L. Ribeiro and C. Alba Vega (eds), *Globalisation From Below: The World's Other Economy*. London and New York: Routledge, 54–68.

Reuters (2012), 'US Puts India on Copyright Pirates "Priority Watch List"', *Times of India*, 1 May. Web.

Ribeiro, G. L. (2012), 'Conclusion: Globalisation from Below and the Non-Hegemonic World-System', in G. Mathews, G. L. Ribeiro and C. Alba Vega (eds), *Globalisation From Below: The World's Other Economy*. London and New York: Routledge, 221–34.

Richards, D. G. (2008), 'A Skeptic's View of Intellectual Property Rights', in R. C. Bird and S. C. Jain (eds), *The Global Challenge of Intellectual Property Rights*. Cheltenham and Northampton, MA: Edward Elgar, 267–82.

Schiappacasse, M. (2003), 'Intellectual Property Rights In China: Technology Transfers and Economic Development', *Buffalo Intellectual Property Law Journal*, 2: 164–85.

Sezneva, O. and Karaganis, J. (2011), 'Chapter 4: Russia', in J. Karaganis (ed.), *Media Piracy in Emerging Economies*. New York: Social Science Research Council, 149–218.

Shapiro, C. and Varian, H. R. (1999), *Information Rules: A Strategic Guide to the Network Economy*. Boston, MA: Harvard Business School Press.

Siwek, S. (2011), 'Copyright Industries in the U.S. Economy: The 2011 Report', *International Intellectual Property Alliance* (IIPA). Web.

Stewart, A. (2012), 'H'wood Zooms on Overseas Boom', *Variety*, 16–22 January: 1, 10.

Stewart, P. M. (2012), 'The BRICS India Summit: Beyond Bricolage?', *Council on Foreign Relations*, 28 March. Web.

Sundaram, R. (2009), *Pirate Modernity: Delhi's Media Urbanism*. Oxford and New York: Routledge.

Tarnoff, J. (2012), 'Piracy Shmiracy: We Need New 21st Century Business Models', *Huffington Post*, 25 January. Web.

United States Trade Representative (2012), '2012 Special 301 Report'. Web.

Variety.Com (2012), 'The BRIC Summit'. Web.

Volper, T. E. (2007), 'TRIPS Enforcement in China: A Case for Judicial Transparency', *Brooklyn Journal of International Law*, 33: 309–46.

Wang, S. (2003), *Framing Piracy: Globalisation and Film Distribution in Greater China*. Lanham, MD: Rowman & Littlefield.

—(2005), 'Harmony Or Discord? TRIPS, China, and Overlapping Sovereignties', in M. Narula, S. Sengupta, J. Bagchi and G. Lovink (eds), *Bare Acts: Sarai Reader 05*. Delhi: Sarai/CSDS. Web.

—(2010), 'Piracy and the DVD/VCD Market', in Y. Zhu and S. Rosen (eds), *Art, Politics, and Commerce in Chinese Cinema*. Hong Kong: Hong Kong University Press, 71–83.

Wilson, D. and Purushothaman, R. (2003), 'Dreaming with BRICs: The Path to 2050', Global Economics Paper, No. 99, *Goldman Sachs*. Web.

Wince-Smith, D. L. (2007), 'Emerging Economies Coming on Strong', *Issues in Science & Technology*, 23(3): 85–8.

Yardley, J. and Bajaj, V. (2012), 'India's Economy Slows, With Global Implications', *New York Times.Com*, 30 May. Web.

Yu, P. K. (2005), 'Still Dissatisfied After All These Years: Intellectual Property, Post-WTO China, and the Avoidable Cycle of Futility', *MSU Legal Studies Research*, Paper No. 3–11: 1–11.

—(2006), 'From Pirates to Partners (Episode II): Protecting Intellectual Property in Post-WTO China', *American University Law Review*, 55: 901–1000.

—(2007), 'International Enclosure, The Regime Complex, and Intellectual Property Schizophrenia', *Michigan State Law Review*, spring: 1–33.

—(2008), 'Intellectual Property, Foreign Direct Investment and the China Exception', in R. C. Bird and S. C. Jain (eds), *The Global Challenge of Intellectual Property Rights*. Cheltenham and Northampton, MA: Edward Elgar, 153–74.

Yueh, L. Y. (2007), 'Global Intellectual Property Rights and Economic Growth', *Northwestern Journal of Technology and Intellectual Property*, 5(3): 436–48.

Part Two

Reflections

Reframing the Discourse of Postcolonial Piracy

The Paradoxes of Piracy

Ramon Lobato

Piracy is a seductive object of media and cultural research, and for good reason. Piracy organizes textual experience on a grand scale, it creates its own economies, it exemplifies wider changes in social structure, and it brings into being tense and unusual relationships between consumers, cultural producers and governments. Critical debate has mushroomed over the past decade, and research on the topic is now appearing across the humanities and social sciences, from literary and legal studies to international relations and organizational theory, adding to the lively conversation taking place on technology blogs, in corporate board-rooms, and in homes and workplaces around the world.

Today's piracy conversation is wide-ranging. It extends beyond the scholarship of intellectual property to encompass many different styles of analysis and engagement, including copyright reform advocacy (exemplified in the Creative Commons and Access to Knowledge movements), situated studies of pirate production and consumption (Karaganis 2011; Sezneva 2012; Rone 2013), and interventions that read piracy through a framework of cultural globalization and governance (Wang 2003; Pang 2006; Fredriksson 2012), to name a few trajectories. This critical counter-discourse is not settled but in a state of flux, with ideas and theories appearing and disappearing at lightning speed.

In this chapter I focus on a particular problem that runs through the current conversation – a problem of naming. Specifically, I want to consider what is at stake in the term 'piracy' itself. Given that copyright infringement is a thoroughly mainstream practice, common in every

nation, what are the implications of describing the media habits of much of the global population as piratical? My aim here is not only to make the usual point about the 'pirate' label – that it criminalizes everyday activities – but also to explore a more subtle tension *within* the critical counter-discourse on intellectual property, about whether a language of 'piracy' should be embraced, rejected, recuperated or rearticulated. It is my hope that, in addressing this tension head-on, we may be able to fine-tune our critical paradigms a little and make sure they are suited to the tasks at hand.

Piracy with and without intellectual property

Like anything else, the piracy question looks different from different angles. Consumers, producers and governments all have their own stake in the issue, and positions vary within and between each group. Disciplines also have distinct orientations. Seen from the perspective of media economics, piracy takes a certain kind of shape. This differs from the way it appears in literary history or the sociology of art. Seen through a freedom-of-information or communication rights paradigm, it morphs again.

It may therefore be helpful to situate this chapter within its own disciplinary context. I became interested in piracy in the mid-2000s as part of a project on audio-visual distribution in different countries. As a scholar of media industries, I was interested in how people access media content and the structures that underwrite this access. This meant understanding not only legal channels of distribution but also the many informal systems, from pirate street markets to online cyber-lockers, that exist alongside them. My main concern was the networks themselves and what kinds of experiences, exchanges and economic interactions they opened up and closed down.

Consequently, I have always been somewhat uncomfortable with the word *piracy*. Even though I use it all the time – there is no adequate alternative – it never captured the essence, nor the complexity, of media

systems. Piracy has many connotations but it is first and foremost a legal category: it brings everything back to intellectual property. By invoking piracy we implicitly frame media practices, which have diverse motivations and functions, as conforming or nonconforming to standards of authorized consumption. This becomes their characteristic feature. Yet, when viewed from the vantage point of everyday practice, this is rarely the most interesting thing about them.

To illustrate this point, let us consider an actually-existing media system: the indigenous audio-visual networks of Ecuador, which have been expertly analysed by the anthropologist Simeon Floyd (2008). Floyd's work documents the explosion of minority Quichua-language media production since the mid-2000s in the Ecuadorean Andes. Locally made DVDs, containing music, drama, street comedy and videos of religious events and cultural festivals, are sold cheaply at local markets 'alongside bootleg Van Damme and Jackie Chan movies' (36). This has all the hallmarks of a typical pirate economy, but it is also a number of other things. As Floyd's analysis foregrounds, given the segregated nature of Ecuador's media environment, this system represents one of the few avenues through which Quichua people get to see and hear their own language spoken on screen. Piracy is here bound up with a wider set of political and racial divides that shape both the formal media environment and its informal equivalent. The Quichua DVD circuits have also become the platform for a new kind of star system: performers build up a celebrity image via the DVDs, and local musicians use them to promote their live shows.

To describe all this as piracy is certainly not inaccurate – the disks are not formally traded, and little or no revenue returns to producers from retail sales – but it captures only one aspect of the system. It reveals little about relations between the Quichua DVD scene and the wider political economy in the region, where informal exchange is a feature of everyday commerce; nor does it capture the secondary economic activities generated by the DVDs.[1]

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[1]   This is a point stressed by Floyd in his analysis: the term *piracy* is used rather ambivalently.

Approaching media systems through the paradigm of piracy – as opposed to seeing them as networks with a range of distinct, possibly contradictory, cultural and economic characteristics – also establishes a certain trajectory of discussion. Once this is in place the conversation usually becomes about the rights and entitlements of producers as opposed to those of consumers. This bifurcation is not always productive. It leads to a rhetorical dead-end where abstractions – the struggling artist vs. the wanton consumer, for example – solidify into identities, as though consumers did not also create and artists did not also consume.

Many scholars have been doing their best to change the conversation about piracy by decentring, without disavowing, the property question. The influential *Media Piracy in Emerging Economies* report (2011) by Joe Karaganis *et al* is one such intervention: it argues that piracy needs to be viewed 'from the consumption side rather than the production side of the global media economy' (i). Such a report, in foregrounding problems of access and affordability, is doing important work in establishing an evidence base and a conceptual tool kit through which we might think about media circulation differently.

Following this lead, it may be helpful to approach the piracy question through paradigms other than property rights, without necessarily devaluing the claims made along that axis. While both copyright defenders and info-libertarians foreground intellectual property in their discourse, albeit in different ways, we also have the option of framing the discussion in a way that puts intellectual property in its place as one way among many of organizing cultural economies, without necessarily buying into an anti-copyright argument: 'These networks are doing A, B and C as well as X, Y and Z. They are opening up some things and closing off others. They are also copyright-infringing.'

So far we have seen how the term *piracy* entrenches a master paradigm – intellectual property – that should instead be dismantled. Discussions about media consumption, access and affordability end up as discussions about property. This is the case even when piracy

is invoked approvingly, in an attempt to reverse the polarities of the debate. The end result is entrapment within a *copyright-centric critique of copyright* – a critical project that cannot speak its own language.

There is no easy solution to this problem. Eliding the question of property is often as problematic as foregrounding it, because many actually-existing media networks are organized around their relation to copyright enforcement, even if this is not their most salient or significant feature. The best response may simply be to acknowledge this paradox, to bring it out into the open, and to take seriously its structuring power over academic and popular debates.

The impossible heterogeneity of piracy

Let us now consider another paradox that runs through today's debates. Speaking about piracy as a thing, as a coherent practice, makes sense in certain situations. Yet it can also erase the difference between media practices that would be better considered on their own terms. Hence piracy often becomes a stand-in for distinct and incommensurable activities.

Take the example of downloading an album via BitTorrent. Sometimes the knowledge of copyright violation will be foregrounded, producing its own thrill ('take that, Sony Music'). Sometimes the act will have no such association, because there is no normative horizon against which to judge it – as in the case of children who have enough technological know-how to download content but have yet to learn about intellectual property ('this is how we get music'). Sometimes the user is aware of the illegality of the act but this knowledge is crowded out by more immediate considerations ('I can't wait to hear this').

Consider some further examples of pirate activity which illustrate the diversity within this category: a middle-class teenager downloading movies from her bedroom in Brazil; an activist in Malaysia uploading files to darknets; an entrepreneurial DVD bootlegger in Russia for whom piracy is a business venture; a woman in Ecuador who shares

PDFs of cookbooks with her friends; an archivist in Belgium who makes a tactical decision to infringe copyright by putting a clip online; a DJ in New Zealand who makes copyright-infringing mixes for her Soundcloud page; and an authoritarian leader in Latin America who promotes illegal copying to undermine left-wing publishing houses.[2] These people are all pirates but they have little in common beyond the fact that they infringe copyright. There is no piracy here, only incommensurable *piracies* (Lobato 2008, 2012).

This second paradox of piracy, its impossible heterogeneity, has implications for political projects that seek to build a common identity around the pirate figure. The Pirate Party movement, for example, defines its ideal citizen according to a set of common practices – above all peer-to-peer exchange – that are taken to be representative of an emergent subjectivity.[3]

How viable is this project of identity-building? Its efficacy will of course be context-dependent. However, the diversity of practices falling under the banner of piracy do make it rather difficult to sustain a political theory of the pirate without falling back on particular, rather than universal, imaginaries of media practice. Not all pirates are created equal, and some kinds of piracy are more socially acceptable than others.

The imaginary that rises to the top in most cases is the reluctant middle-class pirate, embodied in the casual file-sharer or the creative user who ends up on the wrong side of copyright law.[4] This is the ideal-typical subject of liberal copyright critique: the pirate whose innovation atones for his/her intellectual property transgressions. Lawrence Liang (2009) and Kavita Philip (2005) have drawn our attention to the colour-blindness of this redemptive discourse. As they note, debate

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[2] In an essay on book piracy in Peru by Daniel Alarcón (2009), it is suggested that the Fujimori government actively supported piracy because it undermined the power of local publishing elites and intellectuals. Here we see piracy as both a driver of mass literacy, as a democratizing force, but also as one element in a dirty history of political repression.

[3] McKenzie Wark's (2004) famous opposition between the 'hacker class' and the 'vectorialist class' comes to mind here as a pithy slogan for this binaristic imaginary.

[4] Thank you to James Meese for many stimulating conversations on this topic.

around this figure has been playing out in a way that leaves other kinds of piracy – namely the commercial copying found throughout the street economies of the developing world – to one side.

After reading the work of Liang and Philip, or the brilliant critique of Eva Hemmungs Wirtén (2006), it is difficult to take seriously all the arguments mobilized by groups such as the Electronic Frontier Foundation. Yet liberal reformism is still regularly articulated in this language – which explains why the terms of the current piracy debate do not articulate well with a transnational cultural politics. Occasionally this contradiction bubbles up in dramatic ways that foreground the clash of values – as in the recent Golan v. Holder case in the US, which saw liberal critics of intellectual property maximalism arguing for the maintenance of antiquated and discriminatory treatment of foreign rights-holders, all in the name of the public domain.[5]

A few brave scholars have attempted a cross-cultural definition of the pirate (Dawdy and Bonni 2012), but the tension between imagined collective identity and the diversity of people's everyday practice is still largely unresolved. The anthropological evidence points to the existence of a range of 'pirate' media activities so diverse as to render the category meaningless. The more one looks at media practices around the world, the more complications and grey areas appear.

Take, for example, the curious case of non-pirate piracies – practices that look and smell like piracy but are actually licit. The case of Cuba

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[5] The Golan v. Holder case, which was decided by the United States Supreme Court in 2012, centred around the public domain status of thousands of early twentieth-century European musical works, movies and artworks which had slipped through the net of copyright protection as a result of the United States's antipathy to protecting foreign rights, and were only granted protection under the Uruguay Round Agreements Act of 1994. A coalition of advocates and end-users – conductors who wanted to retain the right to perform *Peter and the Wolf* royalty-free, educators who wished to screen early Hitchcock films to their students – had been fighting this restoration of rights for some time, on the grounds that it weakened the principle of the public domain. The Supreme Court eventually ruled against the challenge, confirming the protected status of the works. For copyright reformists, this was another assault on the commons – users, educators and archivists would now become pirates for doing the same things they had done freely before. But the works' earlier public domain status was in fact due to the fact that the US had long shirked its obligations to foreign authors; in other words, the free status of the works was a product of the same nasty copyright geopolitics that the progressives, in other circumstances, would probably lament.

is instructive here. As Anna Pertierra (2012) has documented, Cuba's electronic mediascapes are awash with unauthorized compilations of Latin pop music, blockbuster movies, talk shows and anime, which circulate via portable hard drives. None of this content is legally purchased, but it is not piracy because there is no official discourse of intellectual property protection in Cuba: copyright is considered anti-revolutionary. To make things more complicated, the Cuban state is actively involved in this informal media system, and has started encouraging and licensing local media rental businesses that have cropped up around the country: it sees this activity as a source of economic growth (Haven 2011). Is this piracy? Despite outward appearances, it is not.

For another Caribbean example we could look to Antigua and Barbuda, a nation that recently suspended US copyrights, thus potentially opening the doors to rampant copying of US-produced products. At the time of writing, there has even been talk of a government-authorized 'pirate website' (BBC 2013). But this suspension is actually part of a World Trade Organization-approved retaliation against the US over a registered dispute about an unrelated issue (offshore gambling). Any copying that flows from this suspension will be authorized and legitimate according to the institutions of global trade policy. From the perspective of international law, it will not be piracy at all.

This categorical confusion brings into focus the wide variety of people and practices that gather together under the pirate umbrella. Given that the pirate plays a number of incompatible roles – informational pauper, reluctant thief, thrifty innovator, grassroots entrepreneur, digital opportunist – an effective theory of piracy benefits from being culturally located. In other words, it is helpful to speak about piracy in specific rather than in general terms.

An exemplary model is Ravi Sundaram's book *Pirate Modernity* (2009) which explores the electronics bazaars of Delhi, where a specific reproductive practice becomes a central feature of political economy. For Sundaram, the pirate is emblematic of a new kind of postcolonial urbanism in India's metropoles. He uses the term *pirate* strategically,

as counterfoil to the liberal discourse of middle-class sharing. Brian Larkin's (2004, 2008) work on piracy in northern Nigeria is similarly located in a specific milieu that becomes a platform for a wider theorization.

Other scholars combat the semiotic instability of the pirate figure by filling it with contingency. Adrian Johns (2010) takes this approach, reframing the pirate as a central figure in a wider history of industrial conflicts and settlements. For Johns, piracy is a practice that precedes, and exceeds, intellectual property law, and one that must be understood in relation to its mutable contexts. The category of piracy is retained only to be filled with endless historical difference. As these exemplary studies illustrate, for a theory of piracy to work effectively, a way of dealing with the impossible heterogeneity within the category is needed.

After piracy

As media historians like Johns are keen to remind us, the piracy debate is not new – far from it. Yet the intensity of debate, the level of interest across the social sciences and humanities, and the take-up of piracy as a critical trope for a wider kind of theorizing suggest we have reached a turning point in the discussion. In coming years it is likely that the profile of these issues will increase further. Hence it is helpful to have a sense of where the conversation has been and where it is going.

Looking backwards at the recent history of critical scholarship, a general pattern in the evolution of a discourse may be discerned. First, a maligned term, *piracy*, defined against the ideological backdrop of copyright maximalism, becomes recuperated and revalidated. Various discursive moves then become possible: *positive inversion*, in which the negative space of piracy becomes filled out with experiential detail ('Who are the pirates? What else do they do?'); *normalization*, in which the term is de-fanged by extending it in all directions ('We

are all pirates'); *deconstruction*, in which the epistemological authority of the claim is interrogated ('You say pirate, I say info-liberationist'); *dialectics*, in which piracy becomes an analytic lens through which to reread the contingency of legal structure ('Modern economies and states are built on piracy, which is in turn a side-effect of modernity'); and so on.

These tactics are familiar to us from other contexts, such as postcolonial and queer theory. They form part of a venerable repertoire of critical argumentation which destabilizes a master language by prioritizing its other. This discussion has been generative, not just in opening up new perspectives on the media rights question but also in providing a critical category that may be rolled out in multiple directions. There are also other options available to us.

One alternative would be to bow out of the intellectual property debate altogether and return to the politics of media distribution via another analytic language. Doing so would potentially dissolve the opposition between pirates and legal consumers, if only to reconstitute the debate differently. From here it may be possible to sidestep some of the baggage that plagues the piracy discussion. This approach of strategic withdrawal has its risks – it cedes the discursive ground of piracy to the noisiest stakeholders – but it allows us to move beyond the copyright-centric critique of copyright, the producers-versus-consumers cul-de-sac, and the drama of rights claims.

The necessary ingredient in such a strategy would be a viable alternative language for discussing media access and distribution. There are already a few contenders in use. The language of media 'sharing' discursively transforms piracy into an act of benevolence – but because it implicitly shuns the commercial, it excludes the many for-profit piracies that constitute global mediascapes. It is also intimately bound up with the commercial ideology of social media, and therefore introduces a different set of problems (Kennedy 2013).

'Informal' is the term I have found most useful, at least for media industries analysis, because it imports into the discussion about distribution a longer history of structural theorizing (the informal economies

debates of the 1970s) and also sets up a discussion that is not, and cannot be, organized along moral lines. Informality is neither good nor bad: everyday life is a combination of formal and informal activities, transactions and interactions. Seen from this perspective, media systems take up ever-shifting positions along a spectrum of formality. Piracy becomes an after-effect of changes in regulatory structure.

This is a potentially helpful language for discussing media industries, as it allows us to explore the variable dynamics of different systems without invoking – or at least foregrounding – the moral drama of property. Yet it is less useful for other purposes; and unfortunately it carries its own baggage of colonial developmentalism. Other terms have similar drawbacks. The best option, then, may be to speak in multiple tongues simultaneously.

It seems that there is no adequate alternative to 'piracy', at least not one that will do all the things asked of it. For this reason, an expanded range of analytic languages is needed to debate the politics of information and distribution. Within this cacophony there will be distinct projects that may or may not require the invocation of the property Hydra: sometimes it will be tactically important to defend the ground of copyright infringement; at other times it will be more important to defer those debates and focus on other issues.

In the meantime we can look forward to seeing the discussion evolve in different directions. The paradoxes of piracy will remain with us, but so will the possibilities for engagement and critique that the term opens up.

References

Alarcón, D. (2009), 'Life Among the Pirates', *Granta*, 109. Web.

BBC (2013), 'Antigua Applies for Permission to Run "Pirate" Website', *BBC News*, 25 January. Web.

Dawdy, S. L. and Bonni, J. (2012), 'Towards a General Theory of Piracy', *Anthropological Quarterly*, 83(3): 673–700.

Floyd, S. (2008), 'The Pirate Media Economy and the Emergence of Quichua Language Media Spaces in Ecuador', *Anthropology of Work Review*, 29(2): 34–41.

Fredriksson, M. (2012), 'Piracy, Globalisation and the Colonisation of the Commons', *Global Media Journal – Australian Edition*, 6(1): 1–10.

Haven, P. (2011), 'Cuba Tries to Drag Shadow Economy into the Light', *Forbes.com*, 5 July. Web.

Hemmungs Wirtén, E. (2006), 'Out of Sight and Out of Mind: On the Cultural Hegemony of Intellectual Property (Critique)', *Cultural Studies*, 20(2–3): 282–91.

Johns, A. (2010), *Piracy: The Intellectual Property Wars from Gutenberg to Gates*. Chicago, IL: University of Chicago Press.

Karaganis, J. (ed.) (2011), *Media Piracy in Emerging Economies*. New York: Social Science Research Council.

Kennedy, J. (2013), 'Rhetorics of Sharing: Data, Imagination, and Desire', in G. Lovink and M. Rasch (eds), *Unlike Us Reader: Social Media Monopolies and Their Alternatives*. Amsterdam: Institute of Network Cultures, 127–36.

Larkin, B. (2004), 'Degraded Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy', *Public Culture*, 16(2): 289–314.

—(2008), *Signal and Noise: Media, Infrastructure, and Urban Culture in Nigeria*. Durham, NC: Duke University Press.

Liang, L. (2009), 'Piracy, Creativity and Infrastructure: Rethinking Access to Culture', draft paper, *Social Science Research Network*. Web.

Lobato, R. (2008), 'The Six Faces of Piracy: Global Media Distribution from Below', in R. Sickels (ed.), *The Business of Entertainment, Vol. 1: The Movies*. Westport: Praeger, 15–36.

—(2012), *Shadow Economies of Cinema: Mapping Informal Film Distribution*. London: British Film Institute.

Pang, L. (2006), *Cultural Control and Globalization in Asia: Copyright, Piracy, and Cinema*. London: Routledge.

Pertierra, A. C. (2012), 'If They Show "Prison Break" in the United States on a Wednesday, by Thursday It Is Here: Mobile Media Networks in Twenty-First-Century Cuba', *Television & New Media*, 13(5): 399–414.

Philip, K. (2005), 'What is a Technological Author? The Pirate Function and Intellectual Property', *Postcolonial Studies*, 8(2): 199–218.

Rone, J. (2013), 'Bulgarian Pirates: At the World's End', *Cultural Trends*, 22(1): 1–12.

Sezneva, O. (2012), 'The Pirates of Nevskii Prospekt: Intellectual Property, Piracy and Institutional Diffusion in Russia', *Poetics*, 40(2): 150–66.

Sundaram, R. (2009), *Pirate Modernity: Delhi's Media Urbanism*. London: Routledge.

Wang, S. (2003), *Framing Piracy: Globalization and Film Distribution in Greater China*. Lanham, MD: Rowman & Littlefield.

Wark, M. (2004), *A Hacker Manifesto*. Cambridge, MA: Harvard University Press.

Depropriation

The Real Pirate's Dilemma

Marcus Boon

For many philosophers, appropriation is constitutive of human being. In order to survive, we eat, we build territories, we take and we give. In his early manuscripts, Marx spoke of man's entire relation to the world as one of sensory appropriation. More broadly, all political-economic systems that are based on exchange and equivalence may be said to involve appropriation. Capitalism and colonialism may therefore be thought of as particular regimes of appropriation, then, as are feudalism and 'primitive accumulation', while communism as presented in the *Communist Manifesto* involves a reappropriation of that which has been appropriated by the bourgeoisie. A final appropriation if you like. In the *Grundrisse*, Marx distinguished between property *per se* and private property, but he insisted on the necessity of the former: 'an appropriation which does not make something into property is a contradictio in subjecto' (Marx 1993: 87–8).

Globalization and digitization both amplify possibilities for appropriation to occur – an appropriation that is associated with 'piracy' on the one hand, as the illegitimate possession and exchange of privately owned things, and on the other as the legally sanctioned mechanisms by which things are taken from the global commons and made part of the market economy.

A question remains however about how fundamental appropriation is, and whether all entities may finally be defined as property, whether private or common. In this chapter, I will argue that there is another position with respect to being, and that one name for it is depropriation.

By depropriation I mean to suggest various practices that render things unownable, that refuse the logic of property and that make such things necessarily part of a public domain or commons. But I also mean depropriation as a fundamental condition of being free of ownership. I will explore a variety of examples of depropriation, including Occupy Wall Street, WikiLeaks and the recent musical compilation *Music from Saharan Cellphones*. I argue that it is hard to understand what is at stake in these events or phenomena without being clear about depropriation.

The argument is not a nostalgic one, nor exactly utopian. I recognize, following the work of anthropologist Marilyn Strathern, that there is no such thing as a free culture to be found beyond modern, colonial or capitalist society: that all human societies have hitherto been committed to varying degrees to different kinds of property regimes with different laws, rules, values (Strathern 2005). Having said that, the intensity of recent moves to mark everything in the world as a particular kind of property and/or private property forces us to look more carefully at what is meant by property – and to recognize the importance of certain limits to that concept.

I argue that many of the most interesting social and cultural movements today are developing a conscious practice by which things are rendered unownable and thus made part of a different kind of commons from that discussed by IP scholars like James Boyle (2008) and Lawrence Lessig (2004). The idea is a significant one because it suggests that the goal of progressive political and aesthetic movements should not be to make judgements or claims as to a final and authoritative state of belonging or property, however historically disenfranchised those in question are, but to create practices whereby humans and non-humans can live sustainably without needing to claim ownership. This immediately raises a problem, one pointed out by Marx, who claimed that it was impossible to imagine any basis for life on earth other than appropriation: we breathe in oxygen, eat plants and animals, learn languages from our parents and so on. The only way around this would seem to be a radical practice of ascesis, literally starving oneself. This is hardly the case though. As the Buddhist

teacher Lama Yeshe observes, the problem for the alcoholic is not the glass of wine itself but his craving for it, his desire to appropriate it (Yeshe 1982). One might even say that the problem is not whether to drink or not to drink, but the desire to appropriate, own the drinking of it – or the not drinking of it. The problem, an almost unimaginably vast one, is how to recognize this socially and politically on a global scale.

So: what is depropriation? Obviously it is one of a number of contemporary words in which the prefix 'de' indicates a kind of unravelling of something: deconstruction; decolonization; Simone Weil's decreation (Weil 1977); Deleuze and Guattari's deterritorialization (Deleuze and Guattari 1987). The word has several lineages, no doubt interlinked. One passes through French feminist writers, notably Hélène Cixous, who uses the word to describe a state of open embodiment of which the mother's care for a child is exemplary (Cixous 1976). Another passes through Philippe Lacoue-Labarthe's work on mimesis, in which he proposes a mimetic force that undoes ideas of original and copy since it constitutes that plastic, mutable non-thing which makes both original and copy possible (Lacoue-Labarthe 1989). A further lineage passes through the work of Giorgio Agamben and his notion of a 'whatever being' that cannot be understood in terms of property (Agamben 1993), an idea then taken up by Roberto Esposito in *Communitas*, in which he argues that 'depropriazione', a fundamental lack of property (i.e. an impropriety) is the basis of the commonality of mankind, or even of all Being (Esposito 2010). In other words, what we share is a lack of property, an unfinishedness, an openness or vulnerability. Esposito rigorously demonstrates this as a formal and philosophical possibility, drawing on an analysis of the proper and improper in Heidegger, which are often (mis?)translated as authentic and inauthentic (Esposito 2010: 5–7). Yet, for me, I am continually drawn back to the striking example with which Agamben concludes *The Coming Community*: the crowd of demonstrators in Tiananmen Square who stand forth in a militarized public space, without demands, asserting their Being. Regardless of whether Agamben is completely correct in this analysis, the scenes have been repeated in recent years,

in the various locations and uprisings of the Arab Spring, and more recently in the Occupy Wall Street demonstrations, where, for example, one protestor carried a sign reading 'We're here; we're unclear; get used to it'.

There is a double structure to depropriation and perhaps to piracy in a general sense. In the examples I look at, depropriation functions at both ontological and legal levels: in other words, it is not just a matter of breaking the law of a particular property regime, but also of revealing or developing qualities of subject or object that trouble more fundamental definitions of what *is*. Consider my first example: drugs. Colonial empires were built on sugar, tea, coffee, opium, coca, and of course the postcolonial world today may also be described by the 'rogue' or 'pirate' production of psychoactive substances, whether cocaine production in Colombia, marijuana production in Mexico or heroin production in Afghanistan (Courtwright 2001). This drug trade is increasingly globalized, from Russian or Israeli distribution of ecstasy, to Southeast Asian amphetamines, to Mexican pharmacies selling prescription drugs with fake Rxs over the internet. At the micropolitical level, drugs are about depropriation because of the way in which they sometimes transform a normalized subjectivity; they are ecstatic because they can dissolve the 'proper self'.

One useful way of distinguishing the value of drugs may be to contrast those in which psychic depropriation is followed by a powerful reappropriation in the form of addiction, and those where that does not happen. I am indebted to Michael Taussig's work on ayahuasca shamanism in the Putumayo in Colombia, in which he tries to understand the phenomena of shamanism as a historically specific and diverse form of engagement within a particular colonial and postcolonial situation, so that the healing work of the shaman involves unravelling the terror of colonial appropriation and its various structures (Taussig 1986). In other words, it involves psychic depropriation through ingestion of the drug, through exposure to the sonic powers of the shaman, and to the collective turbulence of the healing session. Such depropriation itself may be reappropriated through postcolonial

ayahuasca tourism which packages a particular model of 'authentic' use of the drug. But even prior to that, Taussig notes that there are radical differences between particular shamans' approaches. Some shamans undergo a laborious process of apprenticeship to other shamans, in which the ability to heal is transferred as a kind of private property, reliant on a discourse of authenticity, while others (with whom he is more sympathetic) simply go into the forest and start using the drug, 'stealing' it, to use the language of those who consider knowledge of the drug proprietary. Taussig is fascinated by a kind of chaos that occurs in a yage session, a chaos that is chaos precisely because it is not clear what belongs to whom. People vomit. They shit. They imagine snakes shooting in and out of their mouths. They cry and laugh. Trauma, personal, social, historical and political, opens up, often violently, yet the opening up of trauma is not itself violent if it is assented to voluntarily. Healing proceeds from opening up trauma, from facing a historical or inexistent but present violence. It opens up through sonic counter-practices, through bodily microtransformation, through psychoactive substances.

This leads me to my second example: music. Obviously musical piracy is a big issue with a long history. Many of the myths of great performers or new styles involve Promethean acts of theft, by which the secret of a style is revealed and shared. A Sufi myth says that the human soul was called to earth and to embodiment because it required ears to hear music, and this was tempting enough for the soul to sign off on an otherwise questionable proposition (Khan 1988: 79). There is something about music that is always already profoundly depropriated. This perhaps accounts for the various ways in which musical forms have been kept secret, and for the capturing and commodification of sound using recording technologies, notation, etc. which seek to turn music into private property. And again, conversely, it is not surprising that the first file-sharing scandals were also associated with music. You might say that the musical pirate's dilemma is whether to try to own sound.

Recently, I have been listening a great deal to *Music from Saharan Cellphones*, a series of compilations, made by Oregon-based musician

Christopher Kirkley, of contemporary Saharan pop music styles which people who live in various parts of the Saharan diaspora listen to on their cellphones, using Bluetooth to exchange files with each other. Kirkley acquired the recordings from people's cellphones while travelling by trading selections from his own musical collection. He initially put them out on a cassette. The cassette was uploaded as MP3 files onto the net. Now, due to interest, he is putting out a vinyl version of the cassette, and trying to track down some of the artists on the Bluetooth files. Meanwhile a group of remixers and musicians around the world have already contributed a series of remixes and cover versions of the 'originals' to another compilation, *Music For Saharan Cellphones*, which, among other formats, is being issued in 'a limited release [of] 30 limited hand numbered microSD memory cards, to be mailed back to Kidal, Mali with the intention of getting the music back on cellphones' ('Memory Cards'). This last gesture reminds me of a Sun City Girls release from the mid-1990s, *Libyan Dream*, which was 'originally released as 50 cassette copies dropped in cassette vendors [*sic*] racks in various cities throughout SE Asia in 1993' ('Official Sun City Girls'). Instead of Gayatri Spivak's affirmation of the value of the subaltern's 'insertion into the hegemonic', here we might speak of a counter-practice of 'insertion in the diasporic'.

To what degree can my comments on Taussig's model of depropriation as part of a subaltern postcolonial healing practice be thought through in the case of *Music from Saharan Cellphones*? It is well known that traditional North African rhythmic musics often have a specific healing function: Moroccan Gnawa music, for example. To what degree do such models survive the secularization of music, as, for example, with the emergence of Touareg 'desert blues' in the Libyan settlement camps in the 1990s? For that matter, to what degree are recording, electrification and the use of digital instruments such as drum machines still compatible with an idea of music as a healing practice? One reason for not rejecting such an idea out of hand would be Afrodiasporic traditions, including roots reggae and African American gospel, where cutting-edge sonic technologies are

compatible with an explicitly religious and salvatory practice (Brown 2010). But in thinking through the music on *Music from Saharan Cellphones* as a piratical endeavour involved in a practice of depropriation, I want to find a way of thinking about 'piracy', even in an MP3 market, as a potentially ecstatic practice. I remain convinced that there is a missing aspect to contemporary theorizations of musical subcultures. You can see it in Steve Goodman's recent book *Sonic Warfare*, which is great on the appropriation of military technologies and counter-ecologies of fear within Afrofuturist subcultures, but which is almost silent on the ontology of collective joy that for me is the reason why subcultures gather together anyway (Goodman 2010). Perhaps this joy is always already post-secular in that it is concerned with an opening that is healing, in which, as Hakim Bey suggests in his book *Immediatism*, it is chaos, exposure to chaos, that heals (Bey 1994). One of the challenges here is to understand the aspect of vibrational ontology, which Goodman calls 'audio virology', as ecstatic. And more than that, that the acts of exchange that happen using Bluetooth, cassettes, MP3 file-sharing, etc. are also concerned with ecstatic contagion, as much as the sounds themselves, with their incredible abilities to pass back and forth across the globe.

This brings me to my next example of depropriation: WikiLeaks, the website and group which has made available a number of national and corporate archives for download by anyone on the internet – including vast caches of US embassy documents and military records. The conventional interpretation of what WikiLeaks would be is that it is concerned with appropriation. In a recent issue of *Radical Philosophy*, Finn Brunton points out that, in his writings, Assange emphasizes that the goal with WikiLeaks is not to break into archives but to make it easier for someone in a closed community that keeps secrets (he calls this a conspiracy) to leak something (Brunton 2011). The goal, then, is to undermine the stability of the group that keeps secrets, and in a formal, almost mathematical way to shift the balance from groups that keep secrets to a public or commons where there are no secrets. And to shift from injustice to justice based on the notion that the secrets of

unjust groups are more likely to be revealed than those that are based on a just and public practice of engagement.

In Assange's formulation, the question of community comes down to making 'robust routing decisions'. Like everyone else, I was astounded at the emergence of WikiLeaks and the possibility of a radically new form of public knowledge it implies. However, I find myself unimpressed with the specifics of most of the revelations generated by WikiLeaks thus far. The endless exposure of the Big Other does not in itself constitute the basis of a just society and it is hard to see how the calls for total transparency are not themselves a strange distributed version of a panopticon – the echo of corporate and national cyber-wars and data theft, with their emphasis on covert appropriation or scrambling of data, along with strategic public exposure of data in order to damage enemies. I argue that despite the clear practice of depropriation that WikiLeaks involves, transmitting private or state-owned archives into a public space that is not owned by anyone, there are significant gaps in Assange's reasoning concerning what will happen to the documents when they are released, and these gaps concern community.

According to Assange's theories, the published documents on the WikiLeaks website will generate an ecosystem of readers and inter-preters who will collectively assess and expand on the truth contained in the documents. Yet this has not happened in any significant way. In a recent interview, Assange blamed this on people's conformity as writers to a group mentality (Obrist 2011: 16). But there is something instru-mental to his view of freedom, as though it would be the necessary or logical outcome of being fed certain pieces of information. Yet, the genesis of recent protest movements actually appears not to be related to some particular nugget of information, but to a particular gesture or act, as in Tunisia, or even with Wall Street. Assange believes in a reversal of the logic of appropriation and property that governs the nation-state today, but that reversal is not in itself able to produce a truly open commons or community.

I will pass quickly to my final example: that of the Occupy movements which have sprung up in North America and elsewhere in recent

months. One striking analogy between the politics of file-sharing and that of the Occupy movements is that the legal prohibitions on direct sharing of copies have resulted in a fragmentation of the object into the distributed forms available on peer-to-peer networks, including WikiLeaks documents.

With the predictable evacuation of the Zuccotti Park occupation in New York in November 2011, the search for the way in which a depropriated community can manifest itself in the public space of the highly capitalized twenty-first-century metropolis will begin anew, but Occupy Wall Street's strength is already that it is a distributed network of many micro-protests. The cities today are zones of visibility, spectacles, in the sense that Guy Debord defines them, and public assembly of anything other than consumers or dutiful workers will apparently not be tolerated. No doubt new ways to contest that structure will have to be devised, and they will all involve a logic of postcolonial piracy since they will in advance be judged illegal, as, for example, the various laws regarding public assembly in the UK of recent decades would suggest. One of the current dilemmas facing the Occupy movements is whether to insist on the tent model of occupation of public space as a permanent form of protest, or to think of it as what Hakim Bey called a temporary autonomous zone (Bey 1991). There is a danger in insisting too much on a permanent appropriation of physical space. In Egypt, the occupying of Tahrir square led to change, in Tiananmen it did not. On the other hand, the mobilization of large groups of people at specific demonstrations or moments in time is more a form of depropriation. The problem with this form, familiar to us today in the form of flash mobs, is that it basically leaves existing structures intact outside of the moment of the appearance of the public.

But Occupy Wall Street represents a significant development in terms of the politics of depropriation. To occupy means precisely to inhabit without owning, and the refusal of the movement's participants to package themselves in terms of a particular set of demands points to occupation as the manifestation of a depropriated community in much the sense that Esposito talks about it: heterogeneous, with 'nothing in

common', yet claiming commonality precisely in that (Esposito 2010). The problem, as I see it, is that we do not yet have a practice, or, to use a phrase of Badiou's, a 'popular discipline', that is capable of sustaining such a community (Badiou 2008).

What does it mean to depropriate in a postcolonial situation? Surely not just to make oneself into a globally disseminated image, or, following Peter Hallward's critique of postcolonial literature, to become an absolute, dissociated singularity, devoid of connection (Hallward 2001). This of course is one of the great fears regarding depropriation: that to let go of a claim of belonging is to lose everything, made all the more traumatic since this would repeat the violent appropriation of colonization. Depropriation does not mean 'to become nothing' because being, in fact, is not coextensive with belonging or the ownership of a territory, nor does it mean a lack of manifestation or presence. Depropriation means to allow a movement to happen, to allow a different relation between beings to open up, because that is how the world is changed, i.e. through transformative mimesis.

Finally, what is striking about *Music from* and *for Saharan Cellphones* is the intense desire to participate in the piracy it reveals. The collection exists because Kirkley participated in exchange in Mali and other places, and because there was a network of nodes in North America such as Mississippi Records that also found it interesting to do so. The music on the cellphones is also there because musicians in the Saharan diaspora wanted to participate in particular sonic forms that are not traditional but, precisely, depropriated: reggae, psych rock, hiphop, etc.

With WikiLeaks, what is powerful about the practice is the invitation to those who participate in rituals of privacy or secrecy to contribute to an ambiguously defined public. The weakness of WikiLeaks consists in the assumption that participation by a community of readers of leaks is automatic and appropriate. WikiLeaks is in fact much more top-down and instrumental than it would appear, and its failures relate to a misunderstanding of appropriation and depropriation in which these things are still basically practised on others.

Occupy Wall Street, despite the appropriative rhetoric of occupying the structures owned by the 1 per cent on behalf of the 99 per cent, is more clearly involved in a practice of depropriation. It is participatory. Occupation happens only because of those individuals who decide to occupy. For the most part, the demands are non-specific, because the goal, whether articulated in this way or not, is to depropriate structure and open up a space of freedom. That space is to resonate with other similarly depropriated spaces. Not just the other Occupy nodes, but other global movements such as the Arab Spring groups. The situations are different, but the stance in relation to those situations is the same.

The issue of stance brings up the problem of practice; in other words, what does a depropriated community do? I argue that all of the situations I have described in this chapter, in both their legal and their ontological interest, are manifestations of a broad crisis in our relation to practice. Piracy, finally, is a matter of practice, but what kind of practice is it? Piracy blurs the lines between work and play, ownership and the commons. Anarchist historians such as Hakim Bey have made the argument that piracy evolved under colonial regimes precisely as an escape from colonial indentured labour. It would not be hard to show that a lot of contemporary phenomena labelled *piracy* involve the avoidance of work. Others are reliant on the same sweatshop labour that drives much of the official economy. My hypothesis: practice gravitates toward those places or occasions where it lives in accordance with the deepest truth which is the truth of depropriation – even when it lacks the words, legal and political structures to sustain itself.

Thus, for example, downloading cultures, or, more broadly subcultures which exchange things like music that are matters of passion, are driven towards something like BitTorrent or peer-to-peer networks not just as a way of evading the strictures of a legal system, but because they have available to them resources in the creation of objects that are real precisely because they ignore prevailing definitions of what an object (or a subject) is in favour of something more profound and more pragmatic. Thus, it turns out that it is not at all necessary for a copy to consist of a laboriously produced one-to-one replica of an

entity: thousands of copies of that entity may be montaged together mathematically to assemble a particular object. In fact, that is what all copying, digital or not, is anyway, and we ourselves are largely copies in this sense.

Bricolage is indeed, as Levi-Strauss said, the science of the concrete. Yet the question of what comes to hand for the bricoleur can take radical form. It could take the form of a musical style that belongs everywhere and nowhere, as with *Music from Saharan Cellphones*, or a state or corporate archive, as with WikiLeaks, or the space of the political itself, whether physical, as in Zuccotti Park, or the dataspaces in which global finance moves, as with the Occupy movements. The pirate's dilemma then, to repeat, is how to resist appropriating all of this in the name of some property form or other, and instead how to unravel that logic of property and the forms it takes today in order to affirm a shared space. That shared space is in fact the space that we already inhabit, but the question remains: How do we collectively learn to recognize it?

References

Agamben, G. (1993), *The Coming Community*. Minneapolis Press: University of Minnesota.

Badiou, A. (2008), 'We Need a Popular Discipline', *Critical Inquiry*, 34: 645–59.

Bey, H. (1991), *T.A.Z.: The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism*. Brooklyn, NY: Autonomedia.

—(1994), *Immediatism*. San Francisco, CA: AK Press.

Boyle, J. (2008), *The Public Domain: Enclosing the Commons of the Mind*. New Haven, CT: Yale University Press.

Brown, J. (2010), 'Buzz and Rumble: Global Pop Music and Utopian Impulse', *Social Text*, 28(1): 125–46.

Brunton, F. (2011), 'Keyspace: Wikileaks and the Assange Papers', *Radical Philosophy*, 166: 8–19.

Cixous, H. (1976), 'The Laugh of the Medusa', *Signs*, 1(4): 875–93.

Courtwright, D. (2001), *Forces of Habit: Drugs and the Making of the Modern World*. Cambridge, MA: Harvard University Press.

Deleuze, G. and Guattari, F. (1987), 'Treatise on Nomadology', in *A Thousand Plateaus*. Minneapolis: University of Minnesota Press, 351–423.

Esposito, R. (2010), *Communitas: The Origin and Destiny of Community*. Stanford, CA: Stanford University Press.

Goodman, S. (2010), *Sonic Warfare: Sound, Affect, and the Ecology of Fear*. Cambridge, MA: MIT Press.

Hallward, P. (2001), *Absolutely Postcolonial: Writing between the Singular and the Specific*. Manchester: Manchester University Press.

Khan, H. I. (1988), *The Mysticism of Music, Sound and Word*. Delhi: Motilal Banarsidass.

Lacoue-Labarthe, P. (1989), *Typography: Mimesis, Philosophy, Politics*, trans. C. Fynsk. Cambridge, MA: Harvard University Press.

Lessig, L. (2004), *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin.

Marx, K. (1993), *Grundrisse*. London: Penguin.

'Memory Cards for Africa', *Sahel Sounds*. Web.

Obrist, H.-U. (2011), 'In Conversation with Julian Assange, Part I', *e-Flux*, 25.

'Official Sun City Girls Discography: Libyan Dream', *Sun City Girls*. Web.

Strathern, M. (2005), 'Imagined Collectivities and Multiple Ownership', in R. A. Ghosh (ed.), *Code: Collaborative Ownership and the Digital Economy*. Cambridge, MA: MIT Press, 13–28.

Taussig, M. T. (1986), *Shamanism, Colonialism, and the Wild Man: A Study in Terror and Healing*. Chicago, IL: University of Chicago Press.

Weil, S. (1977), 'Decreation', in G. A. Panichas (ed.), *Simone Weil Reader*. Mt. Kisco, NY: Moyer Bell, 350–6.

Wilson, P. L. (2003), *Pirate Utopias: Moorish Corsairs & European Renegadoes*. Brooklyn, NY: Autonomedia.

Yeshe, L. (1982), 'The Three Principal Aspects of the Path, Part 1', 1982 lecture, available on *YouTube*. Web.

Keep on Copyin' in the Free World?

Genealogies of the Postcolonial Pirate Figure

Kavita Philip

'Keep on rockin' in the free world', sang American rock icon Neil Young in 1989.[1] The song's lyrics suggested a link between the rhetoric of the Reagan–Bush years, the gutting of the welfare state, and the ways in which the American dream of unlimited consumption and mobility depends on the expansion of exploitation and deprivation:

> We got a thousand points of light / For the homeless man /
> We got a kinder, gentler / Machine gun hand /
> … Got fuel to burn / Got roads to drive.

The refrain, repeating the now-classic title line, was an ironic doxology, marking the realm of rock music as a space of freedom, even while implicating the Western consumer in a global geopolitics of expropriation. Two decades later, Neil Young yoked music production itself

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[1] This chapter's title refers to, and copies from, Neil Young's song title, emulating his historical-ironic register, and continuing his interrogation of the common-sense places in which we locate freedom. The phrases 'thousand points of light' and 'kinder, gentler nation' are from Presidential campaign speeches by George Bush Snr. The song goes on to contrast images of consumption and poverty, campaign rhetoric and military power, the seductions of consumption, and the cultural fantasy of the freedom of the open road. This song from the 1989 album *Freedom* became a rock anthem over the next two decades, articulating an early critique of what activists later came to describe as a sustained historical shift towards neoliberal imperialism. It was listed by *Rolling Stone* magazine as one of the 500 greatest rock songs of all time (Thrashers Wheat 2004). According to some reports, Neil Young's title was inspired by a conversation with a fellow musician, Frank Sampedro, who seems to have used the term 'free world' in a more naive, Eurocentric sense, when he advised Young not to play in the Middle East, but rather to play in the 'free world' ('Rockin' in the Free World' n.d.). Decades later Neil Young continued to think about music and global distribution in unconventional ways when he supported global practices of music piracy.

with a new story of globalization when he declared: 'Piracy is the new radio. That's how music gets around.' The connections between these two moments are, of course, larger than the biography of one musician.

'Keep on rockin' in the free world' belongs in the context of over a century of American activist folk music, from Lead Belly (b. 1888) to Ani DiFranco (b. 1970), calling attention to the ways in which patriotism and profits are dependent on a hidden calculus by which the freedoms of some are won at the expense of the liberties of others. For much of the twentieth century, the realm of culture had stood rhetorically outside the realm of economics and politics, its real or imagined autonomy offering a provisional space from which to mount a critique of US social norms. Musicians, writers, visual and performance artists appeared to live in a public sphere rich with alternative social commentary and creativity, counter-cultural practices, and a set of imaginative resources shared in a global commons. In the twenty-first century, this picture started to dissolve.[2]

From the late twentieth century, as culture itself increasingly became a target for direct capture by capital, the producers of cultural value and knowledge noticed the ways in which their work was being valued differently, and circulating in changed commodity circuits. Cultural

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[2] The appearance of cultural autonomy was an illusion, but one with strategic uses and enormous productivity, as evidenced in this outpouring of critical music and literature. The illusion of cultural autonomy was, perhaps, easier to believe in the mid-twentieth century than ever before or since. Later in the century, the illusion was shattered by the more complete penetration of almost every form of cultural production, and private space, by capital. Many leftist political economists have suggested that the culture industry was always related to capital, and that these changes are of degree rather than a shift in the kind of capitalism or culture we are living in. On the other hand, many cultural critics now argue that the shift in the degree of penetration of culture by capital does precipitate a kind of rupture, and a new implosion of the private–public construction. For example, anarchist activist and literary critic Chris Taylor argues: 'Indeed, the very modality by which the state approaches the social has transformed. The state and civil society no longer engage in a virtuous dialogue mediated by a public sphere.' He traces this to the growth of immaterial labour: 'By fostering the growth of immaterial and informatic modes of production, neoliberal policy becomes a tool for the augmentation (not dismantling) of the state' (Taylor 2013). For a critique of immaterial labour, see the work of George Caffentzis, who disagrees with the premise of immateriality, saying: 'I argue that immaterial labor, as defined by its advocates like Hardt and Negri, does not exist' (Caffentzis 2007: 24). For more on historical rupture, continuity and liberalism, see Foucault (2010).

critics described this moment as marking various kinds of watersheds. It was identified as the historical moment when knowledge became a force of production, labour became immaterial, and intangible things became property.[3] World trade conferences and global treaties on customs and tariffs were no longer left to economists and lawyers; cultural theorists pored over TRIPS, WTO and GATT documentation. As 'intellectual property' became the favoured tool for the capture of cultural value by capital, the resistant analysis of property rights, too, exceeded the writ of legal analysis.

   In a historical period that seemed to respond to the sedimentation of modern disciplines in the eighteenth century, humanities and social science scholars in the late twentieth century precipitated the emergence of new, multifarious spaces of inquiry.[4] These new knowledge-formations were fundamentally interdisciplinary, marking a shift from the disciplinary thrust of eighteenth-century scholarly institutionalizations. The field-formations around law, economics, politics and culture that had thus far shaped the legibility of some questions about human society (and, as disciplines do, silenced others), began to be seen through their constituent contradictions, rather than as transparent repositories of objective knowledge. Some of the key contradictions in this discourse revolved around the fraught questions of power, race, class and sexuality – issues that had silently shaped every key event in the intellectual, political, institutional

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[3] These are generalizations seeking to capture the broad-stroke explanations of a period; however, the complexities of this historical moment are not easily characterized. All of these initial descriptions have been extensively critiqued, and continue to form dividing lines between scholarly camps. If we pay attention to the history of knowledge-as-property, of the globalization of production, and of immaterial labour, we must call this 'watershed' or rupture model into question. Techno-scientific knowledge was a force of production over centuries of trans-oceanic trade, and explicitly so in the Age of Reason, when scientific knowledge undergirded empires. Colonialism globalized production in particular ways. Consider, for example, botanical knowledge and colonial globalization, as explored in Drayton (2000), Philip (2003), Schiebinger and Swan (2005) and Spary (2000).

[4] The philosophical consequences of certain arrangements of disciplinarity might be explored with reference to classic works by Jacques Derrida (see e.g. *Logomachia*, in Rand 1992), Habermas (1987, esp. chapters 1 and 2), and Foucault (2006). These works are not histories of disciplinarity, but they dramatically outline some of the intellectual and political consequences of normative disciplinary formations under the conditions of production of European modernity.

origins of modernity. Fault-lines around these questions had become increasingly visible over two centuries of anti-colonial, anti-racist, working-class and regional or identity-based movements. In this discussion, several figures emerged as standard-bearers for resistant visions of anti-, post- or alternative modernities. The third-world woman, the indigenous person, the global activist and other figures crystallized these emergent critiques of modernity. All these figures showed continuities and resonances with older histories of oppression, but re-emerged in specific ways in the late twentieth century, bridging the gaps between the state, multi-lateral institutions, academia, policy and activism, seeming to crystallize the anxieties and revolutionary promise reformist hope, and romantic nostalgia that no disciplinary formation could contain, and that no single disciplinary critique could articulate. Each of them carried divergent semiotic readings and political tendencies, including revolutionary promise, reformist hope, and romantic nostalgia. The figure of the third-world woman, for example, could index the gaps in social scientific theorizing about unmarked male subjects, spurring theoretical and policy revisions; but it could also devolve into an abstract signifier of pathos, losing the specificity of embodied women's histories. The figure of the indigenous person is fraught, walking the fine line between the political power of solidarities from below, on the one hand, and the romanticist construc- tions of pre-modern authenticity and the noble savage, on the other. Perhaps the most intriguing and controversial figure to emerge out of the critical political ferment of the late twentieth century has been that of the pirate. Unlike the woman and the indigenous person, the pirate has never been honoured by the United Nations with an 'International Year' of concern and attention. Unlike the 'girl child' or the 'tribal', the pirate figure has not been taken up by states or corporations as an object of charitable intervention. More intransigent and harder to sentimentalize than most resistant archetypes, the pirate figure seems to offer a nuanced and extensible critique of modernity.

By the beginning of the twenty-first century, the pirate figure had moved from margin to centre, looming as a larger-than-life political

threat (to state and capital) and becoming a resistant popular cultural figure (for anti-capitalists and libertarians). In a simultaneous replay of physical maritime piracy and virtual property appropriation that juxtaposed historical memory and future anxieties, pirate figures as diverse as Somali sailors, Swedish hackers and a German political party constituted some of the most compelling public spectacles of the new century's first decade. The pirate figure's malleability also constitutes some of its most perplexing characteristics. On the one hand, the implied continuity between maritime piracy and information piracy rests on a strained metaphor – the theft in the former involving tangible goods and labour, and in the latter being digital and therefore infinitely reproducible. One can see the ways in which this metaphor served the purposes of antipiracy efforts, strategically classifying information copiers with robbers, thieves and anti-State actors. Anti-copyright and pro-commons activists inverted the valuation, radically challenging the legal system itself, its inadequacies and inefficiencies exposed, they argued, by information piracy. And the politics of the pirate accusation were inverted in a different way again, in the charge of biopiracy, in which Western states and corporations were represented as the robbers, taking indigenous knowledge (an intangible good) and biological resources away from developing countries, profiting illegitimately by appropriating the common property of humankind.[5] We see here a glimpse of the myriad ways in which the ethical charge carried by the pirate figure was subject to constant contestation and shapeshifting at the turn of the twentieth century.

The first decade of the twenty-first century was characterized by a contest that occurred on multiple fronts – rhetorical, political, economic and technological – to redraw understandings of property. Many

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[5] The 'biopiracy' discourse, popularized by activists like Vandana Shiva, had pre-existed the rise of the information pirate, but seemed to assume a new life as pharmaceutical bio-prospecting and drug patenting developed through the turn of the century. Legal scholars Madhavi Sundar and Anupam Chander make a similar point about maritime, digital and biological piracy (Chander and Sunder 2004). On the Western history of book theft see Adrian Johns (2011); on developing economies and environmental theft see Shiva (1997).

commentators observed that the redrawing of property on such a scale had not happened since eighteenth-century shifts in the enclosure and privatization of rural land, the transformation of agrarian commons to estate property, and the growth of factory labour.[6] The historical continuities and structural similarities we can read in the transformations of the meanings of property, a category at the heart of modern capitalism, are, indeed, startling. But the historical particularities of the twenty-first century, and the way in which property comes to turn on legal and social understandings of 'the digital', drew attentive analyses as well.[7] The choice to emphasize either capital's continuities or digital difference often marks underlying disciplinary and ideological divides: historical materialists tend to dwell on continuity and structure, while anarchists and technological enthusiasts tend to celebrate rupture and the digital age's radical novelty. Rather than adjudicating between the two or advocating a balanced middle ground, I think of the relationship between them as a dynamically modulated articulation of different modes of a knowledge economy.[8]

   Rather than writing from the point of view of particular pirate actors, therefore, this chapter is structured around a methodological question. What insights emerge from tracing the historical and political functioning figure of the pirate as a constitutive element in

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[6] See the work of James Boyle (2008). See also the limitations of the commons-enclosure metaphor, as articulated in Chander and Sundar (2004).

[7] The opposition between 'digital' and 'analogue', like most dichotomies, gets fuzzier under historical and critical analysis. Understood as delimiting a binary, or as narrating a transition, it does not accurately describe the technological landscape of the twenty-first century, which is more of a complex imbrication of older and newer forms rather than, as is popularly fantasized, a purely digital space. However, the extensive use of the term 'digital' already characterizes much academic and popular writing, and thus stands in, here, for a range of discourses about the technology and culture of computational work and play. I use the term 'digital' as shorthand for the discursive field of contemporary techno-politics, and not as a technical description of its everyday technological practices.

[8] The terms 'articulation' and 'modulation' belong to different – and, some would argue, competing – traditions of post-Marxist philosophy. For articulation theory, see Althusser and Balibar (1971). On modulation, see Deleuze (2004). I deliberately place them together here to think together the synchronic and diachronic, structuralist and post-structuralist elements, whose separation underlies much twentieth-century media theory and philosophy of technology.

the knowledge economy? One benefit of this analytical move to tracing structure (rather than beginning from advocacy on behalf of individual political actors) is that it acknowledges the fuzziness in the ethical charge and metaphoric referent in all current pirate discourses. Just as the figures of third-world woman and indigenous native provoked the growth of large new fields of academic and activist inquiry, the pirate figure has generated diverse kinds of investigations. The emergence of these questions, and the salience of the pirate figure to such a range of political concerns, cannot be understood separately from a historical genealogy of late twentieth-century liberalisms and globalisms.

While not denying the political urgency of many pro-commons discourses in defence of piracy in the global South, this methodological approach seeks modes of analysis that side-step the now-common modes of theorizing pirates, such as the corporate criminalizing of postcolonial piracy by transnational lobbying agencies, the scape-goating of 'Asian piracy' to profile a more enlightened free culture, or the celebration of postcolonial piracy as anti-capitalist resistance (cf. Eckstein and Schwarz in the Introduction to this volume).

Reading pirate narratives from the former margins of empire, in what are now the emerging power centres of the global market, genea-logical readings insist on doing more than simply adding these to an understudied topics list in the roster of pirate studies. A Southern regional emphasis was important in a first wave of pirate discourses, in that they brought under-represented case studies to the attention of metropolitan readers and policy-makers. But to some extent, all our metaphors of globalism need revision. Global South and North, Centre and Periphery, First and Third Worlds, Western and Non-Western – these categories are all useful to mark certain historical divisions, but inadequate to the analytical task of understanding the rapidly changing present and shifting futures of information cultures and economies. In the task of rewriting pirate histories and futures, then, we must also rethink the language of global analysis itself.

Genealogies of the pirate figure

Scholarly work on forms of information-sharing among the economi-
cally marginalized has now brought postcolonial pirate studies to
a global audience.[9] How might we acknowledge the importance of
historical continuities in the populist politics of piracy, as well as
account for the novelty of digital copying? Avoiding the binary of
rupture versus continuity in pirate studies, a genealogical approach
beginning from the economic, political, philosophical and academic
margins of informational discourses can productively shape our
forms of attention to practices that are constitutive of the global
knowledge economy.

   As many writers from the global South have argued, the 'improper',
or criminalized, sharing that happens in industrializing economies has
many historical precedents.[10] The copying and distribution of infor-
mation and culture in all forms, from paper to digital, from music
to film, may be seen as a response from the global South to centuries
of unequal taking and sharing of resources of all kinds. It could also
be seen as a continuation, in the global South, of practices that until
recently were common in the North as well. For example, 'improper'
sharing practices practised in the developing world in the late twentieth

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 9 This follows the pattern that postcolonial studies established from the 1970s through the
    1990s. For example, scholarly work about, and from, the margins of empire altered histo-
    riographic method in the US academy in the 1980s and 1990s. Historiographical work
    by the Subaltern Studies collective in India and cultural studies work by postcolonial
    scholars in the Birmingham school have, starting from the margins, moved to canonical
    status in the US academy (Chaturvedi 2000; University of Birmingham 1982). Whether
    this will shape long-term trends in the humanities remains to be seen, especially given
    the new millennium's neo-conservative efforts to reshape the Humanities and Social
    Sciences to the needs of industry.
10 I have elaborated this point in earlier writing. See Philip (2005), where I offered a critical
    reading of the liberal politics of Lawrence Lessig's move to align proper sharing with
    techno-geeks in the industrialized North. Asian pirates thus served as the limit case; on
    its acceptable side lay creative young Western geeks; on the other side, criminal street
    vendors of illegitimately copied data. However, in the twenty-first-century contexts of
    European Pirate Parties and the activism of Anonymous, or the challenges to state-
    controlled information in the leaking activities of Julian Assange and Edward Snowden,
    it would be difficult to cling to Lessig's early attempts to conceive of the Asian street as
    a model for anti-corporate, anti-state, 'criminal' copying practices.

century recall forms of appropriation that American book publishers had practised in the nineteenth century, when they took content protected in Britain and reproduced it without permission or fees for American consumers (Johns 2011). There are other historical precedents for the taking of resources from one part of the world for the benefit of another. Today's knowledge economy, not purely a product of computational globalization, dates back at least to eighteenth- and nineteenth-century voyages that collected scientific specimens from the colonies, and documented tropical flora and fauna in an earlier period of colonial global exploration. Natural resources, in the context of the scientific and industrial revolutions, were part of an earlier knowledge economy, which bound together material and conceptual information in networks of shifting privilege and power. Emerging out of these historical centres of imperial and economic knowledge, the leaders of what we now call the knowledge economy have a lot to lose if they fail to regulate information-sharing to their benefit. Economic hegemonies of the future will be shaped to a significant extent by the outcome of the pirate wars of the early twenty-first century.

At the same time, the pirate figure has become a popular children's hero in the United States. It functions within diverse US multicultural subcultures as a raced, gendered subaltern who effects the inversion of hegemonic power relations. The pirate has, of course, commonly spoken for power's Others. In 1995, Jo Stanley's popular history of women pirates located pirates' resistant appeal in their direct challenge to the state, a feature that made them attractive to libertarians as well as to leftists. Pirates, Stanley suggested, foreground 'the existence and reality of [the state's] political power as fiction – a powerful insubstantiality' (Stanley 1995: 219).[11] It may be this implicit critique of the state

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[11] Stanley 1995. The rejection of the state as a fiction characterized US women's and minority discourses of the 1980s and 1990s. However, in the new millennium (and markedly after September 2001), most academic analyses of the state began to move away from this discourse, and from the idealist notions of state power that had been popular in cultural studies.

and its management of the global market that links the heroic image of maritime pirates with the more recent anarchist-aura of digital pirates.

The swashbuckling pirate-figure has a pop-cultural history that has inspired numerous modern books, from the scholarly *Many Headed Hydra* (Linebaugh and Rediker 2002) to the populist *Outlaws of the Ocean* (Mueller and Adler 1985). But their popularity and influence go further back. Daniel Defoe, author of *Robinson Crusoe*, was fascinated by all manner of vagabonds and rogues, especially pirates. His 1724 book, *A General History of The Pyrates* (for over 200 years attributed to a fictitious pirate author, Captain Charles Johnson), was based on his personal contacts in the commercial and naval maritime world (Defoe 1972). Defoe scholar Manuel Shonhorn notes that 'all of Defoe's observations and experiences – his family alignments, his business speculations and trading ventures, his political propaganda, colonial visions and periodical journalism – contributed to the preparation of these most authoritative pirate biographies of his day' (Defoe 1972: xxiii). On stage, the Gilbert and Sullivan classic *Pirates of Penzance* premiered in New York in 1879, and remained popular for over a century – in 1981 Joseph Papp produced it on Broadway. On film, the first decade of the twenty-first century was filled with versions of the fantasy-adventure series *Pirates of the Caribbean*; by this time pirates had become such a staple of American popular culture that the film, itself inspired by a theme-park ride, featured self-referential pop-culture jokes and allusions; Johnny Depp played the pirate hero Captain Jack Sparrow with an ironic-populist version of Brechtian alienation.

Pirates have long had a marginal, but persistent, presence in counter-culture narratives of modernity, rising to the foreground at particular moments and fading into the background in others, never quite disappearing. Towards the end of the twentieth century, they once again took centre stage in a number of official and resistant discourses. Unlike the nostalgic (and politically harmless) portraits of tender-hearted pirates in American popular culture, the new millennium brought with it pirates from the dark sides of globalization and digital

culture, threatening the emerging architectures of world trade. Somali fishermen, who lived in the ruins of colonial legacies of uneven development, reportedly displaced from their livelihoods by war and neoliberalism, took to literal piracy, robbing ships in the Indian Ocean. In response, the US government sponsored talks to build links between commercial shipping and naval power of the kind not seen since the days of early modern piracy. Roughly contemporaneous with the re-emergence of maritime piracy was the naming of a new form: digital piracy. It had no relation to robbery on the high seas;[12] rather, it seemed to its practitioners more akin to copying than traditional robbing. At first it seemed limited to a small, specialized group of computer users. Occupying an economic and material sphere far removed from both seventeenth-century sea pirates' and contemporary Somali fishermen's lives, its only similarity to their struggle was in its close fit with the argument about differential modes of power, evoked in the pirate metaphor in Augustine of Hippo's famous epigram about Alexander and the pirate. In both cases, governments engaged battle by deploying the full range of powers of the state against the threat to their control, while pirates fought for their autonomy with fugitive, guerrilla-like tactics.[13]

At the beginning of the twenty-first century a young computer-literate population, with its initial roots in technologically elite institutional contexts in the 1970s, but diversifying and spreading over

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[12] Artist and anti-copyright activist Mat Callahan has argued that the moniker was born out of the political effort to apply legal precedents from the Law of the Seas, illegitimately, to a field of cultural production (Callahan, interview with author, July 2013).

[13] The oft-cited pirate justification by St Augustine is drawn from his writing in *The City of God*, in which he refers to a captured pirate who challenges his captor, an emperor, with the words: 'What does thou meanest by seizing the whole earth; but when I do it with a petty ship, I am called a robber, whilst thou who does it with a great fleet art styled emperor' (Augustine 1922, *City of God,* Book IV, Chapter 4). Like contemporary libertarians, Augustine of Hippo here is using the figure of the pirate to challenge a ruling authority, advocating a more egalitarian distribution of power and resources than monarchies and states can achieve. An account of the different tactical styles that characterized twenty-first-century conflict is a larger, related story. The notion of asymmetrical warfare came to be commonly associated with influential analyses of the 'War on Terror' (see Arquilla and Ronfeldt 2001). It is a story worth noting here because of the constant slippage between discourses of piracy and of terrorism in the early twenty-first century.

the next four decades, found itself at the helm of a new technology. To many in these circles, the conditions seemed right for a global 're-boot': knowledge and power could, it seemed, now easily be passed to groups that aspired to change everything about the enunciative conditions and distributive contexts of knowledge itself. Even as digital technology promised unprecedented creative agency to a multitude of globally dispersed social formations, its ownership was being refigured by states and corporations. In the four or five decades since computation started to centrally shape techno-scientific and economic activity, the stakes have shifted from the control of hardware and software to the imbrication of culture itself with the power of the state and capital. State and corporate-led anti-piracy crackdowns grew increasingly successful in reclaiming the new digital spaces for the play of commodified consumerism rather than of free exchange. Pirates of different kinds struggled to stay current.[14] As anarchist literary critic Chris Taylor argues, the growth of signifying practices in spaces formerly understood as 'private' or 'cultural' domains now marks the new ways in which the state and capital enhance their mutual imbrications, and develop their power relations, with/through our networked subjectivities.[15] In

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[14] The Pirate Party, according to European op-eds in the wake of Edward Snowden's revelations of National Security monitoring of US and global communications, registered small gains, if any. *Der Spiegel* wrote in early July 2013: 'If ever there was a news event that might provide a boost to a political party focused on issues relating to Internet freedom and digital privacy, it is the recent revelations that the US, the United Kingdom and several other countries have spent years maintaining a close surveillance of the worldwide web. And yet the most recent public opinion polls published in Germany show that support for the Pirate Party remains paltry' (Hawley 2013).

[15] Here Taylor is developing Franco Berardi's idea of semio-capital (Berardi, better known as 'Bifo', is a philosopher of the Italian autonomist movement, and one of the activist founders of a 1970s pirate radio station, *Radio Alice*). Taylor explicates: 'Capital has become semio-capital (Bifo's term), and the semiotization of capital means that producing or capturing value entails the production or capture of information. This production is not localized to individual firms; rather, it takes place across the broad fabric of the social. As you're doing cheeky things on Twitter or Facebook or YouTube, you're also producing value for capitalists' (Taylor 2013). Taylor writes this in the informal, political context of a blog (rather than a peer-reviewed article), contextualizing his analysis as stemming from an anarchist reading of state and capital, and responding in the moment to current events (in this case, the post responded to events in the USA in 2013, following the revelation of the US National Security Administration's collection of data across domains believed by citizens to be private, cultural or familial). In a 2011 interview, 'Bifo' Berardi articulates a resistant political agenda in the age of

a broad sense, piracy as a metaphor may now be understood beyond the literal meanings of copying. Rather, it is a phenomenon that in its largest sense is best understood in dialogue with a range of political meanings of data: from the libertarian discourses associated with networks of criminality, such as those associated with Dread Pirate Roberts, founder of The Silk Road, to the discourses of 'leaked' information and state secrets associated with the global media storm around Julian Assange and Edward Snowden.[16]

Projects of citizen security and state consolidations of emerging forms of property often provoke taxonomies of the pirate. In such taxonomies, students who create music mashups are different from Chinese street hawkers ripping film copies; corporate office-software theft is different from outsourcing, which is different again from geek leakers in private–public partnerships with the state. Taxonomies then provoke analytical searches to delineate precisely where the fuzzy overlaps are among pirate categories, so as to know what kinds of pirates one might guard against, with what kinds of technological precautions. But a genealogical approach to pirates differs from both taxonomies and chronological histories of information theft and appropriation.

The third millennium's pirate is both a medieval throwback and a contemporary figure; s/he is a 'barbarian' at the civilized city's gates, as well as an 'asymmetric threat' to the global future of the rule of law and

semiocapitalism: '[T]he real fight is the fight of software developers, of the people who have been writing the software of the financial system. We call on them, in order for them to do what Wikileaks has done in the field of information. Decommission, rewrite, and change the course of the future' (Oudenampsen 2011).

[16] Ross William Ulbricht was arrested on 1 October 2013 and charged with being the 'Silk Road' drug trafficker Dread Pirate Roberts. Commentators Nate Anderson and Cyrus Farivar (2013) name this moment as marking a resurgence in autonomous/libertarian net-organizing: '[W]ith the Edward Snowden leaks and Silk Road's demise, security and anonymity have become hot topics once again – and they may spur a renewed interest in making the Net less traceable.' Andy Greenberg has extensively covered the founder of The Silk Road (see e.g. Greenberg 2013). Journalist Brendan Kiley (2013) characterizes Dread Pirate Roberts (DPR) as 'Julian Assange with a hypodermic needle'. Kiley (2013) characterizes DPR as not simply a libertarian drug dealer; rather, he inaugurates 'a different way of thinking about citizenship, commerce, and an individual's relationship to the government'.

free markets. This pirate trafficks in both goods and services, engages knowledge and materials, and deploys know-how and networks. Rather than taxonomize, a genealogical approach observes the ways in which this pirate has come to shape the border between legal and criminal attitudes toward property. Materially, discursively and conceptually, the 'pirate function' (as I have referred to it elsewhere) is embedded in the textual and economic practices of transnational knowledge circuits of the late twentieth century.[17]

Power's others

How do we understand the resurgence of the pirate figure, and how might we read pirates within their political contexts, rather than as historical outliers? Pirates have recently occupied a structural position in the digital economy corresponding to the threatening, constitutive outside of digital optimism. The political consequences of the digital revolution are thrown into relief by focusing on the role of this dark outside, and its role in undergirding the standard optimistic claims of global connectivity and economic development popularized by global development agencies and philanthropists.

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[17] My understanding of the pirate function grows out of Michel Foucault's analysis of the ways in which the 'author function' was central to early literary modern knowledge production. This discussion builds on my 2005 essay (Philip 2005), which concluded by articulating the outlines of a project to analyse 'the pirate function (analogous to the author function) as a series of interrogations of what makes possible/plausible/enjoyable the act of piracy – Who can be a pirate? Who does not need to be a pirate? How does the act of piracy respond to the repressive function of the law of copyright by which transgressive authorial acts are policed?' Taking up these questions, I suggested, was a first step in articulating a larger genealogical project in transnational technocultures. The framing of the project as a genealogical enterprise rather than as an articulation of standpoint theory or policy-oriented advocacy is indebted not only to Foucault's mode of critical historiography, but also to Derrida, who reads textual moments (largely from the corpus of Western philosophy) in order not to 'capitalize' on their definitions of true knowledge, but to analyse, through, beside and around them, the implicit logics and modes that have given us world-shaping histories and geographies. Derrida makes this comment while explicating a reading of Anatole France's *Garden of Epicurus*: 'It is not our task here to capitalize on this … but to discern through its implicit logic a drawing of the outlines of our problem, of the theoretical and historical conditions under which it emerges' (Derrida 1982: 8).

The pirate as boundary object is a key feature of twenty-first-century political economy. Despite the global nature of the economy, though, both academic and activist analyses of the pirate still seem to cluster in ways that keep the Euro-American separated from the pirate-of-colour.[18] The western and postcolonial pirate, as white and Other, then, haunt each other in ways that seem to recall centre–periphery models of global economies and subjectivities. But this historical figuration, of an unmarked centre, and a racialized outside, in which the rational technological worker is haunted by the notion of the irrational savage, does not entirely predict or encompass the scope of this emergent, tech-savvy, recalcitrant figure who evokes the history and futures of anarchism. Rather than simply internationalizing the figure of the pirate (a move that deploys an additive logic), we might notice the necessity of the outside/alien pirate figure as a border that constitutes the recalcitrant but reformable pirate on the inside of the same border.[19]

The constitutive role of the figure on the other side of a border has

[18] Ethnographic studies by Brian Larkin (2008), Abdoumaliq Simone and M. A. Abouhani (2005), and Ravi Sundaram (2009) have questioned the assumptions of Western social theory by drawing on work in cities of the global South. Because of the nature of fieldwork and case study-based writing conventions, academic analyses tend to focus on national studies. Activist networks and their chroniclers, although they work in radically transnational ways, also take the national as a default frame. Most pirate activists do not theorize the pirate's internationalism as a core political analytic. State security and policy analyses, on the other hand, are centrally concerned with the *transnational* pirate, theorizing the pirate figure's menace as stemming precisely from its crossing of borders, its apparent uncontainability by national boundaries. We find examples of this in a range of state-level responses to the pirate threat – from the Rand-sponsored studies of transnational networks to the SOPA draft Bill's concern about 'foreign infringing sites'. American anxieties over Assange and Snowden's global locations, and the geopolitics of the complex extradition and asylum manoeuvres in each case, offer another set of examples of the shifting nature of transnational mobility and its centrality to the threat embodied in the pirate figure.

[19] See Spivak (2005) on the constitutive nature of this 'outsider'. Gayatri Spivak, in much of her work, is interested in following Derrida past Hegel, or, in other words, reading Derrida's notions of justice and ethics in a way that takes us beyond a rights-based understanding of bourgeois subjectivity. Using Melanie Klein's work on Freud in her paper on Derrida, Spivak comments: 'What is interesting about Melanie Klein is that she does indeed want to touch responsibility-based ethical systems rather than just rights-based ethical systems and therefore she looks at the violent translation that constitutes the subject in responsibility' (Spivak 2005: 109). It is in this sense that Derrida's notion of trace seems to go beyond rights-based systems. The pirate figure has commonly been seen as a challenge to Western bourgeois rights-bearing subjects. But to my knowledge we do not yet have any scholarly examples of Derridean tracings of the pirate figure.

most commonly been analysed in philosophical analyses of desire and recognition. In this sense, the pirate may be seen as the Other of the disciplined consumer of corporate information, psychically figuring both the threat of the outside and the feared/desired subject that shapes the legally bound, repressed bourgeois self. The notion of the regulatory boundary was famously framed for contemporary political analysis by Judith Butler, describing her work as a reframing of the Hegelian questions: 'What is the relation between desire and recognition, and how is it that the constitution of the subject entails a radical and constitutive relation to alterity?' (Butler 1999: xiv). Gayatri Spivak glosses this sense of how the 'outside' both regulates and constitutes the inside, pointing to the constitution of the self/other division, as well as the social regulation of the norm: 'This sense of constitutivity … is closer to the everyday sense of the self–other dialectic. When we place "regulative" over against this, it means something like that which "regulates," as with a definitive norm or an invocation of essence' (Spivak 2005: 106). The autonomy of the bourgeois self has been radically challenged by much of the critical humanities of the late twentieth century. Theorists have called our attention to the ways in which bourgeois subjectivities are the effects of regulation, and shown us ways to track the excluded figures that contribute to historically specific constructions of the norm. The pirate figure offers a way to track the ways in which neoliberal governmentality has reshaped the subjects of technology and of modernity at the turn of the century. The genealogical study of the pirate figure I am advocating would draw from the work that philosophers have done on subjectivity and desire, perhaps bringing the Hegelian question of the subject constituted by alterity in conversation with a Derridean tracing of the constitutive Other, a method which both Butler and Spivak have sketched in other contexts. In addition, however, this genealogical treatment would need to draw from the sphere of social science as well as the historiography of technology. To illustrate why I think of the social and the historical as of equal importance in this task as the philosophical, I suggest below some sources of social science methodology, drawn from Science and

Technology Studies (STS) as well as Geography. A historiography of technology in this context might draw on STS, as well as on Foucault's notion of biopolitics and governmentality, which have already been key to humanist theorizing. For reasons of space, this methodological outline can only sketch an approach to each of these areas. A full explication of all these as resources for the construction of this genealogical method would entail a collaborative exercise towards the construction of a 'next generation' of pirate studies.

To read the pirate as a boundary object and border figure is to invoke a range of analytic registers. Three conceptual frames, borrowed from social and historical disciplinary conversations, are particularly useful to think with: the sociological, the cartographic and the critical-historiographic.

The sociological notion of boundary objects is widely used by scholars in Science and Technology Studies. This approach starts by seeing all concepts and objects as embodying dynamic, shifting significations, being 'weakly structured in common use' rather than set in eternally static essences (Star and Griesemer 1989: 408). Boundary objects shine not primarily as themselves, but as a means of translation. Seeing pirates as boundary objects helps bring into focus the fields stabilizing on either side of the pirate, and thus to see as co-emergent the pirate figure *along with* the fields with which it is always imbricated.

The pirate is a weakly defined figure, and yet in every period during which the figure has been crucial to drawing the line between law and criminality, order and anarchy, it has been redrawn with obsessive clarity by all sides. The pirate figure's definition in cultural history is undermined early (as in the epigram about Alexander and the barbarian pirate, which, invoking power as the relevant structuring field, calls the definitions of both sovereign and pirate into question) and often (as we see in the flux in the representation of pirates over centuries as heroic, criminal, abject or noble). Early modern pirate chroniclers like Daniel Defoe searched for every detail of pirate life, just as more recent feminist pirate historians extolled cross-dressing tough girls as gender-bending role models; and modern digital pirate

hunters as well as their defenders strive constantly to delineate, clarify and analyse pirate practices, natures and functions. The notion of 'boundary objects' gives us a way to track this interpretive flexibility in the pirate figure, which is key to following its otherwise seemingly haphazard history.

It is analytically productive to see the pirate figure as a means of translation, rather than fetishizing a stable notion of the pirate itself. The fetishized pirate, even at its most entertaining, allows an implicit assumption that the pirate has become the new (heroic and/ or destructive) subject of history, and paints a picture of associated fields – such as law and criminality, developed and developing worlds – as clear, static domains among which dart these tricksters-sans-papiers. The boundaries between state and civil society, corporate and social media, legal and illegal activities, advanced and backward economies, have been radically called into question by the histories of advanced capitalism and postcolonialism. Figures such as the irreverent copier, the information thief, the data outsourcer or the anarchist code sharer help us understand anxieties about the fields coalescing around them. Tracking boundary objects helps us trace these anxieties, reminding us that the analytic queries most appropriate to our historical moment are about the fuzziness of these fields and their political consequences, rather than about the policing of in-between, anxiety-provoking figures.

The cartographic notion of borders, too, can be productive to think with. Because of the complex mathematical and political histories of cartography, many cartographers work with a nuanced acknowledgement of the fundamental constructedness of mapping conventions. Geographers work with borders and boundaries as political and physical features of the world that must be inscribed onto our representative mappings. In many ways, the postcolonial pirate has emerged as the representative figure of a border, inscribing onto new digital cartographies the legacy of colonial knowledge formations. As new media theorist Terry Harpold pointed out in his study of early maps of the internet, mapmakers' self-referential insights and geographers'

theoretical discourse were often lost in the euphoric age of digital maps. Harpold showed how 1990s' internet maps obscured transnational historical complexities, reified certain kinds of political hegemony and revealed disturbingly neocolonial aspects of popular network discourse (Harpold 1999). In other words, critical histories of borders seemed to drop away in the new discourses of digitality. This helps account for the force with which colonial stereotypes seemed to return, unchallenged, in digital discourses. The metaphors of criminality applied to postcolonial pirates recall the anxieties that colonial administrations expressed about nomadic tribes and the tangled socialities of colonial geographies. Entire tribes in India were declared inherently criminal under the Criminal Tribes Act (1871); at least part of the anxiety can be traced to the late nineteenth-century need for stable sources of labour in the 'tribal' tracts of India's resource-rich hill areas. Anthropology, Religion and Geography formed a nexus of knowledge practices from which the criminal tribal emerged as a subject of law in late nineteenth-century India. Tracing the figure of the tribal has been a productive way to reveal the practices of the colonial state, and its interfaces with the knowledge practices of the time. Analogously, tracking postcolonial pirates as symptoms of geographic and political borders can be analytically productive, as a method to reveal the ways in which nation–state distinctions are being re-sedimented even while popular discourses of culture proclaim the end of borders.

Critical theory allows us to understand a third aspect of the pirate figure as border troubler. Borders and boundaries do more than represent embedded historical geographies; they play a part in constituting the entire range of human experience, from the development of the individual self (though a distinction from an Other), to the experience of national identity (as forged through its difference from outsiders). Humanist theory has elucidated what we might call the subjective life of borders. The fiction of an autonomous self/nation/ agency begins with, and is continually reconstituted by, an imagined boundary with an Other. In so far as pirates constitute borders between good and bad citizens as they relate to property, their shifting historical

roles help us track not only the social life of objects and their owned, shared or ambiguously circulating status, but also the corresponding subject positions. The tracking of subject positions corresponding to the proper ownership of objects helps us recognize, for example, the good subject as one who both consolidates not only her products but also her own/proper self as her own property, and respects the proper ownership subjects in her 'community' (another properly constituted entity). Proper citizenship and subjectivity implies participation and exchange in a chain of properly constituted communities, agents and objects. It is the shifting constitution of these subject–object assemblages that is of most interest to the critical theorist, who traces the genealogical flux of histories (of the past, present and future) that pirate figures co-constitute. This shift cannot be described synchronically. A critical theoretical approach that is psychologically and philosophically astute but not historically attentive would miss ways in which the underlying domain of capital and transnational geopolitics changes the terrain on which subject–object assemblages engage in this chain of exchange. Shifts in the nature of capital flows and productivity are widely acknowledged to be part of the technological landscape in which the contemporary pirate figure operates. But we have yet to see nuanced analyses of the pirate and capitalism that can do more than posit the pirate as the twenty-first-century substitute for the heroic proletarian figure resisting nineteenth-century industrial capitalism.

   Capitalism has changed since the nineteenth century, and so have the figurations of resistance to it. Michel Foucault has sketched a figure of eighteenth- and nineteenth-century agency that offers a more complicated picture than that of the heroic proletarian.[20] Correspondingly, he

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[20] See, for example, the published lectures of Michel Foucault (Foucault 2003, 2007, 2010); that is, *Abnormal* (1974–5), *Society Must Be Defended* (1975–6), *Security, Territory, Population* (1977–8) and *The Birth of Biopolitics* (1978–9). Because Foucault's notion of capillary power and dispersed subjectivities is complicated, being developed in sometimes contradictory ways through his entire body of work, some critics claim that his theorizations leave no room for agency. This characterization, I would argue, stems from fantasmatic assumptions about autonomous, self-acting individuals that would constrain theorists to rather conventional, positivist ideas of self-hood and agency. It may be these kinds of misconceptions that have so far prevented questions

has helped us understand the state as neither a monstrous Leviathan nor a withering-away sovereign, but as a 'correlative of a particular way of governing'.[21] That way of governing is negotiated in each historical moment, with some periods being characterized as 'ruptures'. Like the notion of paradigmatic incommensurability in Thomas Kuhn's work (1962), the notion of rupture in Foucault has often been over-drawn by both supporters and critics. There is both continuity and change in Foucault; and there is much to be gained by reading the present moment both in continuity with a political economy that emerges in the seventeenth and eighteenth centuries, but at the same time one with many deep tears in the fabric of that economy, that perhaps tend toward a technological–social rupture in modes of self-hood and governance.

Foucault traces the emergence of political economy and civil society in the eighteenth century as a contingent outcome of an agonistic process. It represents a historical sedimentation of resistance and accommodation, opportunism and compromise that was roughly contemporaneous with a shift in emphasis from sovereign to regulatory systems of power:

> It is from the second half of the eighteenth century, precisely at the time
> when the questions of political economy and of the governmentality of

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in the historiography of technology from being read productively alongside the work of Foucault (whose doctoral dissertation, it is worth remembering, was supervised by the historian and philosopher of science Georges Canguilhem).

[21] Foucault argues, at the beginning of this volume: 'The state is not a cold monster; it is the correlative of a particular way of governing' (1979: 6) and 'I think that fundamentally it was political economy that made it possible to ensure the self-limitation of govern- mental reason' (13). Summing up, he notes: 'Homo oeconomicus and civil society are therefore two inseparable elements. Homo oeconomicus is, if you like, the abstract, ideal, purely economic point that inhabits the dense, full, and complex reality of civil society. Or alternatively, civil society is the concrete ensemble within which these ideal points, economic men, must be placed so that they can be appropriately managed. So, homo oeconomicus and civil society belong to the same ensemble of the technology of liberal governmentality' (1979: 296). My larger point about rupture and continuity, and its link to technological discussions about analogue–digital ruptures and continuities, is part of a conversation about technological modernity that has been explored in some New Media Theory and Digital Humanities scholarship.

economic processes and subjects are being addressed, that the notion
of civil society will … be thoroughly reorganized.

(Foucault 1979: 298)

Many people understand this as a precise periodization – as if a switch
was flipped in the seventeenth or eighteenth century, ending the right
of the sovereign to kill his subjects, and the coercive power of states,
while beginning a biopolitical regime of public health, the census and
self-surveillance. The historical reality is far more complex. Foucault
gives full reign to the exploration of this complexity in his lectures,
acknowledging the inherent weakness of any grand claim of rupture,
and repeatedly using descriptions of a dynamic, shifting terrain of the
juxtaposition and interpenetration of forms of power. The regulatory,
biopolitical form does emerge as the dominant one in the modern
period, according to him; but this is no linear and permanent victory.
The contingent sedimentations of civil society and liberalism are
never free from a resurgence of agonism; politics is a constant war,
not a stable equilibrium. As several postcolonial critics have noted,
the possibility for sovereign power and its ability to kill are never far
from the surface in domains defined by race, slavery and colonialism
(Mbembe 2003).

  Evgeny Morozov has argued that the problem of digital information
is too important to be left to experts on technology.[22] Our current
period, partly because of its technological reshapings of social, legal

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[22] Morozov (2013) writes: 'It's wrong to think that all this digital stuff can just be pigeon-
holed and delegated to the bright young people who know how to code. This "digital
stuff" is of fundamental importance for the future of privacy, autonomy, freedom, and
democracy itself.' Much of Morozov's diagnosis is astute, although his conclusions come
across to many as nostalgic or simplistic; for example, he argues that we need to stop
commodifying information; that is, to cease being hypocritical information consumers.
We might argue that the 'commodification' ship has already sailed, and that we need
strategies that account for the state of things as they are, not as they may have been had
we not commodified information. Whether we click 'like' on facebook, sign up for a
'free' gmail account or enter our phone number in the local organic grocer's database,
we are already within the information ecology that lives off the commodification of self
and things. It matters little, in the informational logic of this system, whether we 'like' an
anti-imperialist or a shoe-commercial site, whether we buy junk food or organic juice.
All our daily practices generate data that shape consumption and governance as well as
subjectivities and communities.

and economic behaviour, is one in which the contests over civil society – its shape, and the nature of the power it wields – are once again dramatically and obviously in play, more radically than at any time after the eighteenth-century shifts which Foucault identified. Through social media, it seems that global citizen networks have unprecedented power to shape the course of history, as many celebrations of the Arab Spring observed. Through corporate and state deployment of conventional surveillance techniques as well as novel 'big data' analyses, however, it seems to many other, more pessimistic commentators that the powers of surveillance and the efforts to create sovereign, state-regulated communication networks bring the policing powers of the state to unprecedented heights.[23] The swings of global recessions and state economic collapses have brought the spectres of mass unemployment, immiseration, starvation and deprivation back to everyday experience, in demographic patterns that cross conventional borders of developed and underdeveloped. The questions of who will live, and who will die, are posed in ways for which the recent histories of liberalism had not prepared us.[24]

The political economy of this technological moment is shifting; from some perspectives it looks like the renewal of a Bretton-Woods-type pact to forge new geopolitical groupings; at other times it appears that

[23] In 2012, the US White House issued a statement critiquing the development of sovereign internet loops: '[S]ome national governments seek to balkanize the Internet by establishing barriers to the free flow of information under the pretext of protecting cybersecurity, social stability, or local economies. … [T]hese regulatory actions would create a confusing array of "local Internets," establishing different rules for different places' (White House 2012). Ironically, in the following year the US surveillance of its own internet was widely discussed in the wake of the Edward Snowden NSA-leaks, spurring critic Evgeny Morozov, among others, to point out that the age of sovereign, policed media and communication was here, and the dream of a truly open, global internet was dead. Nevertheless, the existence of the 'dark net', and activist efforts to push privacy technologies beyond the state's capacities to police them, indicate that this chapter in the struggle over internet 'freedom' is not yet over, although of course the (never-tenable) fantasy of complete freedom is now weaker than ever.

[24] Foucault has argued that the question of race was one way in which civil society answered the question of who would die (See Foucault 2003: ch. 11, 'Society Must Be Defended'). Achille Mbembe (2003) has posed the question of death and sovereignty in provocative ways, beginning a conversation with which postcolonial piracy studies needs to engage.

we have entered the era of radically decentred, non-state, transnational power. Civil society is in the process of being redefined, as everyone – from National Security coders to teenage skateboarders – shapes and is shaped by the surveillance state. 'Big data' efforts do not have the individuated focus that most associate with the god-like stereotype of Big Brother surveillance narratives. On all sides of the power equations, everyone is still figuring out what the state, corporations and activists can do with data and its networks. In this process, the state, civil society and subjectivity are being reconfigured. This reconfiguration is not a simple rupture between putatively pre-technological humanist and technologically saturated (or post-human) eras. Nor is it a continuous, universal dialectic of state versus people power. The ways in which we define civil society will be part of how we shape developments in governmental technology; we are part of this discussion, and shapers of contemporary governmentality, not simply passive targets of coercive power. 'Instead of turning the distinction between the state and civil society into an historical universal enabling us to examine every concrete system', Foucault reminds us, 'we may try to see in it a form of schematization peculiar to a particular technology of government' (2010: 319).

> Civil society is like madness and sexuality, what I call transactional realities. That is to say, those transactional and transitional figures that we call civil society, madness, and so on, which, although they have not always existed are nonetheless real, are born precisely from the interplay of relations of power and everything which constantly eludes them, at the interface, so to speak, of governors and governed. Civil society, therefore, is an element of transactional reality in the history of governmental technologies, a transactional reality which seems to me to be absolutely correlative to the form of governmental technology we call liberalism.
>
> (Foucault 2010: 319)

As Foucault saw madness and sexuality as transactional interfaces that allow us to see the hinges in seventeenth- and eighteenth-century shifts

to modern forms of governmentality, I suggest that we see piracy as a transactional reality. Rather than investigate specific pirate figures as heroic subjects of the new millennium, we can draw together, out of the rich domain of pirate studies that now exists, a genealogical understanding of how piracy stands at a new set of intersections of knowledge and power: between surveillance and participation, coercion and consent, centralized and distributed systems. In the same ways that social media participants today are shaping, and being subject to, emerging technologies of government, pirate scholars today are part of the deep shifts in civil society. The future directions of pirate studies are embedded in, shaped by and co-constituted with the structures of power-to-come.

Next steps in pirate studies?

The three modes of inquiry outlined above – sociological, cartographic and critical-historiographic – are reminders that pirate scholarship is now at a point where we need to move beyond the *bildungsroman* with the pirate as its hero, and towards an understanding of the pirate figurations within larger historic and social shifts that have been occurring contemporaneously. These modes of inquiry, in other words, remind us that we need to frame new questions, seeking to understand not so much the characteristics and motivations of the pirate-as-a-character, but the stakes and consequences of different mappings of the pirate figure.

The pirate *per se*, congealed or conjured in its present forms, fascinating though s/he is, is less interesting as hero, as archetype or as role model, than as discursive trace and genealogical device. While the mapping of the pirate figure itself as a legal, political actor is an important and fascinating study, the mapping of the *boundaries* between pirates and property-respecting citizens, and among well-intentioned, innocent, righteous or malicious pirates, for example, allows us to map the ongoing constitution of emerging

subject positions, technical-cultural objects and their shifting political-economic habitats. How does the pirate figure come to be rendered a challenging, threatening or archetypal figure of the time, repeatedly and over so many epochs? What transactional realities does it elucidate? Detailed histories of pirates in each period, including the twenty-first century, are available, and we can map the enunciative conditions by which the pirate figure comes to act in the world. In recognizing the constitutive role of the outside, and in combining this critical theoretical insight with the sociological insights into organizational behaviour and the technical devices of transnational data-sharing, the pirate figure comes into focus, but as a transactional nexus rather than an essence. The next steps in pirate studies might proceed, then, not by a deeper understanding of the pirate-figure-in-itself, but by observing the civil societal, political and economic flux which constitutes and is constituted by it.

References

Althusser, L. and Balibar, E. (1971), *Reading Capital*. New York: Pantheon Books.

Anderson, N. and Farivar, C. (2013), 'How the Feds Took Down the Dread Pirate Roberts', *Arstechnica*, 3 October. Web.

Arquilla, J. and Ronfeldt, D. (2001), *Networks and Netwars: the Future of Terror, Crime and Militancy*. Santa Monica, CA: RAND.

Augustine (1922), *St. Augustine's Treatise on the City of God*, abridged and ed. F. R. M. Hitchcock. London: London Society for Promoting Christian Knowledge. Web.

Boyle, J. (2008), *The Public Domain: Enclosing the Commons of the Mind*. New Haven, CT: Yale University Press.

Butler, J. (1999), *Subjects of Desire: Hegelian Reflections in Twentieth-Century France*, 2nd edn. New York: Columbia University Press.

Caffentzis, G. (2007), 'Crystals and Analytic Engines: Historical and Conceptual Preliminaries to a New Theory of Machines', *Ephemera*, 7(1): 24–45.

Chander, A. and Sunder, M. (2004), 'The Romance of the Public Domain', *California Law Review*, 92: 1331–73.

Chaturvedi, V. (2000), *Mapping Subaltern Studies and the Postcolonial*. London: Verso.

Defoe, D. (1972), *A General History of the Pyrates*, ed. M. Schonhorn. London: J. M. Dent & Sons.

Deleuze, G. (2004), *Francis Bacon: The Logic of Sensation*. Minneapolis: University of Minnesota Press.

Derrida, J. (1982), *Margins of Philosophy*. Chicago, IL: University of Chicago Press.

Drayton, R. (2000), *Nature's Government: Science, Imperial Britain, and the Improvement of the World*. New Haven, CT and London: Yale University Press.

Foucault, M. (2003a), *Abnormal: Lectures at the Collège De France, 1974–75*, trans. G. Burchell. New York: Picador.

—(2003b), *Society Must Be Defended: Lectures at the Collège De France, 1975–76*, trans. D. Macey. New York: Picador.

—(2006), *History of Madness*, ed. J. Khalfa. London and New York: Routledge.

—(2007), *Security, Territory, Population: Lectures at the College De France, 1977–78*, M. Senellart, F. Ewald and A. Fontana (eds). Basingstoke and New York: Palgrave Macmillan.

—(2010), *The Birth of Biopolitics: Lectures at the Collège De France, 1978–1979*, ed. M. Senellart. New York: Picador.

Greenberg, A. (2013), 'Collected Quotations of The Dread Pirate Roberts, Founder of Underground Drug Site Silk Road and Radical Libertarian', *Forbes*, 29 April. Web.

Habermas, J. (1987), *The Philosophical Discourse of Modernity: Twelve Lectures*. Cambridge, MA: MIT Press.

Harpold, T. (1999), 'Dark Continents: Critique of Internet Metageographies', *Postmodern Culture*, 9(2) (January). Web.

Hawley, C. (2013), 'Pirate Party Passes into Irrelevance', *Spiegel Online International*, 10 July. Web.

Johns, A. (2011), *Piracy: The Intellectual Property Wars from Gutenberg to Gates*. Chicago, IL: University Of Chicago Press.

Kiley, B. (2013), 'Bitcoin, the Pirate King of the Silk Road, and the Problematic Opportunities of the Dark Web', *Slog*, 16 August. Web.

Kuhn, T. S. (1962), *The Structure of Scientific Revolutions*. Chicago, IL: University of Chicago Press.

Larkin, B. (2008), *Signal and Noise: Media, Infrastructure, and Urban Culture in Nigeria*. Durham, NC: Duke University Press.

Linebaugh, P. and Rediker, M. (2002), *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic*. Boston, MA: Beacon Press.

Mbembe, A. (2003), 'Necropolitics', *Public Culture*, 15(1): 11–40.

Morozov, E. (2013), 'Information Consumerism: The Price of Hypocrisy', *Frankfurter Allgemeine Feuilleton*, 24 July. Web.

Mueller, G. O. W. and Adler, F. (1985), *Outlaws of the Ocean*. New York: Harvest Marine.

Oudenampsen, M. (2011), 'Interview with Bifo (Franco Berardi)', *MO* (blog). Web.

Philip, K. (2003), *Civilizing Natures: Race, Resources and Modernity in Colonial South India*. New Brunswick, NJ: Rutgers University Press.

—(2005), 'What Is a Technological Author? The Pirate Function and Intellectual Property', *Postcolonial Studies*, 8(2): 199–218.

Rand, R. (ed.) (1992), *Logomachia: The Conflict of the Faculties Today*. Lincoln, NE: University of Nebraska Press.

'Rockin' in the Free World' (n.d.), *Wikipedia: The Free Encyclopedia*. Web.

Schiebinger, L. L. and Swan, C. (2005), *Colonial Botany: Science, Commerce, and Politics in the Early Modern World*. Philadelphia, PA: University of Pennsylvania Press.

Shiva, V. (1997), *Biopiracy: The Plunder of Nature and Knowledge*. Boston, MA: South End Press.

Simone, A. M. and Abouhani, M. A. (2005), *Urban Africa: Changing Contours of Survival in the City*. London and Dakar: Zed Books, in association with CODESRIA.

Spary, E. C. (2000), *Utopia's Garden: French Natural History from Old Regime to Revolution*. Chicago, IL: University of Chicago Press.

Spivak, G. C. (2005), 'Notes Toward a Tribute to Jacques Derrida', *differences*, 102–13.

Stanley, J. (1995), *Bold in Her Breeches: Women Pirates Across the Ages*. San Francisco, CA: Pandora.

Star, S. L. and Bowker, G. (1999), *Sorting Things Out: Classification and Its Consequences*. Boston, MA: MIT Press.

Star, S. L. and Griesemer, J. (1989), 'Institutional Ecology, "Translations" and

Boundary Objects: Amateurs and Professionals in Berkeley's Museum of Vertebrate Zoology, 1907–39', *Social Studies of Science*, 19(3): 387–420.

Sundaram, R. (2009), *Pirate Modernity: Delhi's Media Urbanism*. London and New York: Routledge.

Taylor, C. (2013), 'Prism, Surplus Sociality, and the Crisis of Semio-Capital', *Of C. L. R. James* (blog). Web.

Thrashers Wheat (2004), 'Rolling Stone's 500 Greatest Songs of All Times', *Neil Young News*, 19 November. Web.

University of Birmingham, Centre for Contemporary Cultural Studies (1982), *The Empire Strikes Back: Race and Racism in 70s Britain*. London: Hutchinson in association with the CCCS.

White House (2012), 'White House Statement', 8 May. Web.

Young, N. (2012), 'Interview on US National Public Radio', 31 January, 10.42 a.m., PT. Web.

Interrogating Piracy

Race, Colonialism and Ownership

Adam Haupt

This chapter argues that mainstream media rhetoric on piracy serves narrow, corporate interests at the expense of the public interest, and especially so in colonial and postcolonial contexts. It will examine some of the fundamental assumptions that inform modern legal conceptions of intellectual property in order to draw attention to flawed arguments about the commodification of cultural expressions, such as music. Specifically, this work will explore the influence of John Locke's arguments about the principles of natural justice on the Statute of Anne, which was very influential on modern Western copyright laws, in order to argue that racial and gender-based exclusions were built into legal thinking about the ownership of tangible and intangible property. Ultimately, these exclusions coincided with the expansion of Western imperialism and colonial projects. The story of commons enclosure in England may thus be read as a precursor to Western imperialism as we know it today, where a corporate rhetoric on piracy masks contemporary strategies of commons enclosure and serves to illegalize postcolonial struggles against the inequities of Western cultural imperialism. By way of illustration, I will briefly explore the story of South African musician Solomon Linda – composer of the song 'Mbube', which became a Disney hit in *The Lion King* – to demonstrate how these early attitudes towards cultural expression and the ownership of ideas continue to be the basis of racist practices in the (post)colonial present.

In her book *Copyright and the Public Interest*, Gillian Davies discusses the underlying principles that govern modern copyright law.

She argues that the Statute of Anne was the 'foundation upon which modern copyright in the Western World was built' (Davies 2002: 9). The Statute, which 'recognised the individual author as the fountainhead of protection' and adopted limited terms of protection of published work (ibid.: 10), was influenced by the arguments of John Locke, who advanced four related arguments. First, Locke contended that 'people had a natural right of property in their bodies' and that, subsequently, they 'owned the labour of their bodies and the results of their labour' (ibid.: 14). The second principle follows from the first: 'Remunerating a creator for the use of his work enables him to continue working and is natural justice in accord with the maxim that the labour is worthy of his hire' (ibid.: 15). This just reward for labourer principle provides a stimulus to creativity, the third principle. The assumption made by Davies based on Locke's ideas is that authors generate knowledge for financial gain and that the absence of a 'just reward for labour' would lead to a decline in published work. These three principles therefore serve social requirements, the fourth principle: 'It is a social requirement in the public interest that authors and other right owners should be encouraged to publish their works so as to permit the widest possible dissemination of works to the public at large' (ibid.: 16). Davies's analysis highlights how the influence of Locke's ideas in the formulation of the Statute led to a focus upon the individual author, which coincided with emerging capitalism's privileging of individual accumulation of wealth through strategies such as commons enclosure. This focus on the individual author is understandable, given that the monopoly of the Stationers' Company had to be broken in order to facilitate innovation, competition and the creation of new works. However, this emphasis on the individual auteur also coincided with the transition from feudalism to capitalism.

In 1968, Garrett Hardin had argued that English common fields needed to be enclosed and managed by private landowners in order to avoid irresponsible overutilization by the serfs (Hardin 1968). The assumption was that commoners could not be trusted to manage the commons themselves and that private landowners could be trusted

with the task of averting environmental disasters. This argument has been complicated by Dorothy Kidd, who contends that this purportedly necessary move benefited the landed gentry, which needed large tracts of land and cheap labour to engage in large-scale commercial farming (Kidd 2003). In the end, commoners were forced into wage labour. Taking this line of thinking further, Jane Humphreys writes that the proletarianization of commoners undermined the independence of women, particularly widows, who found it increasingly difficult to subsist on common resources (Humphreys 1990). In her research on gender biases in the work of John Locke, Lorenne Clarke concurs that Locke's understanding of property ownership is premised upon gender inequality:

> Locke must insist on the natural inferiority of women due to their naturally disadvantaged position with respect to reproduction, while it is quite clear that that disadvantaged position can be brought about only by denying women access to the ownership and control of private property and thereby gaining the means to ensure their own survival and that of any children they might bear.

> (Clarke 1977: 723)

Locke's view of property ownership is therefore in line with his patriarchal context, which privileged white male accumulation of property. The influence of his work goes beyond gender-based exclusions, though. Writing about the influence of Locke's philosophy on US interpretations of copyright law, K. J. Greene asserts:

> John Locke's philosophical legacy deeply influenced the thinking of our Constitutional founders, who consistently equated liberty with property ownership. For example, Alexander Hamilton, a vehement stalwart for property protection by the State, asserted at the Constitutional Convention that the 'one great object of government is personal protection and the security of property.' Locke's theory of personal property asserted that 'every man has Property in his own Person [and thus] the Labour of his body and the work of his hands is properly his.' Taken literally, Locke's philosophy is the antithesis of

slavery, as a slave, by definition, does not own the labor of her or his own body.

<div align="right">(Greene 1999: 345)</div>

As Mark Rose indicates, the key to 'Locke's thought was the axiom that an individual's "person" was his own property' (Rose 1993: 5). Hence, 'through labor an individual might convert raw materials of nature into private property' (ibid.). Under slavery, the US and the UK did not recognize black subjects' rights of property in their bodies and, therefore, did not believe that they were entitled to the fruits of their labour. If these rights were not recognized, it is not difficult to see how the logic of common field enclosure in England was extended to the 'New World': Africa, the Americas and Southeast Asia. If commoners in England were subjected to the paternalistic reasoning presented by Hardin in his justification for avoiding an assumed 'tragedy of the commons', it is possible to imagine how paternalistic relationships developed under European colonial rule, particularly when it came to approaches to managing natural resources and labour.

Greene writes that black subjects' intellectual property rights, much like their rights to tangible property, were not protected for specific reasons:

> In practice, Blacks as a class received less protection for artistic musical works due to (1) inequalities of bargaining power, (2) the clash between the structural elements of copyright law and the oral predicate of Black culture, and (3) broad and pervasive social discrimination which both devalued Black contributions to the arts and created greater vulnerability to exploitation and appropriation of creative works. This phenomenon of cultural appropriation experienced by Black artists compares to the history of legal subordination experienced by African-Americans under property law principles.

<div align="right">(Greene 1999: 356–7)</div>

He argues further that the exploitation of black subjects' intellectual property was comparable to their marginalization under property law. Copyright's focus on individual authors was uncomprehending of

collective, oral modes of knowledge production and cultural expression in a racist context that largely denigrated black contributions to society and made it difficult for black artists to negotiate contracts as equals. Despite these difficulties, slaves and freed slaves 'continued to produce original works' that 'went uncompensated' – thus undermining Locke's just reward for labour argument (Greene 1999: 358). Black subjects continued to innovate new cultural forms well into the twentieth century despite these racial disparities and regardless of the poor prospects of financial rewards. In this regard, Reebee Garofalo holds that black artists made a substantial contribution to popular music despite industry and audience racism, which ensured that 'black personnel [were] systematically excluded from positions of power within the industry and [that] the audience [was] artificially fragmented, in part along racial lines' (Garofalo 1994: 275).[1]

The racist politics at the heart of the reception and consumption of work by black artists also lays the groundwork for understanding how cultural appropriation operates in popular culture. Jonathan Hart argues that cultural appropriation 'occurs when a member of one culture takes a cultural practice or theory of a member of another culture as if it were his own or as if the right of possession should not be questioned or contested' (Hart 1997: 138). The key issue at stake in discussions of cultural appropriation is uneven relations of power between those who are represented and those who have the necessary symbolic power to convert marginal communities' cultural expressions into symbolic capital (Haupt 2012; Skeggs 2004). From this perspective, Greene's reference to black artists' poor bargaining power makes sense.

A South African example of cultural appropriation is the song 'Mbube' by Solomon Linda. Linda received no royalty payments and died a pauper despite the fact that his song went on to become one

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[1] This suggests that people do not produce work for exclusively financial reasons, given that African-American artists continued to produce artistic works despite their social and economic marginalization. Thus, despite the commodification of black cultural expression at the expense of African-Americans, one could argue that the profit motive is not the only driver of knowledge and cultural production.

of the most commercially successful songs in the history of popular culture (Ovesen and Haupt 2011). It seems likely that Linda also received no royalties for the many cover versions and adaptations of his composition, as suggested by the documentary *A Lion's Trail* (Verster 2002), largely because of his poor bargaining power and poor knowledge of his legal rights in the context of apartheid South Africa. As in the US, the politics of race in South Africa played a key role in the marginalization of black artists. This marginalization is underscored by the fact that the song became known as 'Wimoweh' and 'Wimba Way' before it resurfaced as 'The Lion Sleeps Tonight' in the Disney hit film *The Lion King*, a children's animation which presents Africa as an animal kingdom (Malan 2000; Ovesen and Haupt 2011). By the time the Linda composition made its way to the US and went on to become a big commercial success for a number of American musicians, the original Zulu title 'Mbube' (which means lion) had become the nonsensical 'Wimoweh' and 'Wimba Way'. This offers a good case in point of how cultural appropriation works. Perry Hall's analysis of the appropriation of African-American cultural forms seems relevant to African cultural expression as well. Hall contends that the 'pattern of separating the art from the people leads to an appropriation of aesthetic innovation that not only "exploits" Black cultural forms, commercially and otherwise, but also nullifies the cultural meaning those forms provide for African Americans'. It is in this way that these appro-priations 'become ineffective as expressions and affirmations of the unique cultural experiences from which they arise' (Hall 1997: 31–2). In essence, the dislocation of cultural signifiers and expressions from the marginal communities that produce them allows more powerful communities – such as colonizers, slave-owning communities or their privileged descendants – who do not share the same lived experiences of these marginal communities to employ these signifiers and expressions for their own ends, often without the permission or knowledge of these communities.[2] The dislocation of 'Mbube' from the geographical and

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[2] Further examples of cultural appropriation in contemporary popular culture may be found in the research of Steven Feld. For example, Feld's work on *Deep Forest* (2000)

cultural context in which it was produced and the absence of dialogue with Linda and his fellow artists in Africa enabled American musicians to appropriate the song and project a set of ideas about Africa onto the song (for example, ideas about lions sleeping in a jungle, as opposed to the more likely plains of the Serengeti or the Kalahari). The cultural appropriation of Linda's music parallels certain aspects of *The Lion King*, which tells the tale of a lion cub who must succeed his late father as the lion king. The protagonist needs to go through a rite of passage to save the kingdom from the period of darkness that prevails with his father's death. The film is more than just a variation of Shakespeare's *Hamlet* (Gooding-Williams 1995). Robert Gooding-Williams contends that the Disney film reflects Hegel's view that Africa:

> is no historical part of the World; it has no movement or development to exhibit. Historical movements in it – that is in its northern part – belong to the Asiatic or European World. … What we properly understand by Africa, is the Unhistorical, Undeveloped Spirit, still involved in the conditions of mere nature, and which had to be presented here only as on the threshold of the World's History.
>
> (Hegel 1956: 99)

The legacy of Hegel's claims about Africa that legitimated the exploitation of Africa and the enslavement of its people resonates in neocolonial narratives like *The Lion King*. Gooding-Williams (1995) argues that the film recycles and reiterates Hegel's perspective of Africa by 'depicting Africa as a naturally existing and organically integrated "circle of life"'. The framing of Africa as 'natural', 'primitive', 'undeveloped' and 'unhistorical' makes it possible for the West to project a set of values

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reveals unequal power relations between artists of the global North, which seems unable or unwilling to comprehend the concept of collective knowledge production, and communities from the global South. See also Feld's research on cultural appropriation on Herbie Hancock's 1973 album, *Headhunters* (Feld 1996). For a detailed discussion of cultural appropriation in contemporary South Africa, see *Static: Race and Representation in Post-Apartheid Music, Media and Film*, which argues that self-described 'zef-rave-rap' group *Die Antwoord* employs blackface (Haupt 2012). It is perhaps unsurprising that their surreal parodies found a receptive audience in the US, which has a long history of blackface theatre and cinema.

onto Africans that would justify their subjugation under colonialism
– something which resonates with Eric Lott's research on blackface
minstrelsy. Lott writes that cultural appropriation went beyond just
'borrowing' from marginal communities without their permission or
knowledge. Blackface minstrelsy, in which white performers literally
blackened their faces and adopted black accents, performed white,
racist projections of black caricatures in music, theatre and cinema for
white audiences. Lott writes that what 'was on display in minstrelsy was
less black culture than a structured set of white responses to it which
had grown out of northern and frontier social rituals and were passed
through an inevitable filter of racist presupposition' (Lott 1993: 101).
Ideologically, blackface therefore served a very particular political
purpose as it revealed a great deal about white projections of blackness,
notions of whiteness as well as colonizers' rationalization of racial
oppression. Writing about racism in Western cinema, Robert Stam and
Louise Spence argue: 'Europe constructed its self-image on the backs
of its equally constructed Other – the "savage", the "cannibal" – much
as phallocentrism sees its self-flattering image in the mirror of woman
defined as lack' (Stam and Spence 1983: 4).

The analogy between phallocentric and racist projections of
femininity and blackness, respectively, allows one to think about the
kinds of racial and gender-based exclusions in the history of property
and intellectual property as discussed by Clarke, Greene, Kidd and
Humphreys. The exclusions discussed by these theorists reveal how
white male economic power was built upon racial and gendered
processes of marginalization. Likewise, the arguments by Lott, Hart,
Hall and Gooding-Williams also allow one to think about the ways in
which racist and sexist modes of representation reinforce white male
hegemony. The power of the one interest group comes at the expense
of the 'other'. *The Lion King* projects a set of neocolonial mythologies
about Africa as unhistorical, undeveloped and natural onto the silver
screen, while employing a popular song that was literally appropriated
from Linda and reworked as if it were raw material without an attempt
to engage its author or the actual cultural context in which the song

was produced. The song is treated as if it were in a state of nature, waiting to be 'dressed to advantage'. Mainstream white popular culture therefore constructs itself through white projections of blackness.

African-Americans' experience of cultural appropriation in the US becomes significant when considering that country's own approach to intellectual property during the emergence of black cultural forms, such as the blues, as well as the film and book publishing industries. According to Debora Halbert, the Lockean concept of landed property was used to explain the intangible right of intellectual property (Halbert 1997: 58–9). The irony is that the notion of ownership of tangible or intangible property rights did not apply to black subjects. A further irony is that the US did not protect foreign authors' copyright and that large-scale duplication of foreign work took place – in other words, the US was complicit in the piracy of large amounts of foreign work (Halbert 1997). It was not until the US made the transition from an industrial to an information economy in the mid-1980s that it began to use laws on copyright, trade agreements and multilateral agreements on intellectual property to globalize its own narrow interpretations of intellectual property rights (Halbert 1997; Haupt 2008). By the mid-1990s, the US was placing pressure on countries that it felt were not taking its concerns about piracy seriously. Ironically, as Halbert writes, the US 'accused China of failing to protect products as far ranging as Disney's *The Lion King* to Microsoft's computer programs' (Halbert 1997: 65). While the US effort to fight piracy on a global scale, be it P2P file-sharing or goods counterfeiting, has been presented as part of attempts to protect creators, its rhetoric has relied on the myth of the individual auteur (Alderman 2001; McCourt and Burkart 2003; Haupt 2008). In the case of alleged music piracy on P2P networks, it has claimed to act on behalf of musicians (Haupt 2008). However, such a claim rings hollow because the copyright holder is rarely the artist who created the work in question and because the rights holder is often a corporate entity, to which the 'just reward for labour' argument may hardly be said to apply (Schumacher 1995; McLaren 2002). This is a context in which only four holding companies dominate about 75 per

cent of the global market share in the music industry (Patry 2009: 120). It is therefore clear that corporate attempts to fight piracy are questionable, as they appear to be consolidating their own monopolist interests. They are thus not acting on behalf of artists or creators; historically, they have certainly not acted on behalf of black artists such as Solomon Linda.

In certain respects, this brief consideration of piracy in relation to the history of cultural appropriation in music demonstrates Michael Hardt and Antonio Negri's assertion that 'the wealth collectively produced by the workers becomes the private property of the capitalist' (Hardt and Negri 2004: 188). This is a significant insight because commons enclosure facilitated industrialization and the creation of a wage-dependent underclass that could no longer access the commons to subsist. It also extended to colonies, where people were enslaved to generate wealth for emerging industries and markets (Rockman 2012). During the second enclosure movement, which is the name James Boyle gives to the shift towards narrow and monopolist tendencies during the emerging information age, we see the enclosure of the information commons on the internet, which was collectively produced by hackers (Boyle 2003, 2008). I would argue that this second enclosure movement actually had a precursor: black cultural expression, which was collectively produced in the era of slavery as a means of coming to terms with a range of racialized atrocities (Gilroy 1993) only to be appropriated and commodified at the expense of its black contributors. In other words, the linguistic commons created by the word play of what Henry Louis Gates calls Signifyin(g) (Gates 1988) gave birth to the blues, jazz and hip-hop (Schur 2009), all of which were commodified and appropriated by the mainstream music industry at the expense of its contributors. In light of the racialized injustices that inhere in the history of ownership, and given that dominant approaches to intellectual property have yet to interrogate individualist notions of knowledge production that do not adequately acknowledge the value of collective knowledge production and the commons, the assumed moral high ground upon which the term 'piracy' rests seems somewhat shaky.

This chapter has argued that media industries' rhetoric of piracy does not acknowledge the racial and gendered exclusions or inequities that form an important part of the history of the ownership of both tangible and intangible property. Disney's use of South African Solomon Linda's 'Mbube' on the soundtrack of its 1990s blockbuster *The Lion King* is rather ironic. A film that perpetuates racial stereotypes about Africa itself employs a song that offers an example of how cultural appropriation works along racial lines as well as in unequal relations of power between the global North and the global South. The fact that the Linda family's case against Disney was eventually settled for an undisclosed amount following the death of Linda himself as well as of one of his daughters does little to dispel this impression (Ovesen and Haupt 2011). In the end, scholarship on commons enclosure is compelled to assume a racial dimension. Boyle's work on the second enclosure movement, which took place in conjunction with the onset of the information age, should perhaps be called the third enclosure movement. If the first enclosure movement commenced with the appropriation of the common fields of England – supposedly to avoid a tragedy of the commons – then the second enclosure movement took place when England proceeded to enclose commons well beyond its borders as the British Empire began to expand globally. This enclosure movement involved the appropriation of tangible property in the form of land and the enslavement of Africans – Locke's argument regarding stimulus for creativity thus did not extend to black subjects, who were denied rights of property in their bodies and, consequently, were denied the right to enjoy the fruits of their labour. As a result, this second enclosure movement also entailed the appropriation of intangible property, be it prose, poetry, music or dance. The key difference between the second and third enclosure movements is that key colonial powers competed with each other for various parts of the commons during the colonial era, whereas today those former colonial powers cooperate with each other to secure hegemony on a global scale through multilateral organizations such as the United Nations, the World Trade Organization (WTO), the World Bank and

the International Monetary Fund (IMF) (Hardt and Negri 2000). Hardt and Negri call this new era of cooperation Empire, which refers to 'a new notion of right, or rather, a new inscription of authority and a new design of the production of norms and legal instruments of coercion that guarantee contracts and resolve conflicts' (Hardt and Negri 2000: 9). It is this shift away from competition and conflict between former colonial entities which ensures that relations of power between former colonizers and the colonized remain more or less in place in the post-independence era. In *The Wretched of the Earth*, Frantz Fanon argues that the new black ruling class in postcolonial African states plays a key role in ensuring that the corporate interests of the West prevail – partly by acting as a buffer between Western corporations and the black majority in the former colonies (Fanon 1968). From Hardt and Negri's perspective, these elites would ensure their countries' participation in these circuits of power through multilateral agreements via organizations like the WTO and WIPO (World Intellectual Property Organization). Disney's *Lion King*, along with its appropriation of 'Mbube', therefore sells its audience a view of Africa that purchases consent for asymmetrical relations of power between North and South, black and white. In the end, industry concerns about piracy mask the ways in which racialized inequities are perpetuated by an approach to intellectual property that continues to serve narrow, neocolonial interests in a supposedly postcolonial era.

References

Alderman, J. (2001), *Sonic Boom: Napster, P2P and the Future of Music*. London: Fourth Estate.

Boyle, J. (2003), 'The Second Enclosure Movement and the Construction of the Public Domain', *Law and Contemporary Problems*, 66(33): 33–74. Web.

—(2008), *The Public Domain: Enclosing the Commons of the Mind*. New Haven, CT: Yale University Press.

Clark, L. M. G. (1977), 'Women and John Locke: Or, Who Owns the Apples in the Garden of Eden?', *Canadian Journal of Philosophy*, 7(4): 699–724.

Davies, G. (2002), *Copyright and the Public Interest*. London: Sweet and Maxwell.

Fanon, F. (1967), *Black Skin, White Masks*, trans. C. L. Markmann. New York: Grove Press.

—(1968), *The Wretched of the Earth*, trans. C. Farrington. New York: Grove Press.

Feld, S. (1996), 'Pygmy POP: A Genealogy of Schizophrenic Mimesis', *Yearbook for Traditional Music*, 28: 1–35.

—(2000), 'A Sweet Lullaby for World Music', *Public Culture*, 12(1): 145–71.

Garofalo, R. (1994), 'Culture versus Commerce: The Marketing of Black Popular Music', *Public Culture*, 7: 275–87.

Gates, H. L. (1988), *The Signifying Monkey: A Theory of Afro-American Literary Criticism*. Oxford and New York: Oxford University Press.

Gilroy, P. (1993), *The Black Atlantic: Modernity and Double Consciousness*. Cambridge, MA: Harvard University Press.

Gooding-Williams, R. (1995), 'Disney in Africa and the Inner City: On Race and Space in *The Lion King*', *Social Identities*, 1(2): 373–9. Web.

Greene, K. J. (1999), 'Copyright, Culture, and Black Music: A Legacy of Unequal Protection', *Hastings Communication and Entertainment Law Journal*, 21: 339–92.

Halbert, D. (1997), 'Intellectual Property Piracy: The Narrative Construction of Deviance', *International Journal for the Semiotics of Law*, 10(28): 55–78.

Hall, P. A. (1997), 'African-American Music: Dynamics of Appropriation and Innovation', in B. Ziff and P. V. Roa (eds), *Borrowed Power: Essays on Cultural Appropriation*. New Brunswick: Rutgers University Press, 31–52.

Hardin, G. (1968), 'The Tragedy of the Commons', *Science*, 162: 1243–8.

Hardt, M. and Negri, A. (2000), *Empire*. London and Cambridge, MA: Harvard University Press.

—(2004), *Multitude: War and Democracy in the Age of Empire*. New York: Penguin.

Hart, J. (1997), 'Translating and Resisting Empire: Cultural Appropriation and Postcolonial Studies', in B. Ziff and P. V. Roa (eds), *Borrowed Power: Essays on Cultural Appropriation*. New Brunswick: Rutgers University Press, 137–69.

Haupt, A. (2008), *Stealing Empire: P2P, Intellectual Property and Hip-Hop Subversion*. Cape Town: HSRC Press.

—(2012), *Static: Race and Representation in Post-Apartheid Music, Media and Film*. Cape Town: HSRC Press.

Hegel, G. W. F. (1956), *The Philosophy of History*, trans. J. Sibree. New York: Dover Press.

Humphreys, J. (1990), 'Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries', *The Journal of Economic History*, 50(1): 17–42.

Kidd, D. (2003), 'Indymedia.org: A New Communications Commons', in M. McCaughey and M. D. Ayers (eds), *Cyberactivism: Online Activism in Theory and Practice*. London and New York: Routledge.

Lott, E. (1993), *Love and Theft: Blackface Minstrelsy and the American Working Class*. New York and Oxford: Oxford University Press.

Malan, R. (2000), 'Money, Greed and Mystery', *Rolling Stone*, 25 May: 54–66, 84–5.

McCourt, T. and Burkart, P. (2003), 'When Creators, Corporations and Consumers Collide: Napster and the Development of On-Line Music Distribution', *Media, Culture and Society*, 25: 333–50.

McLaren, C. (2002), 'Copyrights and Copywrongs: Interview with Siva Vaidhyanathan', *Stay Free!*, 20. Web.

Ovesen, H. and Haupt, A. (2011), 'Vindicating Capital: Heroes and Villains in *A Lion's Trail*', *Ilha Do Desterro*, 61: 73–107.

Patry, W. (2009), *Moral Panics and the Copyright Wars*. Oxford and New York: Oxford University Press.

Rockman, S. (2012), 'Slavery and Capitalism', *The Journal of the Civil War Era*, 2(1): 5.

Rose, M. (1993), *Authors and Openers: The Invention of Copyright*. Cambridge, MA and London: Harvard University Press.

Schumacher, T. G. (1995), '"This Is A Sampling Sport": Digital Sampling, Rap Music and the Law in Cultural Production', *Media, Culture and Society*, 17(2): 253–73.

Schur, R. L. (2009), *Parodies of Ownership: Hip-Hop Aesthetics and Intellectual Property Law*. Ann Arbor: The University of Michigan Press and The University of Michigan Library.

Skeggs, B. (2004), *Class, Self, Culture*. New York and London: Routledge.

Stam, R. and Spence, L. (1983), 'Colonialism, Racism and Representation', *Screen*, 24(2): 2–20.

Verster, F. (dir.) (2002), *A Lion's Trail*. Undercurrent Film and TV/Lion's Trail Productions.

Part Three

Selections

The Work of Postcolonial Piracy

To Kill an MC

Brazil's New Music and its Discontents

Ronaldo Lemos

Introduction

On 6 July 2013, the Brazilian 'funk carioca' musician Daniel Pellegrine, known as MC Daleste, was killed on stage while performing in front of 5,000 people in the city of Campinas. Daleste was first shot in the armpit. Not knowing what was going on, he shouted at the audience. A second fatal shot hit him in the abdomen. All was instantly caught on video by his fans, some of whom later posted the killing on YouTube. The police concluded that Daleste was shot from a distance of 40 metres, indicating that he was probably hit by a sharpshooter. Daleste (his name is a contraction of 'from the East', in reference to the 'East Zone', the largest metropolitan area in Sao Paulo) was 20 years old.

Even though virtually unknown by the upper economic classes, Daleste was one of the most popular artists in Brazil. Videos of his music had reached more than 100 million views on YouTube before his death. He was capable of drawing thousands to his concerts, something that not many artists in the country can easily do. Daleste's music was produced and distributed mostly online, through the same informal channels that made other music scenes in Brazil, such as Tecnobrega (Lemos 2008), electronic Forró, Lambadão Cuiabano, Pisadinha and Funk Carioca itself popular (and economically lucrative).[1]

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[1] This mode of production and distribution based on technology, the internet and other networks such as cellphones is actually a global phenomenon. I like to use the term 'globoperipheral music' to describe them; others like to use the term 'ghettotech'. Since

Daleste's killing raises important questions about the mechanisms of popularization and acceptance of these new, decentralized music scenes. This is music produced in the globally connected peripheries, for the peripheries and everyone else, outside of the traditional legitimated channels of the 'centre'. The emergence of these scenes, the fact that they heavily embrace and adapt to technical innovation, and their economic and symbolic success, all challenge traditional cultural practices and modes of production.

This chapter departs from the killing of MC Daleste to briefly discuss some of the new dimensions of how peripheral music is created and disseminated in Brazil. It shows that technology has reorganized not only the production and dissemination of music (as described in my work on Tecnobrega, see Lemos and Castro 2008), but also its forms of marketing and promotion. It describes how many (if not most) music hits in Brazil are now created by means of a chain of appropriation and reappropriation of ideas that challenge the traditional practices of intellectual property. It also describes aspects of the cultural and economic impact of these scenes, and briefly touches upon the reactions to MC Daleste's killing and the inherent prejudice which peripheral music still suffers at the hands of the upper classes.

Before we start, a quick note about terminology. I use the term 'peripheral music' as shorthand for 'globoperipheral music' (Lemos 2008; Domb 2012). As I mentioned in an earlier essay:

> As one can observe, the idea of 'periphery' used here does not have much to do with a geographical concept. Nor does it have any relation to the separation between rich and poor, developed and developing, or even North and South. These music scenes … emerge in any place where there is a computer, creativity and people wanting to dance. The invisibility of these scenes happens only when we decide (consciously or unconsciously) not to pay attention to them. For that reason, thinkers such as Hermano Vianna affirm that the 'centre' is becoming

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I disagree with the idea that these scenes are products of 'ghettos', and since they may actually be the most popular music in the world, and also because I dislike ghettos of any kind, I prefer my own term.

more and more 'the periphery of the periphery', especially from a symbolic standpoint.

<div align="right">(Lemos and Castro 2008, my translation)</div>

Accordingly, this chapter takes into account precisely the clashes resulting from the reconfiguration of centre and periphery that we have been witnessing over the past 20 years, largely as a result of technological changes which, in turn, have led to a reconfiguration of the public sphere.

How technology reconfigured music promotion, 'artist development' and revenue models

In early August 2013, if someone goes on YouTube, types 'MC Daleste' into the search bar and selects the filter 'view counter', this person will get a very good idea of the MC's popularity. Counting only the music videos on the first page, the total number of views will reach more than 70 million (sadly, two of the videos show his tragic death). Daleste is not a case of an artist who became popular after his death; he was already a widely popular singer before he died.

Daleste's music is known as 'Funk Ostentação', a variation of 'Funk Carioca', the music created in the favelas of Rio de Janeiro in the late 1980s.[2] Influenced by Miami Bass, but also by all sorts of Brazilian references (such as the drums of the AfroBrazilian religion Candomblé, which led to the beat known as 'tamborzão'), Funk Carioca has continued to evolve and mutate until today. Furthermore, in the past six years, it has increasingly spread beyond Rio de Janeiro, reaching the peripheries of many other Brazilian cities, including Belo Horizonte, Recife and Sao Paulo.

In Sao Paulo, a city usually identified with the strength of its hiphop scene, Funk Carioca mutated once again, giving birth to 'Funk

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[2] Hermano Vianna, the famous Brazilian anthropologist, was the first to study Funk Carioca in the late 1980s. He has made his original work available online (Vianna 2006).

Ostentação'. Even though the rhythm structure and singing style are still close to Funk Carioca, the 'ostentação' variation incorporated the 'bling' aesthetics of hiphop into Funk Carioca. Its lyrics and themes involve money, economic success and, of course, showing off one's wealth.

The main driving force behind Daleste's popularity, as with most other emerging peripheral artists in Brazil, is the internet. His music did not play on the radio, nor did it receive coverage on TV, in newspapers or any other traditional media outlets. The platforms for the dissemination of his music are mostly YouTube, Facebook, Twitter and 4Shared (each playing a different role), and the devices on which they are played and shared 'person to person' are cellphones and, increasingly, tablets.[3]

YouTube is the main 'home' and display platform for music. It is where a lot of people go to enjoy a track they like. It is also the main medium of discovery. In this sense, YouTube is the source of the links that are then shared on social networks, such as Facebook or Twitter. If you don't have your music uploaded on YouTube, you fail to meet the basic precondition for being shared, so that other people get to know your work. It is important to remember that, like 4Shared, YouTube is also a source for music downloads. Many users go to YouTube using popular websites, browser plug-ins and other tools to 'rip' the songs from the site. It is a much simpler operation than using file-sharing software or even being part of a file-sharing community.[4] In addition, the catalogue of music available on YouTube is vast and diverse. Most of the peripheral music is simply not available through iTunes, Google Play, Spotify or other official music distribution platforms. As an example, some of MC Daleste's tracks are available on iTunes, but the majority of them are not. They are 'exclusive' YouTube tracks.

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[3] On the arrival of tablets, besides cellphones, most of them manufactured in China by unknown brands, running Android (or a version thereof), and often costing less than US$150, in the poor areas of Brazil, see a brief description in Lemos (2013).

[4] This chapter does not address the legal issues surrounding these operations, either in regard to the law of each specific jurisdiction, or the terms of use of each respective site, but limits itself to the description of how they happen.

But YouTube's role is more complex than this. Alongside Facebook (and to a lesser extent Twitter), it is also the place where most of the A&R takes place. Most artists' promotion and development take place today on YouTube and not through a recording company, an agent or a PR company. Popular YouTube channels and Facebook communities have positioned themselves as important 'broadcasters' of new music.

Interestingly, these channels and communities belong to owners living in poor or marginalized areas, often similar to the socio-economic conditions from where most of the artists also come. These are people who actually make their living from these channels and communities on YouTube and Facebook. The owners of these communities work as entrepreneurs; playing the role of content curators, they select new songs and artists to include in the channel or community. They charge up-and-coming artists money if they want to be included in their selection. There are many examples of such content curators, owners of channels on YouTube who play an important role in the dissemination of new peripheral music, including 'Fonte do Funk SP' or 'Canal Detona Tudo'.

Some owners of popular channels have set up more complex businesses and charge for producing low-cost videos of new artists. The price paid includes also the selection to become part of the channel, in a sort of combo: the owner operates both the production of the video and its dissemination. It is good business; besides being paid by the artists themselves, the owner also benefits from getting a cut of the publicity revenue generated by YouTube, shared with the owner. Examples of YouTube channel owners practising this 'combo' business model include DJ Tom, Klebinho, Villela Videos and P. Drão.

If you want to be updated about what is trending in 'Funk Ostentação' these days, the above links are a great source. The same practices also take place on Facebook. There are many communities, some of them with millions of members, which charge artists for a 'placement' of their songs. Once again, most of them were created by people living in poor areas, who actually make a living by charging musicians (and any other form of business) interested in getting some exposure through

them. Examples of these communities include the comedy-oriented Humor na Web, with more than two million subscribers, or the smaller Ta Serto community, catering to a smaller but niche audience of 37,000.

Of course, artists also have their own pages and communities that frequently also become popular in their own right. For example, before his death, MC Daleste had two profiles on Twitter, one with 60,000 followers (https://twitter.com/DalesteBR) and the other with more than 200,000 (https://twitter.com/DALESTEMF/). On Facebook, once again, he had two communities, one with more than 350,000 members and the other with more than 250,000 (http://www.facebook.com/DalesteAutentico) – these numbers increased almost twofold after his death.

What the above examples demonstrate is that it is not only music production and dissemination, but also the marketing and promotion of music (part of the 'A&R' department of record companies) that have been decentralized by the appropriation of technology on the part of the peripheries. Whoever followed the debates about the transformation of the music industry in the 2000s often heard that A&R would always be an activity of record labels, with 'artist development' becoming part of their core business. It turns out that, for peripheral music, A&R has become increasingly decentralized. It is now performed by the same peripheries that had previously appropriated the tools for producing and distributing music on their own.

I remember a conversation I had in Sao Paulo in 2007 with Chris Anderson, former editor-in-chief of *Wired* magazine, about the need for artists' promotion. Anderson was writing his book *Free* and wanted to include a chapter on Tecnobrega based on my study of the music scene. He was interested in the fact that artists in the scene give away their music for free, both by posting it online, and also by giving away their CDs to street vendors (called '*camelôs*') so that they would freely duplicate and sell them as much as they wanted.[5] In short, the same

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[5] The excerpt on Tecnobrega was indeed included in the book; see Anderson 2009.

street vendors selling pirated materials would also sell music that was deliberately given to them by Tecnobrega artists.

Anderson asked me whether the *camelôs* had any role in the promotion of the music. I said yes, the *camelôs* also worked as promotional agents, and some of them even as curators, guiding the buyers through the large output of releases, and showing what they thought was the 'hot new' music (this model still exists today). He then asked me what would happen when everything moved online, and *camelôs* also became obsolete. At the time, I had no answer to that question. I mentioned that portions of the promotions were already happening online, by means of the now defunct MSN Messenger. Famous DJs and producers used MSN to broadcast their new releases to their friends, which they would then disseminate to their respective sets of friends.

But now, Anderson's concern has a more comprehensive answer. The same tools and processes that led to the decentralization of music production and dissemination have led also to the decentralization of A&R. An illustration of this is the fact that Daleste himself never released a music video of his own. All of his music videos available on YouTube were posted by his fans, some of them reaching millions of views. The first and only music video that Daleste actually recorded was released after his death (and in two days reached two million views). In short, this creates a new logic for the 'free' model. While in the Tecnobrega scene artists give away their music for free and make money by performing live or selling merchandise (including 'original' CDs) after their performances, a new form of intermediary has emerged. Different from traditional recording companies, they are small entrepreneurs who have mastered the art of online promotion.

Needless to say, the 'free' model remains untouched. Especially with YouTube becoming the biggest '*camelô*' of them all, the one and major centre point for the distribution of peripheral music, the perception on the part of artists is that it just feels 'natural' to upload their music for free onto the website. They can then 'monetize' on it by playing live and selling merchandise after their shows, just as do Tecnobrega artists. But they also understand that YouTube has brought new opportunities for

content monetization through revenue sharing if their music becomes really popular. It is almost as if a small 'reform' of the copyright system has taken place, and something along the lines proposed by William Fisher in his book *Promises to Keep* has materialized.[6]

A similar thought was expressed by Francesco 'Phra' Barbaglia, the Italian DJ and producer behind the well-known project Crookers (which works as a mediator of the aesthetics of peripheral music), in an interview he gave to MTV Iggy:

> The more people who know an artist's music, the better it is for the artist. If your music gets really big in terms of audience because of a YouTube audience, it's good for you, because you can now tour that record.
>
> The freedom to upload whatever you want is half good, half bad. When you've been working on an album for a year, and you have this marketing strategy, and then suddenly someone leaks the album, it can really piss you off. Apart from that, sites like YouTube are great for checking out music. I love it. As a label owner, I can honestly say I don't care. I'm putting my guys' music up on YouTube. And you can [earn] some money, too. It's not a lot, but you get it because you have the rights.
>
> (DJ Pangburn 2013)

Hermano Vianna responds to the optimism of Phra in more acidic and sceptical terms:

> It is curious thinking – combining the practice of a blind flight – apparently contradictory (or entirely contradictory) oscillating between the defence of freedom [to share] and the copyright restrictions. According to the existing copyright laws in most countries,

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[6] Fisher (2004) proposes the creation of different kinds of 'sharing licenses', in which exclusive copyrights would be suspended in exchange for a system of 'tax' collection – voluntary or compulsory – and its respective distribution to artists, depending on their popularity and other factors. It is possible to say that Google's YouTube does something similar. A vast amount of music is available on the site, uploaded for free. The site then collects the 'tax' through advertising, and distributes a portion of the revenue to content owners. Of course, in Fisher's model the intermediary would keep only a small portion of the revenues, contrary to Google, which keeps the majority.

no one can publish any work by any author without the copyright holder's permission (it is irrelevant whether the media is 'traditional' or 'new'). To be clear: publishing a Crookers song without the authorization of Crookers is illegal. What he said in this interview is that he does not care about the illegality. Indeed: that this type of illegality can be beneficial to his music and to his career. He reminds us: the artist can even make money with the non-authorized publishing of his works. Technology is inventing – by force – its own law, which becomes generalized practice, even against official law. … When we hear that 'Gangnam style' made more than one million dollars on YouTube, we have to remember: much of that money comes from ads placed on videos that from the perspective of the official laws would be considered pirate. So we live in an ambiguous situation where one company determines a new legality. This is a technologically legal hack, made in a hurry. What kind of external control can we have over the number of views? Do we have to believe in YouTube's numbers? I never like to be in a hurry.

(Vianna 2013a, my translation)

In addition to this important debate between legality and illegality, the fact is that the transformations in the creation, distribution and promotion processes of music are here to stay, and will keep introducing even higher levels of entropy to the traditional copyright system.

An example of this is the large number of peripheral music hits in Brazil that are composed by means of a process entailing the appropriation and reappropriation of ideas, which challenges the premises of the whole system and reconfigures the very idea of 'composition', changing it from an individualistic activity to a collective practice. This is a long and complex discussion. For the purposes of this chapter, it suffices to quote once again Hermano Vianna on how the global hit 'Ai Se eu Te Pego'[7] was actually composed. It works almost like a

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[7] The song reached number one in the iTunes charts in various countries in 2011 and 2012. In some markets the music was marketed as 'Nossa, Nossa'.

'prototype' for the composition process of many other recent popular peripheral songs:

> It all seems to have begun in an airplane carrying a group of middle-class girls from Paraíba, a state in Northeastern Brazil, to Disneyland, Florida. To pass the time on the trip, they started to make up songs. Without the slightest intention of becoming composers, they came up with the chorus 'assim você me mata, ai se eu te pego, ai, ai' (This way you're gonna kill me, oh if I catch you, oh oh). They liked the song so much that they started to sing it on all the trips they took thereafter, including one they took to Porto Seguro.
>
> It was at a party at Axé Moi that the girls from Paraíba first met Sharon Acioly, who was for many years the high priestess of fun in the complex. She held a variety of roles at Axé Moi, ranging from singer to hype-woman. She wasn't there to make works of art, rather, she was tasked with keeping the crowds entertained at all times. To do this, she would make up games for the guests. One of these games took Brazil by storm a few years ago: the 'dança do quadrado' (square dance), which she stole from a group of students from São Paulo and Minas Gerais who were visiting the Porto Seguro complex. When Acioly heard the girls sing the refrain 'Ai se eu te pego', she quickly took it and began chanting it over a funk carioca beat. …
>
> While passing through Porto Seguro one day, Antonio Dyggs went to check out the entertainment at Axé Moi. Dyggs was an event producer from Feira de Santana, an interior city which lies on the edge of the Bahian sertão. 'Ai se eu te pego' stuck in his head and he decided to make a forró version of the funk song. He proceeded to record it with Os Meninos do Seu Zeh, one of the bands that he worked with. …
>
> Michel Teló first heard his future global hit when it was already part of the repertoire of the bands Cangaia de Jegue and Garota Safada, just to name the more famous ones, and revving up parties throughout the Northeast.
>
> This is the most significant characteristic of Brazil's music scene today. All the hits are quickly rearranged to fit in whichever Brazilian genre, when they're not mixing all the genres already (Michel Telo's

version, for example, contains elements of sertanejo, forró, arrocha, vaneirão, among others).

<div align="right">(Vianna 2012)</div>

As may be seen from this long quotation, the forms of music composition applicable to peripheral music have changed. They have become more decentralized, transcending the ideals of creativity embodied in the copyright system. Rather than one individual composing each song, several do it. Rather than songs composed with a single intention, we have accidents leading to the emergence of a new song. The same pattern repeats itself in other peripheral songs. Another example is 'Minha Mulher Não Deixa Não' ('My Wife Does Not Let Me'), a hit in 2011, which was composed by a multitude of authors, using the same pattern of appropriation and reappropriation. Most of the popular Forró songs, especially in its more electronic incarnations, are basically created by appropriation. In these music scenes, 'trend spotters' circulate through Brazil, even going to parties taking place in smaller rural cities, looking for songs with the potential to be re-created or even re-recorded by the bigger Forró bands.

A similar pattern applies to the Funk Carioca, Funk Ostentação, Tecnobrega and Reggae Maranhense scenes, which often use the same base track, adding variations by a multitude of authors on top of it to create a new song. In addition to this, as soon as the song grows in popularity, the public is not content simply to listen to the song. The public wants to participate, and to re-create the song itself in numerous ways; the public wants to be part of the reappropriation process. For instance, the song 'My Wife Does Not Let Me' was re-created as another version called 'My Wife Does Not Tell Me What to Do', which became almost as popular as the original. All popular peripheral songs are re-recorded by myriad other artists, professional or amateur, and fans. This 'call and response' pattern may to some extent have become globally visible with the success of hits like Gangnam Style and Harlam Shake, which were extensively re-recorded.

However, my point is that these practices had been at the core of the peripheral music creation process for years, and that they represent autonomy and decentralization. Peripheries are responding not only to the 'call' from the culture that is produced and circulated by the centre, but also from cultural scenes from other peripheries. One case is the song 'Alô Tô Num Bar' (2008), an example of Forronejo (a mix between Forró and Sertanejo, the Brazilian version of country music). It was re-recorded in Colombia by the local artists 'El Celular' (The Cellphone) and became the major hit of the carnival of Barranquilla in 2010 (Lemos 2010). Needless to say, both versions produced a multitude of additional versions by other professional and amateur artists, as well as by the public itself. Peripheries are increasingly connected to other peripheries through technology, and have become capable of accelerating the speed with which they influence, and collaborate with, each other, transcending and challenging ideas of authorship, and the usual individualist assumptions behind the copyright system.[8] This gives rise to other issues, such as the role of copyright-collecting societies regarding this new dominant trend; how to distribute the royalties when songs are recorded by multiple interpreters; how to find out who are the original 'composers'; and what is the weight to be attributed to re-recordings on the part of the public and other professional or amateur artists? These are all open questions, leading to tensions and a crisis of legitimacy on the part of the collecting societies' usual system.[9] In Brazil this legitimacy crisis has become so critical that a new law was passed in August 2013 completely revamping the whole system. The law creates new criteria for artists' representation, voting rights, and also implements regulations regarding transparency and public accountability.[10]

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[8] Of course these challenges have led to a great deal of litigation lawsuits. Both 'Ai Se Eu Te Pego' and 'Minha Mulher Não Deixa Não' have resulted in lawsuits in which the various 'authors' have sued each other. 'Alô Tô Num Bar' also provoked legal disputes. The courts, naturally, find it difficult to deal with these cases, and the final solution, when achieved, will most likely be an imperfect one due to the complexities involved in each case.

[9] For more information on this, see Lemos (2011).

[10] Disclosure: I was one of the drafters of the law, and served as an expert by invitation of the Brazilian Senate to advise on the drafting process. The full text of the law may be found at: http://www.planalto.gov.br/CCIVIL_03/_Ato2011–2014/2013/Lei/L12853.htm

Whether the tensions emerging from these new cultural practices will be solved through democratic channels, by means of new laws, as has been the case in Brazil, or whether they will be solved by means of private practices, such as YouTube and Google becoming increasingly a copyright royalty collector and distributer, only the future will tell. For now, it suffices to say that these cultural practices that have become dominant in peripheral music scenes function as a spearhead for other social transformations. My point is that, by analysing and understanding them, it is possible to understand future conflicts and reorganizations which will affect all other cultural scenes.

Brazil's new music and its discontents

When a popular artist dies in Brazil, it generally becomes national news. Newspapers write obituaries; the television channels broadcast the funeral; the family is interviewed, and the artist's legacy is remembered and discussed. Public personalities, including government officials and the Minister of Culture, comment on the passing away, and so it goes. If the death had a violent cause, the commotion increases, and public revolt and grief resonate even more loudly in the public sphere.

None of this actually happened following Daleste's death. With a few notable exceptions, his death was covered mostly in the crime pages of the newspapers. It was treated as another usual death in the 'already violent' Funk Carioca (and Funk Ostentação) scene. There was no official statement on the part of public authorities; the Minister of Culture remained silent; and the TV channels reproduced the same 'criminal' angle of the newspapers; that is, when the case actually made it to the TV news.

One of the very few honourable mentions of Daleste's death took place in a column written by Hermano Vianna for *O Globo*, a newspaper in Rio de Janeiro (Vianna 2013b). A single Brazilian

Senator from Sao Paulo, Eduardo Suplicy, followed suit, giving a brief homage to him at the Senate, reading the same verses from Daleste's music that had been quoted by Hermano in his article ('Eduardo Suplicy' 2013).

If in the news the coverage was mostly criminal speculation (the case remains unsolved), it was on the internet that most of the repercussions of Daleste's death were to be felt. Protected by anonymity, the majority of reactions actually cheered the fact that someone had decided to kill him. Many online comments compared his killing to an act of 'cleansing' which should actually be praised.

Many of these heinous reactions are still visible, for instance, in the comments section on Vianna's article in *O Globo*. The piece received more than 200 comments, most of them consisting of hate speech against Daleste, some making hateful or condescending remarks about the article. Some actually went on to say that Daleste 'deserved to die', or actually 'provoked his own death'. One of the reasons for this reaction is that one of Daleste's songs, written in the first-person voice, talks about killing police officers. The song, titled 'Apologia' (Apology – the name given to the crime under the Brazilian Criminal Code of celebrating a criminal act, punishable with six months' detention), goes like this:

> To kill the police is our goal
> Tell us who is the power
> Criminal mind and evil heart
> I'm the fruit of wars and rebellions
> I started when I was underage, already with the 157 [stealing]
> Today my addiction is robbery, dangerous profession
> I'm a specialist graduated from the criminal university
> Heavy soviet assault guns
> This is the group of the MK and I am the one who rules
> It's 1 p and 2 c, tell us who is the power.

Daleste is clearly not talking about himself. He is not describing his own childhood; he is using a first-person narrative voice to describe ways of life he has known, but of which he was never part. There is no

record that Daleste ever stole anything when he was a child, nor that he killed a police officer, held any Soviet assault gun or dealt with prison rebellion.

In a video he later recorded (using Twitcam!), Daleste actually talks about the meaning of the song, and about his own critical view of police violence (Pellegrine 2011). He also explains that the song is not intended to promote violence, especially against the police. He apologizes if any such interpretations took place. He praises his family, and emphasizes the fact that he is an artist, saying that the song is a way to stir people's 'conscience'. He says, 'you listen to my song, but you should not do it', and also 'do as I do, not as I say'.

However, Daleste's haters are not capable of differentiating between his own voice and his narrative voice. Some actually argued that he deserved to die for the content of his lyrics as in the comments on Vianna's newspaper piece. Of course, the comments sections in Brazilian newspapers generally harbour extreme views, some of them deeply conservative and reactionary. Nevertheless, they fail to understand that peripheral music, including Funk and global hiphop tracks, habitually sing about police violence and violence against the police. Even though these are tough and unfortunate topics, they are also a product of violent contexts and ways of living that exist where the music and its authors come from.[11]

So my point is that something more profound happens with regard to Daleste and most other artists coming from peripheral scenes. They are denied a narrative voice. The fact that these artists often live in tough areas, come from impoverished backgrounds, deal with tough issues that are universally regarded as 'serious' problems, handcuffs them to the situation. Whatever they say is connected to the factuality of their context and background. They become personally accountable for it as individuals, not as artists.

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[11] Even mainstream artists, such as New Jersey rapper Ice T (currently working as an actor in the popular TV show *Law and Order*), have written about these tough subjects using the first-person voice, for instance in the well-known song 'Cop Killer', released in 1992 by Ice T's former band Body Count.

In other words, the limitations Daleste and so many other peripheral artists face is that they are often not perceived as artists by the 'centre'. Their music is seen as an intrinsic part of the landscape of an impoverished area. They are just another sign of precariousness, in the same category as an unpaved road, an open-air sewage spill, or any other 'facts' that describe life in a poor area. This is one of the issues with peripheral music: the 'centre' sees it as a fact, not as an aesthetic enunciation, as a statement that demands to be recognized as an individual expression or even as a work of art.

A good parallel to this idea is expressed by Lawrence Liang when he draws on an encounter between Victor Hugo and a working-class poet remembered by Rancière:

> [W]hen Victor Hugo was shown a poem written by a worker, his embarrassed and patronizing response was, 'In your fine verse there is something more than fine verse. There is a strong soul, a lofty heart, a noble and robust spirit. Carry on. Always be what you are: poet and worker. That is to say, thinker and worker.' This is a classic instance of what Rancière would term an 'exclusion by homage'. Thus, the aspirations and desires of the poor have to be 'something more than fine verse', and the information needs of the poor have to be something more than wanting to watch a film or even dreaming of becoming a filmmaker.
>
> (Liang, Chapter 2, this book)

It is in this patronizing spirit that most peripheral music suffers the stigma of being considered 'bad taste' by the 'centre'. The opinion is usually expressed without any further attempt to consider or actually listen to, or try and understand what is actually being expressed through these songs. Apart from being an indelicate stance,[12] this is also a position that reinforces otherness. As expressed in Liang's quote, a member of the working class cannot fully aspire to be an artist: he

[12] In 2011 I participated in a colloquium to discuss the idea of 'Delicacy' at the Portuguese and Spanish Department of Princeton University, where I addressed some of the issues developed further in this chapter. For those interested, the full conference is at: http://www.youtube.com/watch?v=4dfcLstUejc

or she will always be an artist and a worker. No one will let him or her forget that.

Accordingly, the revolt spurred by Vianna's homage to Daleste indicates the discontent with the increasing visibility of peripheral music. Yet, because of the internet, and technology in general, the popularity of peripheral artists no longer depends on the approval or the support of the centre. Artists do not need traditional media to establish a fan base of millions. Accordingly, the centre loses at the same time the capacity to act as a gatekeeper of success, as well as the ability to work as the final guardian of taste. Even though peripheral music may still be perceived as 'bad taste' by the centre, no one else seems to care. Of course, the centre and traditional media still hold to some extent the power of legitimation. Even the most successful of peripheral artists claim that they feel appreciated when they are invited to play in a popular TV show.

This happened, for instance, in the case of Tecnobrega. The scene remained marginalized for years (and it still is in its home state of Pará). However, around 2010, traditional media started disseminating Tecnobrega not only as the 'hot new thing', but also as an 'original' expression of Brazilian culture. The scene started gaining a great deal of airtime through traditional media, which helped legitimize it and reduce the stigma of 'bad taste'. Artists such as Gaby Amarantos or Gang do Eletro gained national (and international) recognition, with the former appearing in the *Wall Street Journal* following a concert in Central Park, and the latter joining the line-up of the Catalan electronic music festival Sónar in 2012.

Still, the death of Daleste is symbolic of the anxiety concerning the increasing visibility and importance of peripheral music. Daleste was not the only funk MC to be killed in Sao Paulo. In the past three years, four other MCs have been killed as well. Since Funk Carioca is a rather new phenomenon in Sao Paulo, and quickly became one of the most popular music styles in the peripheries of the state, it has been dealing with a great deal of prejudice and also state repression. The tensions between the centre, the state, police and Funk in Sao Paulo are bound

to continue over the next few years. They exemplify the transformation of the public sphere that Brazil has been undergoing in recent years. Once again, paying attention to them can reveal more profound trends, and tensions, that will continue to play a role in all social spheres in the country, from politics to law.

While Daleste's killing is still investigated, and the culprits still remain to be caught and tried, it is worth looking at another of his songs, whose lyrics are also written in first voice, this time called 'Minha História' (My Story):

> When I started / I had a lot of difficulties / and my house was out of reality / it is revolting I know / I felt the taste of poison / until 13 I had no bathroom / at home the walls were wood / I remember as if now / when I opened the fridge and there was nothing to eat / the empty stomach / but tomorrow I go to school / and eat there / Saturday and Sunday is difficult / but we can stand / hunger is nothing / in relation to what matters / I never understood why I did not have a normal family / my mother and my father working / and my brother at school / my older sister in college / but life is a fuck / everything upside down was my fate / but I left it all to the hand of god / and today I'm here, going forward / singing my story to those who like funk / thank you for your attention / the rest of this story I will sing again / I am a damn winner / I'm a funk singer, yeah, and I'm proud of that / I bear in my chest the scars of prejudice.

As it turns out, those who are indeed practising 'Apologia' – the act of cheering a crime – were actually the ones who applauded Daleste's killing.

References

Anderson, C. (2009), *Free: How Today's Smartest Businesses Profit by Giving Something for Nothing*. New York: Hyperion.

'Canal Detona Tudo', *YouTube*. Web.

DJ Pangburn (2013), 'Crookers Talks Ciao Records and How YouTube Has Evolved Music', *MTV Iggy*. Web.

DJ Tom, 'Tom Produções', *YouTube*. Web.

Domb, A. (2012), 'Tecnobrega's Productive Audiences', *Spreadable Media*. Web.

'Eduardo Suplicy' (2013), 'Eduardo Suplicy lamenta morte de Daleste e lê versos do MC no Senado', *Globo*, 15 July. Web.

EL ZAA and EL YAO, 'El Celular', *YouTube*. Web.

Eric and Matheus, 'Alô Tô Num Bar', *YouTube*. Web.

Fisher, W. (2004), *Promises to Keep: Technology, Law and the Future of Entertainment*. Stanford, CA: Stanford University Press.

'Fonte do Funk SP', *YouTube*. Web.

Humor na Web, Facebook page. Web.

Klebinho, 'klebinho3Oficial', *YouTube*. Web.

Lemos, R. (2008), 'Tudo Dominado: A Música Eletrônica Globoperiférica', *Overmundo*. Web.

—(2010), 'Chupa Chups Musical', *Revista Trip*. Web.

—(2011), 'O Mistério do E-Cad', *Revista Trip*. Web.

—(2013), 'Mercado do Brasil Começa a ser Tomado pelos Tablets', *Folha de São Paulo*, 4 March. Web.

Lemos, R. and Castro, O. (2008), *Tecnobrega: O Pará Reiventando o Negócio da Música*, Rio de Janeiro: Aeroplano.

P. Drão, 'pdrão vídeo clipes', *YouTube*. Web.

Pellegrine, Daniel (MC Daleste) (2011), 'fala sobre suas musicas na twitcam', *YouTube*. Web.

—(MC Daleste), Facebook page. Web.

—(MC Daleste), Twitter account (DalesteBR). Web.

—(MC Daleste), Twitter account (DALESTEMF). Web.

Ta Serto, Facebook page. Web.

Vianna, H. (2006), 'O Baile Funk Carioca', *Overmundo*. Web.

—(2012), 'Pegando Tudo', *Hermano Vianna*, trans. M. Bishop. Web.

—(2013a), 'Legal e Ilegal', *Hermano Vianna*. Web.

—(2013b), 'A vida e a morte de MC Daleste', *O Globo*, 12 July. Web.

Villela Videos, 'Canal Detona Funk', *YouTube*. Web.

'Justice With my Own Hands'

The Serious Play of Piracy in Bolivian Indigenous Music Videos

Henry Stobart

The sense of injustice surrounding the use of copyright legislation to control the circulation of knowledge and culture, especially by large transnational media corporations in the global South, has been well documented by scholars and is the target of considerable activism (Story et al. 2006). In this context, 'piracy' sometimes emerges as a means to confront powerful and greedy transnational corporations associated with capitalism and colonialism. For example, in a blog entry entitled 'La Descolonización de la piratería' (2007; Decolonization through piracy)[1] the Bolivian blogger Dario Manuel (from El Alto, La Paz, Bolivia) presents piracy as a political strategy to weaken the structures of economic and epistemological domination, so that – as it were – the colonial capitalist monster bleeds to death. He entreats his readers to:

> keep photocopying books and buying pirated VCDs and DVDs in order to devalue the colonial culture industries who make themselves rich from our trees and the apocryphal ignorance lumbered upon us, according to the logic of taking away our light in order to replace it with an adulterated light. Negating this colonial strategy of domestication requires us to pirate (read 'to decolonize') this modern Western mode of thought which is a parasite on our cultures.
>
> (Manuel 2007, my translation)

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[1] This summarizes four key points from an essay of the same name by Victor Hugo Quintanilla Coro (source not cited).

Even when not approached from such a strong ideological perspective, it is clear that media piracy is almost inevitable in emerging economies where incomes are low, media products are expensive (sometimes identical in price to advanced economies) and digital technologies are cheap (Karaganis 2011). In addition, pirate distribution networks are immensely more efficient than formal ones in such economies, allowing access to a far greater variety of knowledge and cultural products than is otherwise available. Accordingly, it is common to hear piracy justified in terms of global justice. For example, in the words of a Bolivian student from a lower-middle-class family: 'We're all pirates, but it is necessary. It is made necessary when you take into account the social environment in which we live, and the poor country into which we have been born' (my translation). More generally, the acceptability or even celebration of music piracy is often supported by the argument that artists usually derive little benefit from the sale of recordings or from royalty payments, as rights are customarily signed over to the record label or media corporations. Accordingly, the common claim by (industry-motivated) antipiracy campaigns that media piracy causes direct material harm to artists and individual creators is often presented as fallacious. Instead, such discourse highlights how unfettered circulation of recordings often increases artists' visibility, fan base and opportunities for the economic mainstay of live performance (Yar 2008: 616). The free and informal circulation of recordings may indeed prove to be an effective business model for certain genres with lucrative live performance opportunities (Lee 2012; Lemos 2007). But to over-generalize this model or celebrate it as the way out of the current crisis in copyright would be naive. For example, for studio-created music without a live equivalent, or genres involving small audiences or large musical forces, this model is likely to be economically disastrous (Lebrecht 2008). As the case study below will demonstrate, pirating music in the global South may represent the justice of decolonization, but it can also pose enormous challenges for low-income music creators and entrepreneurs. It is the strategies adopted by a Bolivian indigenous

musician to seek 'justice' and confront the challenge of piracy which form the focus of this chapter. Yet, in this artist's music video productions, the serious message of antipiracy becomes a focus of creativity, humour and entertainment.

Bolivia: A pirate ecology?

Arguably, the relative affluence and strict copyright enforcement of certain regions of the global North permits piracy – when not directly identified with criminality – the luxury of assuming an aura of subversive romance, connected with notions of free culture and opposition to privatized monopolies (Dawdy and Bonni 2012). Yet, in parts of the global South where access to full-price recordings is beyond the budget of the majority, piracy may carry rather different connotations, often connected with necessity and postcolonial resentment rather than romance or idealism. Such is the case in Bolivia, the focus of this chapter, which counts among the poorest, least developed and most economically informal countries of Latin America, and where I estimate that levels of optical disk (VCD, DVD, CD) piracy approximate 90–95 per cent ('The World Factbook'). As domestic internet penetration in Bolivia remains among the lowest in South America, with online access largely restricted to public internet cafés, the music piracy in question mainly takes the form of optical disk copying rather than digital downloads.

   A policy that confronts international copyright norms, in favour of access to knowledge and culture, may seem a logical path for Bolivia's current – at the time of writing – MAS ('Movement Towards Socialism') government. This is headed by the country's first indigenous president, Evo Morales, who entered office in 2006 following a landslide election victory and was re-elected, by an even larger margin, for a second term in 2009. As he came to power, Morales presented himself as Washington's 'worst nightmare' and he has continued to espouse a project of cultural revolution and decolonization, while being

explicitly opposed to global capitalism and neoliberalism. However, from a cultural perspective, there is little that is revolutionary about Bolivia's Intellectual Property policy: it is a signatory to TRIPS (1995), maintains a National Intellectual Property Service (SENAPI), its music copyright law dates from 1991 (*ley* 1322, *derecho de autor*), and the only notable departure in the new Constitution (ratified in 2009) is the recognition of 'collective' creation.

Rather than explicit policy, Bolivia's high levels of piracy reflect a lack of enforcement by successive governments. Alongside the political unpopularity of aggressive antipiracy campaigns, many of Bolivia's key institutions (including government departments and universities) would find it almost impossible to operate without pirated software and photocopied books. Several costly campaigns were mounted by the large-scale phonographic industries in the late 1990s and early 2000s, but police corruption, legal loopholes and lack of state support rendered these campaigns largely ineffective. In addition, major civil unrest in 2001 and 2003, largely targeted against multinational interests in the country, would have ensured both that antipiracy was a low priority and that it may have been interpreted as collaboration with foreign powers (see Wang 2003: 149). By 2003 all the major international record companies had closed down operations in Bolivia and only *Discolandia,* of the three major established national record labels, was still producing recordings, albeit with a greatly reduced staff (Stobart 2010). None the less, I estimate that the quantity of recordings produced in Bolivia – especially in the form of the VCD music video – has increased since that time, in part reflecting the emergence of new low-income markets and the greater affordability of production and playback equipment. Most such production, which varies considerably in quality, is undertaken in small-scale digital studios and is financed by the artists rather than by the studio. Little of this work is registered for copyright and the informal nature of certain studios means that counterfeit copying sometimes supplements production work or serves as a source of start-up capital. How, then, do musicians and small-scale musician-producers fare in Bolivia's ecology of predominant piracy?

Gregorio Mamani: Confronting piracy and reducing prices

This chapter focuses on the antipiracy strategies of the Bolivian *originario* ('indigenous')[2] *charango*-playing singer-songwriter Gregorio Mamani Villacorta (1960–2011). It builds on 11 months of ethnographic research (2007/8) based in the city of Sucre, where Gregorio Mamani lived with his family, during which I participated as an unskilled assistant in the production of three VCD (video compact disk) music videos. To reflect our close personal interaction and friendship, I will hereafter refer to Mamani using his first name 'Gregorio' (he died suddenly and unexpectedly at a tragically young age in 2011). Gregorio was brought up, and lived until he was nearly 30, in the *originario* community of Tomaykuri in the Macha region of northern Potosi, moving permanently to Sucre in the 1990s. His trajectory as a recording artist dated back to the late 1980s and included dozens of audio cassette releases of *charango* songs and of rural music (under the group name *Zura zura)* produced by the *Borda* label in Cochabamba. In around 2000 he created his own label CEMBOL ('Centre for Bolivian Music') and from the proceeds of a successful tour of Peru, Argentina and Bolivia in around 2005 he created a digital home studio dedicated to making VCD music videos and largely consisting of cheap second-hand digital equipment. Close involvement in politics, which included his production of a widely circulated cassette and VCD of campaign songs for the election of Evo Morales, led indirectly to his employment in 2006 by the Prefecture for the Department of Chuquisaca, based in Sucre. However, after only one year – and just before I commenced research in Sucre – he resigned from this post and returned to his career as a musician. Gregorio was a forceful, idiosyncratic and pioneering character, and a particularly outspoken opponent of music piracy. This outspoken opposition to

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[2] *Originario* is the term of choice used by many highland Bolivians, to reflect an identity that transcends traditional racial, class, community and ethnic lines (see Grisaffi 2010).

music piracy led me to research this phenomenon in depth and to appreciate both its social benefits and its wider impact on the Bolivian music industry (Stobart 2010).

   Arguably the most significant measures adopted by Gregorio to confront piracy were: (1) reducing the retail price of VCDs to match pirate prices; (2) personal and family distribution to key regional markets; and (3) screen printing VCD disks with the CEMBOL logo alongside a short video clip on certain productions informing consumers how to distinguish between (screen-printed) original and (blank) pirated disks. As I wish to focus on the more creative and psychological aspects of Gregorio's campaign here, I will reserve detailed discussion of these two latter themes for other publications. None the less, it is important to highlight how personal distribution to market stalls by artists (or family members) can create mutually dependent relationships or friendships with vendors and offer opportunities to police the sale of their work. Aware that overpricing is a key ingredient of music piracy, low-income *originario* artists such as Gregorio have competed with piracy through price reduction, radically decreasing or even removing the price differential between an original VCD and a counterfeit copy. In part this may be seen as a pragmatic response to price cuts resulting from exponential growth and competition within the pirate market. None the less, major national and international labels have often chosen to make few concessions on price, partly due to their reliance on international sales – partially explaining their collapse in Bolivia (Stobart 2010).[3] Despite his outspoken opposition to music piracy and the fact that price reductions limited his profits, Gregorio recognized the need for his work to be affordable for his low-income audience and was critical of the 'excuses' given by larger labels for failing to drop their prices. The challenge was to achieve a sustainable balance, where on the one hand prices were low enough for consumers to have access to his work and,

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[3] Parallel import, where authorized low-price media destined for particular low-income regional markets is sold in full-price high-income markets, has been a major disincentive for price reduction (Wang 2003: 181).

on the other, artists and producers could recoup and make a modest profit from their investment.

In the 1990s the CD was largely restricted to the middle classes and it was common for originals to retail for around 100Bs (c. £7.00) each. When the VCD appeared on the popular low-income market in around 2003,[4] accompanied by affordable playback equipment – usually made in China or Taiwan – each disk retailed for around 30Bs (c. £2.10). Considerable profits were possible at this time, for both producers and pirates, leading to an explosion in the market, but also to a rapid decline in prices. By 2007 the typical retail price for an original VCD was 10Bs (c. £0.70) and counterfeit disks, when offered in plastic presentation boxes, were typically sold at the same price. However, when these same disks were sold in small plastic bags alongside their printed colour paper labels *(laminas),* their typical retail price was three discs for 10Bs (c. £0.70) – approximately 33 centavos (c. £0.23) each. Most low-price counterfeit discs of this kind, featuring music originally produced in Bolivia, were mass produced in Peru and shipped into Bolivia via the frontier town of Desaguadero (Stobart 2010). In April 2008, I encountered Bolivian distributors in Desaguadero paying a wholesale price of 1.20Bs (c. £0.09) per unit, and then selling these disks on to local vendors in various part of Bolivia for 2Bs (c. £0.14) each. Among the wholesale disks on sale in Desaguadero I came across pirated copies of several of Gregorio's VCD productions, including one on which I had collaborated as an unskilled assistant a few months earlier.

Clearly, *originario* artist-producers have no chance of competing with the prices of Peruvian mass-produced counterfeit disks. Indeed, the raw material costs paid by Gregorio exceeded these prices: in Sucre he paid around 1Bs (c. £0.07) per blank CD and 1Bs (c. £0.07) for the production of each colour-printed cover sheet *(lamina).* None

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4 Some consultants estimated the arrival of the VCD on the Bolivian market as somewhat earlier – in one case 1997. This suggests that at first VCDs were limited to an exclusive and expensive niche market. They did not arrive on the low-income *originario* market until several years later. For example, in 2002 the stalls from which I regularly purchased *originario* music only offered audio cassettes. When I returned to Bolivia in 2004 these same stalls were dominated by VCDs, which had eclipsed the cassette.

Table 10.1 *Overview of disc pricing over time and wholesale/retail*

Price reduction of original discs/cassettes (typical prices)

1998 retail price of CD = 100Bs (c. £7.00)
2003 retail price of VCD = 30Bs (c. £2.10)
2008 retail price of VCD/cassette = 10Bs (c. £0.70)
    – wholesale price (in case) = 6Bs (c. £0.42)

Typical prices of counterfeit discs (2008)
Retail price of **pirated** VCD (in case) = 10Bs (c. £0.70)
Retail price of **3 pirated** discs (in bags) = 10Bs (c. £0.70)

Typical prices of counterfeit discs (2008) – price per disc
Bulk-buy (100+) wholesale price in Desaguadero market, Peru = 1.20Bs
    (c. £0.09)
Wholesale price paid by local Bolivian vendors to distributors = 2Bs
    (c. £0.14)
Retail price per disc (when 3 purchased together) = 0.33Bs (c. £0.23)

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the less, as many vendors sold disks in plastic display cases for 10Bs, he was able to compete with this price by selling his VCDs to vendors for 6Bs (c. £0.42p) in a display case (or for 5Bs without). Even if the price of 10Bs was the same for consumers, vendors could potentially increase their profit margins considerably by using cheap counterfeit disks from Peru (or copied locally) rather than those purchased from Gregorio. I will examine some of Gregorio's strategies for confronting this problem below.

Psychological campaign: Appealing to consumer sentiment

Alongside educating consumers about piracy, Gregorio used psychological pressure to dissuade them from purchasing counterfeit recordings. The text below, taken from the insert of an audio cassette released in 2001, emphasizes that piracy was already a major concern before the explosion of the *originario* VCD onto the market in around

2003. While the VCD's arrival undoubtedly escalated the scale of counterfeit copying, audio cassette piracy was already well established in Bolivia – as in many other parts of the world (Manuel 1993). Compared to antipiracy notices elsewhere, Gregorio's text is strikingly poetic, melodramatic and nostalgic, as if an art form in itself. It draws powerfully on metaphor and appeals directly to the sympathies and sentiments of his audience, pricking the reader's moral conscience. It is also remarkable how the text identifies the promotional potential of piracy and its origins in the over-pricing of original recordings. At this time, such points were rarely admitted by major media corporations, let alone openly stated in their antipiracy campaign literature. These references, alongside addressing the reader as 'brother/sister', highlight Gregorio's attempts to appeal to the empathy, understanding and good nature of his audience as fellow Bolivians. In this way, he milks a popular national discourse which presents Bolivians as honest and generous, despite their poverty which is seen to result from other nations' greed.

No to piracy, of this humble music, he who falsifies copying the colours and forms of this work may be called moths to music.

The case is against the violence of piracy, which kills and harms drinking the blood from the lungs of artists and composers, losing them their merits and honours.

Because of pirates our Bolivian artists have been devalued by musical sound production industries.

Because of piracy, no longer is the work and sacrifice of songwriters and composers recognized economically and with income for those to whom it belongs, as it was in the past.

But on the other hand, due to piracy artists achieve greater promotion and fame while, nonetheless, becoming poorer than ever and without benefits; singing whatever for a pittance or nothing.

All those of us who live from the music business place our hands on our chests and speak to your heart in silence and remind you of Bolivian artists.

Nonetheless piracy has also appeared due to the high price of productions in this country of original sound [recordings]

With thanks from your friend: Gregorio Mamani Villacorta.
                          (Mamani 2001, my translation from Spanish)

Gregorio appeals to national sentiment even more explicitly in the presentation clip which opens the first edition of his VCD of the 'First GPFONPO Festival' in 2004 (which I discuss in more detail below). The scene opens to the sounds of Gregorio's song 'Celosa Celosay' and a man arriving at the door of an office, presumably to start work. Gregorio is seated at a desk in the office and playing his *charango* along with the song and, on seeing the man, greets him as 'director' and invites him to enter. The 'director' asks Gregorio what 'rubbish' he is listening to and Gregorio retorts that it is 'our' (i.e. Bolivian) music. The director then replaces Gregorio's cassette of Bolivian folk music with a recording of North American pop music (Hey Ya! 2003 by *OutKast*), asserting that '*this* is music' and highlighting his status as a 'high-level director'. Gregorio angrily exits with his instruments and in the next scene is shown in a state of deep despondency, lamenting his compatriots' low esteem for the nation's music. Looking directly into the camera, he appeals to his Bolivian 'brothers' and 'sisters' to value national music by not purchasing pirated recordings (see Mamani 2004).

Through this video clip Gregorio plays on national anxieties about the powerful influence and preponderance of mass-mediated popular culture, especially as purveyed by large US multinational media corporations. Such allusions are likely to have struck a chord with the dynamic social movements of Bolivia's largely low-income and indigenous population which by 2004 had gathered huge momentum. Fundamental to this discontent was widespread opposition to foreign and multinational exploitation of national resources which had crystallized in major civil conflict around the so-called Water Wars (2001) and the Gas War (2003). These movements ousted President Gonzalo Sánchez de Lozada in 2003 and were to lead to the landslide election victory of Bolivia's first indigenous president, Evo Morales, in 2005. Gregorio became an increasingly active and outspoken supporter of the Morales campaign; indeed, his recordings of campaign songs

were widely circulated and probably very significant to the growth of popular support for Morales.[5] While Gregorio's antipiracy video clip may be seen to identify with the low-income popular indigenous classes, it also critiques the failure of educated middle-class Bolivians to value and support national culture. Indeed, it remains common for educated middle-class people to disparage the kinds of *charango* songs Gregorio played as 'rubbish' (*basura*), favouring instead international music and artists that carry far greater cultural capital within Bolivia's hierarchical society.[6] In the clip, Gregorio casts the 'director' as ridiculous and undignified. He is seen to flaunt class status but is ignorant and uncaring about his nation's culture; in short the director is 'unpatriotic'. Through this juxtaposition, Gregorio identifies himself with his humble low-income audience of Bolivian 'brothers' and 'sisters', who express their patriotism and regional identity through supporting regional artists and by not buying pirated disks. This already potent message was undoubtedly heightened and shaped by the dynamic social movements of the time and by the escalating campaign for the election of an indigenous president. Let us now turn to another aspect of this GPFONPO video compilation which further highlights the link between antipiracy and indigenous social movements.

Promoting solidarity among *originario* artists

The VCD from which the video clip described above was taken presents itself as the first festival of GPFONPO – *Gran Peña Folklorica Nacional de los Pueblos Originarios* (The Great Assembly of National Folklore

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[5]   These campaign songs were released first as an audio cassette in 2004 and then as a VCD music video in 2005.

[6]   This was very evident from the tastes of children in the private schools in Sucre that my children attended. Interest in national music was largely restricted to dancing in folklore parades and a few major national groups, such as Los Kjarkas. To have expressed interest in regional folk musics would have attracted ridicule. For similar examples of the way in which particular musics are constructed as 'bad' or 'trash', see Washburn and Derno (2004).

of *Originario* Peoples). It features a selection of regional performers
of varying renown, and the cover of the first edition declares that
the VCD is dedicated 'to the best interpreters of the *charango* in the
procession of artists'.[7] The following text appears on both editions of
the VCD, its rhetoric merging the struggle against piracy with wider
revolutionary mobilizations:

> **FROM ALL TO ALL**
> THE MOVEMENT OF STRUGGLE
> HALT PIRACY AND
> CORRUPTION IN THE COUNTRY
>
> **CULTURAL CENTRE OF**
> **BOLIVIAN MUSIC**
> **CEMBOL** is an *originario* production
> Struggle for the wellbeing of the country
>
> If our Governments, if our Parents, do not manage to attain Our
> independence, [and our] social, economic and cultural sovereignty as
> artists; [then] singing and shouting we will accomplish it ourselves.
> This is because we are the force and the seed from which Bolivia was
> born, as a free homeland which we will always make heard.[8]

It is notable that no reference to Evo Morales appears on this VCD,
except spoken by Gregorio's 10-year-old son David in the intro-
duction to his song 'No bebas papcito' ('Don't drink dad'). David
was hugely popular as the child star *Vichito Mamani,* and the spoken
words – which were clearly scripted for him by Gregorio – simply
express support for Morales, gratitude to Gregorio for organizing the

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[7] Intriguingly, on the label of this first edition of the VCD, the photograph and name of
Bonny Alberto Terán – arguably the most famous artist of the genre – is covered over
using a white correction pen, and the word *Protesta* ('Protest') appears handwritten in
red pen, suggesting that the enterprise was surrounded by controversy.

[8] **DE TODOS PARA TODOS /** MOVIMIENTO DE LUCHA / ALTO LA PIRATERIA
Y / CORRUPCION EN EL PAIS – **CENTRO CULTURAL DE LA / MU[S]ICA
BOLIVIANA / CEMBOL** es una producción originario / Lucha por el bienestar del Pais
– Si nuestros Gobiernos, si nuestros Padres, no lograron forjar Nuestra independencia,
soberanía Social, económica y cultural como artistas cantando y gritando nosotros lo
forjaremos. Por qué somos la fuerza y la semilla de donde nació Bolivia, por Patria libre
que siempre sonamos.

festival and opposition to piracy. What I wish to highlight about this VCD production (and the festival that it purports to document) is its initiative to create solidarity among *originario* artists. As Gregorio emphasized to me on many occasions, *originario* artists needed to work together to counter piracy, but also to improve their social conditions and to protest against their marginalization by the national music rights society, SOBODAYCOM (Bolivian Society of Music Authors and Composers). This need for artist solidarity was also explicitly expressed in a pamphlet published by Gregorio which outlined the effects of music piracy and the lack of state protection for the country's 'millenarian musical culture'. Asserting that it was 'time to call for justice', the pamphlet called for the urgent convening of 'a first national meeting of *originario* artist composers of the Bolivian nation'.

In short, Gregorio's outspoken position was fundamental to provoking debate among *originario* artists and to catalysing solidarity. Over subsequent years, associations of *charango* singer-songwriters gradually emerged in the cities of Cochabamba and Sucre, and in 2007 the umbrella organization ASCARIOBOL (Cultural Association of Indigenous *Originario* Artists of Bolivia) was founded. Although, by this time, piracy was only one of the issues on artists' agenda, ASCARIOBOL made national news with its first 'Day of the Artist' on 27 April 2008, when an estimated 10,000 musicians and dancers processed through the streets of La Paz to the presidential palace. Although a pioneer, Gregorio's idiosyncratic and irascible nature, his inability to compromise and his insistence on only participating in the organization as president, ultimately meant that he remained largely isolated from ASCARIOBOL. None the less, several members openly acknowledged that Gregorio had been the spark which had brought ASCARIOBOL into being and some even campaigned for him to become Bolivia's Minister of Culture. In the light of this, the VCD of the first – and only – GPFONPO Festival, in 2004, would appear to be one of the first concrete manifestations of *originario* artist solidarity in the face of piracy.

Provoking resentments

In the previous examples I examined how Gregorio confronted piracy by appealing to the loyalty, good nature and patriotism of his audience and through motivating solidarity among *originario* artists. None the less, feelings of loyalty and group solidarity are often accompanied by antipathy towards others, and in the following example we see how resentment is provoked and redirected against music piracy. In the song 'A la Mar' ('To the Sea'), from his 2008 VCD *30,000 Chanchos* ('30,000 Pigs'), Gregorio explicitly invokes the 'War of the Sea' – a reference that almost any Bolivian will instantly relate to the War of the Pacific (1879–83). In this disastrous conflict with Chile, Bolivia lost its access to the sea, a loss that remains a deep and painful scar in the Bolivian psyche. The most decisive battle in the conflict – in which the war hero Eduardo Albaroa was shot dead – took place at Calama on 23 March (1879). This date continues to be commemorated each year, with flag-lined streets and parades, in many parts of the country. At the same time as provoking resentment over Bolivia's lost access to the sea, the video images in 'A la Mar' feature the violence of ritual fighting (*tinku*). The tradition of *tinku* fighting during religious festivals is found in many parts of the Northern Potosi region, but the largest and best known takes place in the town of Macha during the Feast of the Holy Cross in early May. Numerous groups of warriors playing *jula jula* panpipes and singing *charango* songs in the *cruz* style – as heard in this recording – converge on the town from surrounding rural communities (Stobart 2006). This includes groups from the village of Tomaykuri, some three hours' walk from Macha, where Gregorio grew up and lived until he was nearly 30. In other words, *tinku* fighting and its associated music were very much part of Gregorio's culture and in the video he approaches *tinku* as an insider, juxtaposing its violence with comic elements. Since at least the 1980s, *tinku* fighting has been the object of much – often exoticist – outsider fascination, attracting a stream of national and international tourists, photojournalists and filmmakers. *Tinku* has

also given rise to a national folkloric dance, found in urban folklore processions throughout the country, which imitates regional dress and parodies fighting to invented music and choreography (Goldstein 1998). In contrast, Gregorio was one of the first regional artists to commercialize, celebrate and champion the rural song style associated with *tinku*, which is quite distinct in style and sonority from that of the nationally ubiquitous urban *tinku* genre.

The song 'A la Mar' not only stirs up resentment over Bolivia's loss of maritime access to Chile, but also invokes conflict through its numerous video clips of *tinku* fighting and seething crowds filmed during the feast itself. The music and video images are dynamic and arresting from the outset; Gregorio's slow-motion leap transitions into the energetic synchronized jumping and stamping (*zapateo*) dance characteristic of the *cruz* song genre (Stobart 2006: 89–90). We see combat between pairs of women, pairs of men and neighbouring villages (Churikala and Colquechaka) and there is sometimes a sense of complete mayhem. Against this visual bombardment, the song is heard sung in Spanish; an exception for this VCD on which most songs are in the indigenous language Quechua. This detail suggests that Gregorio's antipiracy message was aimed at a more urban audience who would be less familiar with Quechua. The song is divided into three verses: the first links going to the sea with lovemaking, pleasure and sensuality, flowers and lips tasting of pomegranate. These sensory pleasures vanish in the second verse to be replaced by a sense of loss and nostalgia: 'Why do you sing no more?'. The culprits, we are told, who have taken away this source of pleasure – just as the Chileans 'stole' Bolivia's access to the sea – are those who dishonestly sell and buy counterfeit recordings, causing artists to live in poverty. In the final verse Gregorio appeals to the President (Evo Morales) for 'justice', but as copyright law is not enforced he threatens to take the law into his own hands, using *tinku* tactics.

Through the course of the song the antipiracy message is emphasized using screen text (in Spanish). The words 'Halt piracy dammit. … He who damages this work will pay dearly. Justice will be done

with my own hand'[9] gradually move across the screen during the first
verse and into the instrumental. Similarly, during verse two we are
cautioned: 'Halt falsifying CDs. Say No to piracy.'[10] During the instru-
mental between verses two and three, video images of *tinku* fighting
with stones (*rumi tinku*) are shown, a particularly dangerous practice
which regularly results in fatalities, despite the authorities' attempts
to outlaw it. During this stone-fighting episode text appears on the
screen warning the viewer that 'this fight is Deadly', thereby setting up
the action that is played out over the course of the final verse. In this
sequence, Gregorio is shown thumping his *tinku* opponent – speeded
up for comic effect – and then hurling a stone at him. His adversary
then appears prostrate on the ground, blood dripping from his mouth,
as if vanquished in mortal combat. Gregorio performs a victory dance
beside the body and, as a final flourish, disdainfully kicks away his
opponent's fighting helmet (*montera*). Meanwhile the screen text reads:
'Gregorio Mamani is not looking for problems. He's looking for those
who fake his work and for counterfeit buyers [*compradores truchos*]'
(Mamani 2008).[11]

The resulting music video is both threatening and hilarious; it
is serious and playful. Viewers can hardly miss Gregorio's message:
he will not hesitate to use violent means, if necessary, to protect his
work from piracy. However, the communication of this message is,
at the same time, highly entertaining – a kind of antipiracy art form,
which conveys meaning at a multiplicity of levels. Much humour
also surrounded the production and filming of this track, several
sequences of which I filmed under close instruction from Gregorio.
At his request, my 10- and 8-year-old sons (dressed in *tinku* outfits)
appear alongside him in the opening sequence and much was made
of the bull's blood collected from an abattoir shortly before filming.

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[9] Alto [*sic*] la piratería carajoo … El que hace daño este trabajo pagara caro. La justicia
     será con mi propio mano.
[10] Alto [*sic*] la falsificación de CDs. Dile no a la pirateria carajo.
[11] Gregorio Mamani no busca problemas, buscaron los que hacen fasificaciones este
     trabajo y los compradores truchos.

This anti-piracy entertainment clearly went down well with local viewers; indeed one urban Bolivian friend described it as *brutal* – a Spanish expression which conveys the sense of 'awesome' (as well as 'brutal').

Violent acts: 'Justice with my own hands'

In the previous example, Gregorio exploited his *originario* (indigenous) identity as a 'noble savage': honest and moral, while potentially fierce and mortally dangerous. This is supported by the reality of *rumi tinku* – stone fighting – which results in fatalities almost every year. But the spoof fatality that ends the video, and Gregorio's play acting, is calculated to provoke laughter; it is light-hearted and playful, even if the underlying message is serious. As noted above, Gregorio having radically reduced prices to make the retail cost of original and pirated VCDs identical (when sold in a presentation case), the primary target of his antipiracy message was not so much consumers as vendors. By purchasing Peruvian mass-pirated disks or making copies themselves and placing these in presentation cases, vendors could potentially make a profit of around 7Bs (£0.49) per disc, compared to 4Bs (£0.28) from an original supplied by Gregorio. Established market vendors in the main areas where Gregorio's VCDs were sold were sure to know that Gregorio's threats, albeit clothed in humour in Gregorio's 2008 'A la Mar' music video, were entirely serious. His scandalous actions were infamous and stallholders would have been familiar with his first VCD dedicated to music of the Macha *tinku* (*Capital Tinkuy de Macha* 2005). In this video, Gregorio documents his retaliation for a vendor's repeated piracy of his music in a shocking and concrete way, expressing his identity as a violent Macha warrior.

This notorious sequence occurs in the first song on the disk, entitled 'Miski Imilla' ('Tasty Lass') – the pseudonym by which Gregorio's wife is presented on various recordings. In both the video and the Quechua/Spanish song text, Gregorio strategically essentializes himself as brutal

and 'detested' – abandoning any sense of nobility or humour. He appears as bellicose, bullying, sexually crude and chauvinist, brimming with unrestrained Macha masculinity. The first spoken words and sung verses are full of crude sexual references, with musical instruments – the *pinkillu* flute (an obvious phallic reference) and the *charango* – presented as the actors in sexual interactions and violence towards women. The video shows a cockfight and images from the actual feast in Macha, where Gregorio is seen to knock over a girl in the crowd (probably originally unintentionally) and comment 'that's how I am'. After entreating Macha warriors to go into battle, he is shown with blood around his mouth singing the classic lines from this song genre: *Somos, somos, Macheñitos somos. Hijos de la patria, bolivianos somos* ('We are, we are, Machas is what we are. Children of the nation, we are Bolivians'). But rather than finishing these well-known couplets in the usual way, he sings 'Kicks and punches, we are slaughterers. When there are pirates, we're sackers.' At this point the video images move from the context of *tinku* fighting in Northern Potosi to a street in the city of Cochabamba. Decked out in *tinku* battledress, including a *montera* ox-hide fighting helmet, Gregorio is seen to stride up to a shop selling pirated VCDs and to tear disks from the display rack while the female vendor tries in vain to stop him. He then throws a rock through the screen of a television set, and attempts to smash a stool before strutting away. The remaining verses are variants of well-known *Cruz*-genre song texts that evoke *tinku* fighting and which are often sung by men during the Feast of the Holy Cross in the town of Macha (see Mamani 2005).

Miski Imilla ('Tasty Lass')
(Spoken text in italics)

Hey! Sweet pinkillu flute,
He's the lover of Tasty Lass dammit!
The rebel who makes you dance,
Filthy whiskers dammit,
Go for it! Up with those feet [jump in dance]
Ulla, ulla, ulla dammit!.

My charango's called 'back breaker',
And its girl is called 'Tasty Lass'.
In dress, in *pollera* skirt, makes urine drip.
Who, like me, gives her the works?
Kidnaps and gives it to the Macha girls.

That's how I am!
Get ready with your slings lads,

We are, we are, Machas is what we are
Children of the nation, we are Bolivians.
Kick and punches, we are slaughterers,
When there are pirates, we're sackers

Brrrrr! And not scared of the devil.
Now you've had it pirates, assassins, whores Sack and spoil damitttt!

From the square in Macha, who's president?
I'm Eulogio's son, that's who is president.
From Tomaykuri, here I am present,
Detested lad, present with his girl.

Let's go dammit. Arrrrr, move those feet dammit.
Running, through the streets, the square with the church tower dammit!
Where are Phichichua community's dancers?

This street, another street,
Capital of *tinku*, the streets of Macha,
That's what we are, singers and dancers.
Even in the stone fighting we hold firm,
With all the kicking our chests are firm.

Now go for it dammit!, hit dammit, hit dammit!

Look out 'ulla, ulla' dammit! Pick 'em up, pick 'em up, duck the stones
    dammit.[12]

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[12] *Ijayyy misk'i pinkillu,/ Misk'i imillaq waynan karaju, / wanka tusuchi, / q'upa viguti karaju. / Ijayyyy, patanta patanta / Ulla, ulla, ulla karaju.* – Charanguituypata, llik'i wasa sutin, / Chulitanpatataq, misk'i imilla sutin, / Chutasta chulasta, jisp'ayta sut'uchin. / Pitaq nuqa jina, tukuy imán quchin, / Machamán chulasta astakipan quchin. – *Así suy* /

There is no humour in the video images of Gregorio smashing up an actual shop. Rather, this footage, filmed for him by his son, was designed to shock, provoke fear and provide evidence that – as a Macha warrior – he was ready to undertake 'justice with my own hands'. This example – intentionally captured on video – was by no means the only time Gregorio smashed up the stall of somebody who repeatedly pirated his work. He told me how, when distributing his recordings to market stalls – especially in the lowland Chapare region – some vendors would purchase multiple copies of his disks ('some took five units from me, some 20 or 25, up to a maximum of 30'), whereas others would buy a single disk. When he returned several months later, those who had previously bought a large batch would typically request more. However, vendors who had purchased a single disk almost never wanted more, and their stalls would often display many pirated copies of his work. In these cases, he told me that he would politely ask the stallholder to refrain from pirating his work. If on his next visit the vendor still did not buy original disks and persisted in pirating his work, Gregorio would issue a much more serious warning. When vendors continued to ignore his warnings, he would take far more drastic action:

> On the third time I went armed, loaded with stones in my rucksack and wearing my *montera* fighting helmet. [I thought] 'I'm going to scare the hell out of these bastards. Now I'm really angry'. It really pained me all this work, all I'd had to invest, all the sacrifice I had made. …
>
> [So, I would ask] 'Why do you do this to me? Why? You should buy originals from me. You just bought one from me, and now there's

Alistarse yuqallas, warak'as – Somos, somos, Macheñitos somos, / Hijos de la patria, bolivianos somos. / Patada y puñetes, matadores somos, / Vamos haber piratas, saqueadores somos. – *Bruirrrrr. Ni supaypis manchachikunchu. / Ahora sí piratas, asesinos, granputas karaju / Saqueo, saqueo karajuuuu.*– Macha plasamanta, pitaq presidente, / Elujituq wawan, chaymá presidente. / Tumaykurimanta, aqui estoy presente, / Chiqnisqa yuqalla, chulantin presente. – *Jaku karaju. Arrrrr, chakis karaju, chakis karaju. / Ufhayyy, kallinta kallinta turri plasaman, karaju / Haber maytaq Phichichuwa karaju.* – Esta callecito, otra callecito, / Capital del tinku, Macha callesitu, / Jinamá nuqayku, takiq tusuq kayku. / Rumi parapipis, sayaq pichu kayku, / Jayt'a patadita muchu pichu kayku. – *Ahora si karaju, takay a karaju, takay a karaku./ Jayyy ulla, ulla karaju. Uqhariy, uqhariy rumiwan, rumiwan wasaykuy karaju.*

all this lot you are selling – nothing but piracy' – and still they weren't
bothered. Right away I'd put [a stone] *kak!* through their television,
and go off shouting. Some hit me or took me off to the police, but the
police didn't know what to do when we arrived at their office.

<div align="right">(Mamani 2007)</div>

On these occasions, Gregorio ensured that he carried with him a
copy of the Copyright Law (*ley 1322 – derecho de autor*). If taken to
the police station by angry vendors, he would present this document
to the officers, stating that his legal rights had been infringed. While
admitting he had also 'committed an error' by damaging the vendor's
property, he would ask how he was to protect his rights if the police
did not uphold the law. This usually led the police to accept the
vendor's wrongdoing and to send Gregorio away without penalty or
requirement for compensation, while reproaching him for his 'delin-
quency'. Smashing up stalls was very unpopular among vendors,
who sometimes responded by throwing stones at Gregorio to create
a kind of Macha-style *rumi tinku* battle in the markets of Chapare,
but it powerfully communicated the message, as does the video, that
Gregorio was not afraid of resorting to violent means to protect his
interests. Through such actions, he capitalized on his indigenous (*origi-
nario*) identity as a fearsome warrior of *ayllu* Macha, playing on deeply
held urban fears about the imagined violence and unpredictability of
indigenous people (Harris 2000: 141). This dauntless self-presentation
contrasts vividly with the sense of powerlessness expressed to me by
Carmelo Gutíerrez, the (urban, non-indigenous) owner of *GC Records*,
a Cochabamba-based label dedicated to producing music videos of
originario music:

On one occasion I stumbled across [a vendor selling fake copies of
my recordings], right? It made me really furious that this guy, right
there next door to my business, was selling pirated recordings. So I
got really angry; grabbed and tore up all that was mine. I smashed,
snatched and smashed, right? I said 'You guys just don't know how
much it costs to produce this material, do you? It doesn't cost you

anything, does it? So at least show some respect, when you are right next door to me.'

Well, they said to me, 'we didn't make these, we bought them. Go off and control the border [with Peru]. That's where they bring them from, don't they?' So, what happened? Ten people turned up, just like that, and instead of me doing it to them, they wanted to beat me up! … All I could do was grab [my stuff] and escape.

<div align="right">(Gutíerrez 2008)</div>

This example not only reinforces Gregorio's boldness of character and his exploitation of indigenous identity, but also elucidates some of the ways in which within piracy ecologies self-justification and the defence of personal interests are played out in local day-to-day contexts, with 'wrongdoing' often deferred to others. I often heard stallholders identify the criminality of piracy with Peruvian mass producers, even though nationally produced VCDs were actively selected and despatched to Peru for copying by Bolivian vendors.

During my research with Gregorio in 2007 to 2008 he did not undertake any further destruction of market stalls. However, the three VCDs on which we worked together all included antipiracy screen text warnings that the piracy of his work would result in 'justice with my own hands'. Gregorio was a strong and determined personality who was not afraid of making enemies or of causing outrage; indeed, he spoke with pride of how his attacks on the stalls of pirate vendors had provoked a 'scandal' that was even reported in the newspapers of the Bolivian capital, La Paz.[13] Perhaps, having proved to vendors that his warnings were not empty threats, he could afford in his later work to approach his antipiracy campaign in a more creative, light-hearted and entertaining way.

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[13] None the less, he could not provide specific dates and I have been unable to track down these newspaper reports.

Conclusion

We might expect original DVDs and VCDs to be more widely available in the shops and market stalls of Sucre's beautiful colonial city centre, frequented by the city's middle classes and tourists. Although such surroundings might promise the 'secure zones of authorized consumption' dreamed of by the media industries (Sundaram 2009: 135), in reality, original recordings were almost entirely absent. By contrast, many original recordings were available in the less affluent and sprawling *Mercado Campesino* ('peasant market') on the city's periphery. Such a pattern clearly contests any simple correlation between piracy and poverty. However, in contrasting these two retail environments, it is important to point out that the purely pirated disks of the city centre offered a much greater variety of musical genres, a large proportion being of mainstream national or international origin. Almost entirely absent from such stalls was the work of regional *originario* musicians, and my requests for the recordings of Gregorio Mamani usually met with blank expressions, highlighting the strong class-based associations of particular genres. While a large number of stalls in the *Mercado Campesino* – as in the city centre – only offered pirated recordings, a considerable number stocked original recordings of regional *originario* genres, sometimes alongside a selection of pirated international music. Almost every such stall offered a variety of recordings by Gregorio, mostly originals; it was evident that here, unlike in the city centre, he was a household name.

A number of factors related to the various antipiracy strategies described above may help explain why original recordings were so widely available in the less affluent *Mercado Campesino*, but almost entirely absent from Sucre's city centre. First, the policy of small-scale regional producers, like Gregorio, to drastically reduce wholesale prices to make recordings affordable for low-income consumers was critical, even if they were ultimately unable to compete with the rock-bottom levels of pirates. Larger-scale national and international labels

or rights holders have usually been unable or unwilling to reduce their prices to locally affordable rates, meaning that piracy has become the only option for city centre vendors. The Bolivian middle classes, who frequent Sucre's city centre markets, may be relatively affluent compared to Gregorio's low-income *originario* audience, but average incomes are still probably five to ten times lower than in Europe or the USA (see Karaganis 2011). In addition, the piracy networks that supply city centre vendors are hugely more efficient than official distribution channels, offering a diversity of musical genres and films previously unimaginable for most Bolivians.

A second factor is that a much greater sense of 'social intimacy' and interaction is found among the artists, vendors and audiences of regional *originario* music than is usually possible in the marketing of mainstream national and international genres. This 'sense of participation in a shared community' (Condry 2004: 358) may involve feelings of loyalty and concern that musicians receive the economic recognition they deserve. Personal participation in the distribution process by regional *originario* artists often entails relationships of mutual interdependence, trust or even kinship with vendors. Such close interaction, alongside strategies such as flooding the market on the release day and screen-printing disks, also enables artists to police the sale of their work and to protest against its unauthorized replication. City centre vendors, by contrast, are less likely to have direct contact with the artists whose work they sell, especially in the case of international recordings. During my research, consumers and vendors in Sucre's city centre were subject to very little antipiracy discourse or pressure. Although aware of its illegality, most consumers to whom I spoke considered piracy as a huge 'boon' or 'benefit' (*ventaja*) in their lives.[14] None the less, one middle-class Sucre-based musician, who

[14] To my knowledge, no antipiracy campaigns or raids took place in Sucre's city centre during my field research. If they had, they would probably have been undertaken by third-party employees hired by recording companies. Actions of this type mounted in earlier years elsewhere in Bolivia were largely ineffective and tended to provoke resentment against rather than sympathy for the music industries.

regularly travels to Europe to perform, described piracy as 'the cancer of music'. He told me that his group's work was regularly pirated in the city centre and, as they could not even recoup production costs, they had abandoned making recordings to sell in Bolivia. However, with their experience of European tours and CD prices, there was little sense that the group had considered radically lowering prices or working with the vendors, or were particularly concerned to grow their national audience and attract (relatively low-paid) engagements at home.

Third, we might wonder how much Gregorio's consciousness raising and psychological campaign – with its poetry, appeals to patriotism or resentment, ludic threats and brutal actions – impacted on vendor and consumer attitudes and practices in the *Mercado Campesino*. In many respects, Gregorio's antipiracy campaigning was unique as regards creativity, relentlessness and variety in approach. No other artist went to such extremes, nor turned the 'play of piracy' into the focus of such interest and entertainment; indeed, the creative richness he employed may be seen to transform antipiracy into an art form. His approach certainly seems a great deal more creative and enter-taining than, for example, the UK's 'Knock off Nigel' antipiracy videos (c. 2007) which aimed to shame viewers into buying originals, or the many other industry-funded campaigns which spuriously connect media piracy with organized crime, drug-trafficking or terrorism (Govil 2004). By contrast, Gregorio's discourse and strategies – albeit highly melodramatic – were for the most part culturally relevant and accurate. He dropped prices to the absolute minimum, he informed and identified with his low-income audience and he targeted the sharp end of his campaign precisely at those vendors who chose to maximize profit at the expense of artist-producers. It is hard to be sure how much Gregorio's campaigning contributed to the existence of several groups of stalls in Sucre's *Mercado Campesino* selling original VCDs of regional *originario* music. Ultimately, reduction in price and personal distribution to vendors by the artists and their families may have been much more significant.

During my 11 months of research with Gregorio, based in Sucre, I participated in the production of three of his VCD productions. The first, entitled *Zura zura*, featured rural Carnival music, and had both a limited potential audience and short market window of around one month in the run-up to Carnival (Stobart 2011). A pirated 'special edition', produced in Peru, was in circulation around two weeks after this VCD's release (Stobart 2010: 44). Gregorio estimated that he sold around 2,000 VCDs before it was pirated, and that his total profits (after direct costs) for his two months of production work amounted to approximately 4,000Bs or £260 (calculated at 2Bs or £0.13 per disk). Even though this was disappointing for Gregorio, other producers of *originario* music told me that they rarely sold more than 1,000 originals. For the second production on which we worked together, *Exitos de Ayer y Hoy* ('Hits of Yesterday and Today'), which mainly featured old recordings of Gregorio's classic *huayño* songs to which he added video, estimated sales were around 4,000 (i.e. a profit of around 8,000Bs or £520). For our final production, *30,000 Chanchos* ('30,000 Pigs'), which featured the music of the Macha *tinku*, and on which the song 'A la Mar' appears (see above), Gregorio estimated that 6,000 copies had been sold by the time I left Bolivia around one month after its release (i.e. profits of around 12,000Bs or £780). To my knowledge, neither Gregorio's second nor his final production was pirated over the main post-release sales period. Even if he exaggerated the numbers of VCDs sold, the figures hugely exceed those given to me by other artists and studios. It must be remembered that each production involved several months of constant work and that many other indirect costs were involved. While the return from his best-selling VCD was considerably more than the earnings of most other rural migrants in Sucre, it was by no means a fortune; indeed, his family's lifestyle was extremely modest and money was a constant worry. As Gregorio pointed out, live engagements tended to pay much better. For example, a typical fee was 2,000Bs (£130); half of this would be shared with the two accompanying guitarists (500Bs each), while he would take 1,000Bs (£65) as leader, soloist and songwriter. None the less, such bookings for live

performances were few and far between – around five in my 11 months of research. In this context, viewing recordings purely as a form of promotion, rather than as a significant source of income, presents a very bleak picture for musician-producers such as Gregorio.

References

Condry, I. (2004), 'Cultures of Music Piracy: An Ethnographic Comparison of the US and Japan', *International Journal of Cultural Studies*, 7(3): 343–63.

Dawdy, S. L. and Bonni, J. (2012), 'Towards a General Theory of Piracy', *Anthropological Quarterly*, 85(3): 673–700.

Goldstein, D. M. (1998), 'Performing National Culture in a Bolivian Migrant Community', *Ethnology*, 37(2): 117–32.

Govil, N. (2004), 'War in the Age of Pirate Reproduction', in S. Sengupta, M. Narula, R. Vasudevan, R. Sundaram, J. Bagchi, A. Sharan and G. Lovink (eds), *Sarai Reader 04: Crisis/Media*. Delhi: Sarai/CSDS. Web.

Grisaffi, T. (2010), '"We are Originarios … We just aren't from here": Coca Leaf and Identity Politics in the Chapare, Bolivia', *Bulletin of Latin American Research*, 29(4): 425–39. Web.

Gutíerrez, C. (2008), Personal interview, CG Records, Cochabamba.

Harris, O. (2000), *To Make the Earth Bear Fruit: Ethnographic Essays on Fertility, Work and Gender in Highland Bolivia*. London: Institute of Latin American Studies.

Karaganis, J. (ed.) (2011), *Media Piracy in Emerging Economies*. New York: Social Science Research Council.

Lebrecht, N. (2008), *Maestros, Masterpieces and Madness: The Secret Life and Shameful Death of the Classical Record Industry*. London: Penguin Books.

Lee, D. (2012), 'A glimpse at Piracy in the UK and Beyond', *BBC News – Technology*. Web.

Lemos, R. (2007), 'From Legal Commons to Social Commons: Brazil and the Cultural Industry in the 21st Century.' Centre for Brazilian Studies, University of Oxford (working paper).

Mamani, G. (2001), Audio cassette insert, *Gregorio Mamani con su cancionero*. Sucre: CEMBOL.

—(2004), 'Entrada de Presentacion', from VCD: *1er. Festival GPFONPO (Gran*

Peña Folklorica Nacional de los Pueblos Originarios), *YouTube* (http:// youtu.be/FMDbWSRz4vk). Web.

—(2005), 'Miksi Imilla', from VCD: *Capital tinkuy de Macha, YouTube* (http://www.youtube.com/watch?v=nTeN_8_IGns). Web.

—(2007), Personal interview, December.

—(2008), 'A la Mar', from VCD: *30,000 Chanchos: La Revolución Cultural*, *YouTube* (http://youtu.be/TpcgAhUt1_U). Web.

Manuel, D. (2007), 'La Descolonización de la piratería', *letras bolivianas*, 13 November. Web.

Manuel, P. (1993), *Cassette Culture: Popular Music and Technology in North India*. Chicago, IL: University of Chicago Press.

Stobart, H. (2006), *Music and the Poetics of Production in the Bolivian Andes*. Aldershot: Ashgate.

—(2010), 'Rampant Reproduction and Digital Democracy: Shifting Landscapes of Music Production and "Piracy" in Bolivia', *Ethnomusicology Forum*, 19(1): 27–56.

—(2011), 'Constructing Community in the Digital Home Studio: Carnival, Creativity and Indigenous Music Video Production in the Bolivian Andes', *Popular Music*, 30(2): 209–26.

Story, A., Darch, C. and Halbert, D. (eds) (2006), *The Copy/South Dossier: Issues in the Economics, Politics, and Ideology of Copyright in the Global South*, n.p. Copy/South Research Group. Web.

Sundaram, R. (2009), *Pirate Modernity: Delhi's Media Urbanism*. London and New York: Routledge.

'The World Factbook: South America: Bolivia', *Central Intelligence Agency: Library*. Web.

Wang, S. (2003), *Framing Piracy: Globalization and Film Distribution in Greater China*. Lanham, MD: Rowman & Littlefield.

Washburn, C. and Derno, M. (eds) (2004), *Bad Music: The Music We Love to Hate*. New York: Routledge.

Yar, M. (2008), 'The Rhetorics and Myths of Anti-piracy Campaigns: Criminalization, Moral Pedagogy and Capitalist Property Relations in the Classroom', *New Media Society*, 10(4): 605–23.

Money Trouble in an African Art World

Copyright, Piracy and the Politics of Culture in Postcolonial Mali[1]

Ryan Thomas Skinner

Money trouble

In November 2006, the Triton Stars, an aspiring Malian dance band, finished a four-day run at Studio Bogolan in Bamako, Mali's capital along the upper Niger River. The recordings were for the band's second album, a follow-up to their first release, *Immigration*, which had been on the market since January of the same year without any sales to speak of. In an effort to rejuvenate the band's prospects, producer Racine Dia decided to re-release the first album in January 2007, to be followed soon thereafter by the second (as yet untitled) album, building on the anticipated success of the first. The problem, Dia told me, was

that nobody in Mali knew the Triton Stars. They didn't have *tògò* ('a reputation') in the city. To rectify this, the group would play a series of weekly concerts in December, free of charge.

On Friday, 8 December, audience members – including friends of the band, shoppers from the nearby Sokoniko market and a large contingent of neighbourhood youth – sat noisily on plastic chairs laid out on a small grassy field in front of the concrete stage. Others stood behind them, or along the wall marking the perimeter of the Centre de Recherche Culturelle et Artistique, a privately funded cultural centre. At 9.30 p.m. the Triton Stars took the stage, right on schedule, kicking off with a track from their new album, a piece called 'Wariko' ('Money Trouble'), a hard-edged and fast-paced Afropop arrangement. Lyrically, the song addressed a theme to which everyone present could relate: the socioeconomic precarity inherent in a loosely regulated and generally inequitable cash economy. In the opening verse, lead singer Karounga Sacko belted out the following lines:

I ma don tile min ye
('Don't you know that the sun today')
tile feri feri?
('is a very hot sun?')
Kow bèè dalen wariko de la
('Everything is tied to money trouble')
Aaaa! Wari ma nyi de
('Ahhh! Money is not good')
Balima dama ye nyògòn na bila
('Family members are beset by dispute')
ko nin kun ye wariko
('because of money trouble')
Furunyògòn dama ye nyògòn na bila
('Married couples are beset by dispute')
ko nin kun ye wariko
('because of money trouble')
Siginyògòn dama ye nyògòn na bila
('Neighbours are beset by dispute')

ko nin kun ye wariko
('because of money trouble')
Jènyògònmògòw ye nyògòn janfa la
('Close friends have betrayed each other')
Aaaa! Wari ma nyi de
('Ahhh! Money is not good')
Nè dun siran na
('As for me, I am afraid')
Nè bè siran wari nyè
('I am afraid of money')
A ye furu sa
('It kills marriage').

During my fieldwork in Bamako (2005–7), the phrase *wariko*, much like the incessant heat of the afternoon sun (as Sacko poetically notes above), was ubiquitous. When a roving hawker entered into a family compound in hopes of selling his wares, he was almost always greeted with a polite *wariko*, meaning: 'Sorry, we don't have money to spend today.' When a friend or a relation approached her companion, brother or sister for some extra cash to get through the week, she often heard *wariko* in response, implying: 'I'd like to help, but I have the same problem right now.' In the market, the phrase echoed in the mouths of peddlers and hagglers with such redundant frequency that it became a sort of vocal *leitmotif* in Bamako's urban soundscape. Echoing this refrain, Sacko probed its psychosocial dangers. Because of money trouble, extended families, neighbours, siblings and close friends are embroiled in argument and betrayal. Money kills marriage and inspires fear. It threatens both self and society.

Later in the show, the subject of money trouble returned, this time in the words of two MCs (*animateurs*), whose stage patter between songs playfully referenced the precarious livelihoods of professional artists in Mali. 'Everyone will get together to buy this cassette,' one of the MCs announced. 'So, what's the problem? You only need to listen to the first track on Side A. Honestly, you will hear people making noise! When that track is playing, you will be pleased.' What, then, was

'the problem'? As the second MC explained, it was not simply social and aesthetic; it was also, and perhaps more urgently, political and economic:

> This cassette, it's good from start to finish. If you know it, you know what's in it. What do we want from you? You can tell others about it. I know it. [The Triton Stars] are young musicians, who are on the rise. The problem these artists face, though, is cassette piracy. If you haven't bought this cassette, if you want these musicians to advance …
> if you buy this cassette, make your best effort [to buy the one] with the sticker on it and the BuMDA [Bureau Malien du Droit d'Auteur] label. That's the only way artists can make a living.

In this chapter, I historicize this complex problem by interrogating the salient and oppositional forms *wariko* takes within the Malian culture industry: copyright (*droit d'auteur*) and piracy.[2] I also consider, like Sacko in his song, the socioeconomic repercussions of this 'money trouble' in the working lives of professional artists. Yet, as the Triton Stars' concert made clear, such troubles are not just about money; rather, they index a pervasive sense of precarity that triangulates social, political and economic uncertainty for which money, and its widespread lack, is the privileged sign.[3] As sociologist Franco Barchiesi describes, in a poignant critique of (neo)liberal economic rationality, '"precarity" transcends the problematics of employment insecurity [glossed here as 'money trouble'] in conventional policy and socio-logical debates, *emphasizing instead the crisis of work and of an entire normative and symbolic universe* that, during the decades of global neoliberal hegemony, has heavily come to rely on the employment

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[2] In this chapter, I use the term 'copyright' in the francophone sense of *le droit d'auteur*, employed in Mali, a former French colony. 'The right of the author' includes both moral and proprietary rights (*droits moraux et patrimoniaux*), pertaining to the material publication and exploitation (proprietary rights), as well as the personal attribution and integrity (moral rights) of a work (for a definitional history of French copyright, see Latournerie 2001).

[3] For a broad-based ethnographic survey of 'money' – its materiality, uses and troubling effects – in contemporary Mali, see Wooten (2005). For a more general, comparative discussion of shifting forms and understandings of wealth and value in sub-Saharan Africa, see Guyer (1995).

imperative' (Barchiesi 2012: n.p., emphasis added). For many artists, the professional precarity signified by *wariko* has a clear source: music piracy; 'The problem', the MC said, 'these artists face'. It is this qualification of piracy as an objective and strongly negative truth – what Barchiesi calls a 'normative and symbolic universe' – that this chapter seeks to historically contextualize and, in doing so, problematize.

As the above scenario indicates, appeals to confront the problem of piracy and affirm the status and identity of local artists as rights-bearing subjects resound within the Malian public sphere. Such arguments echo anxieties about the social and economic value of music in an era of privatized markets and decentralized politics, a sentiment expressed when the MC spoke, from the stage of a private cultural centre, of '*the only way* artists can make a living' (my emphasis). Through such claims on socio-musical justice, a contemporary discourse of neoliberal governance takes shape around the concept of 'culture', defined as an expedient object of curatorial and commoditized expression (Yudicé 2004). Copyright and its ubiquitous infringement, piracy, represent the normative and aberrant forms through which culture is produced and policed in Mali, as elsewhere (see Karaganis 2011); that is, they are the categorical means by which 'governmentality' – the regulatory and disciplinary politics of population management and control in modern states (Foucault 2007) – operates as 'cultural policy' under the global sign of neoliberalism (see Guilbault 2007).

In practice, however, the politics of culture in Mali has succeeded neither in securing the legal and pecuniary interests of musicians nor in stemming the unauthorized reproduction of musical works. This perceived failure of neoliberal governance manifests in what I have elsewhere called an artistic 'crisis of political subjectivity' (Skinner 2012a), in which musicians, caught between a dysfunctional state and an informal economy that flourishes in its midst, struggle to sustain a viable professional status and identity. In what follows, I put these artistic struggles into historical relief by tracing a genealogy of copyright and its criminalized corollary, piracy, through an emergent politics of culture in Mali. This history reveals the long-standing, though steadily

deepening, social, political and economic precarity that has shaped the subjectivity of the postcolonial Malian musician. This chapter is thus a particular history of *wariko* as experienced by musicians in the Malian art world (see Becker 1982) from the era of independence to the present. It aims to bring the past to bear on this current era of neoliberalism and the pervasive 'money trouble' it produces by interrogating the governmentalization of culture as a regime of rights and discipline in postcolonial Mali. As a cadential counterpoint, I conclude with a short reflection on what I will call 'non-governmental culture', or the forms of expression that articulate outside – and often in violation of – the disciplinary institutions of neoliberal governmentality. Yet, as we will observe, Bamako's non-governmental culture can only be fully understood in relation to the history of cultural governmentalization in postcolonial Mali, to which I now turn.

Artistic rights and labour in post-independence Mali

In 1957, artists working in the French Soudan (now Mali) and other French colonies were allowed to join the Société des Auteurs, Compositeurs et Editeurs de Musique (SACEM), a French agency that managed the licensing of artistic works and the collection and distribution of royalties for affiliated artists (Diakite 2006: 54; see also Laing 2004: 71–2). This imperial affiliation did not last long. Following independence three years later, all music produced in Mali, in line with the new nation's policy of cutting institutional ties with its former colonizer, fell under the purview of the state. Up until 1977, Mali did not have any codified copyright law or bureaucratic mechanism for royalty distribution. This meant, in practice, that the postcolonial state could act as the sole arbiter of domestic cultural production, distribution and exploitation. In 1962, Mali did, however, ratify the Berne Convention in nominal deference to international intellectual property law and, during the same year, the government signed the continental accord creating the Organisation

Africaine de la Propriété Intellectuelle (Cissé and Traoré 2001: 7). In 1963, Mali reaffirmed its commitment to 'the harmonization of copyright law in Africa' at a UNESCO-sponsored meeting of the International Bureau for the Protection of Intellectual Property in Brazzaville, but argued that such legislation should 'take local context and popular opinion into account' (Ntahokaja 1963: 252–3),[4] thereby affirming the authority of individual African states to legislate intellectual property as they saw fit. Despite the official public rhetoric of international and continental agreement, copyright in Mali remained uncodified and subject to arbitrary state interpretation for nearly two decades.

As copyright goes, so go the artists. In the 1960s, musicians in Mali were beholden to the state as clients of a nationalist politics of culture, though, until 1966, they were not employed by the state. For the most part, artists worked informally, living off a share of ticket sales from concert performances, without a *décision d'embauche* ('an employment contract') (Dembelé 2007). Their musical labour (performed and recorded) was considered the property of the state and was described, under the regime of Modibo Keita (Mali's first President), as *fasobaara* ('work for the nation'), in Bamanankan, Mali's lingua franca. In the early 1960s this could sometimes mean unpaid labour, described in terms normally associated with colonial rule: *forèsèbaara* and *diyagoya-baara* ('forced labour' and 'whether-you-like-it-or-not work'). 'They couldn't pay us', recalls Nfa Diabaté, a retired member of the National Instrumental Ensemble, 'so they called it *fasobaara*' – a postcolonial expression of *wariko* in the 1960s Malian art world (Diabaté 2006; see also Amselle 1978: 343, 348).

And, as artists go, so goes their work. In the post-independence era, musical recordings were made and archived at Radio Mali, the single, state-owned media outlet that housed the country's only recording studio (see Mamadou Diawara 1997). These recordings were, for the most part, propagandistic in terms of content, with themes that

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[4] I thank Marc Perlman for bringing my attention to this reference.

emphasized nationalist-use value, including comparisons of the modern nation state to the precolonial Mali empire *Maliba* ('Great Mali'); calls for newly ordained Malian nationals displaced within the former French empire to return home ('Yan Ka Di', Here Is Good); and appeals to work for the homeland ('Fasobaara', Nation Building).[5] Exchange value was a lesser concern. Recordings of such nationalist music (see Skinner 2012b) were made principally for radio broadcast. Long-play pressings of state-sponsored Malian groups did not appear until the late 1960s and were not widely distributed until the early 1970s.[6] By contrast, foreign-produced records had long been in circulation (since at least the 1940s), especially in the capital, Bamako, where such regional and global sounds were coveted commodities within an urban popular culture that thrived throughout the 1950s, 1960s and 1970s (Manthia Diawara 1997; Skinner 2011).

A disjuncture thus emerged between the circulation and consumption of national and foreign music that, under the increasingly authoritarian rule of the single-party state in the late 1960s, also marked the fault lines of official and unofficial culture. As a young activist of the ruling party asked in December 1967: 'Does the Malian revolution need James Brown [or] Johnny [Halliday] … to fill the catalog of its National radio?'[7] Perhaps not; yet, despite efforts to inhibit foreign (which usually meant Western and neocolonialist) cultural influence (see e.g. Arnoldi 2006: 60), such recordings continued to resonate

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[5] See, for example, musical selections included on the two-volume release, *Epic, historical, political and propaganda songs of the Socialist government of Modibo Keita (1960–1968)* (1977).

[6] Ethnomusicologist Graeme Counsel documents a pair of recordings released in 1968 by 'Republic [*sic*] du Mali Radiodiffusion Nationale' in his extensive online 'Radio Africa' discography (Counsel 2012). Elsewhere, Counsel writes that '[c]ommercial recordings were sporadic until the German label, Bärenreiter-Musicaphon, in conjunction with UNESCO and The Malian Ministry of Information, released over a dozen discs in circa 1971. It wasn't until 1973 that the Malian government first released its own material' (Counsel 2006: 138). These recordings sought to sample the regional diversity of Malian cultural expression and likely served as tools of promotion, to 'perform the nation' (Askew 2002) abroad. Examples of such state-sponsored promotional releases include *Panorama du Mali* (1973) and *Regard sur le passé à travers le présent* (1973).

[7] Comité révolutionnaire de coordination de la JUS–RDA de Bagadadji to Comité Nationale de la Jeunesse (Bamako, 26 December 1967, ANM-H FBPN 52/140).

within Bamako's urban soundscape.[8] For Malian artists, this cleavage between the national and the popular, the official and the unofficial, became a source of great frustration. With their domestic labour beholden to a single venue of broadcast distribution at the national radio, and without any legal right to their recorded work in Mali, the subaltern status of their cultural labour became patent. Internationally renowned musician Sorry Bamba's autobiography (Bamba and Prévost 1996) recounts his attempt to procure copies of an album recorded on the occasion of Mali's tenth anniversary of independence for his state-sponsored band, the Orchestre Régional de Mopti (1970). His narrative captures the perceived injustice of Mali's centralist policy towards cultural production and ownership:

> Each of the musicians was looking forward to receiving a copy of the disc. But, when they saw the Youth Director giving one disc to the authorities in Mopti and only one for the entire Orchestra, they were shocked by the deception! This meant that just one disc was to be shared, like a wafer, among all of the musicians in the Orchestra!
>
> Such pettiness nauseated me to such a degree that I lost interest, given the circumstances, in this recording. And yet, this disc represented my own research and adaptation, backed up, of course, by the competence of the musicians. If copyright is respected in other countries, here, it does not exist. I know this well, because I have been a member of SACEM since 1968 and released a number of albums in Côte d'Ivoire.
>
> In Mali [in the 1960s and 1970s], all albums were the property of the state. It was not even possible for a composer [*auteur-compositeur*] to reclaim the studio tapes of his own works if the Youth Ministry decided to keep them for a recording. Radio Mali was not permitted to give out a copy to these artists [*auteurs*].
>
> In the face of this injustice, a friend of mine managed to acquire some of my recordings that were being broadcast on the Radio Mali

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[8] For an artful account of Bamako's 'unofficial' postcolonial youth culture, replete with 'foreign' sounds, see the photographic work of Malick Sidibé (Mangin 1998).

> airwaves. It was only because of this effort, that I had the immense joy
> of being able to possess just a few of my own works!
>
> <div align="right">(Bamba and Prévost 1996: 134)</div>

As Bamba describes, Malian artists' access to their recorded works
through the 1960s and into the 1970s was restricted by a highly
centralized cultural economy and subject to the arbitrary decisions
of local and national authorities, subverted only by the surreptitious
pirating – to complicate the shades of illegality the contemporary
term *piracy* implies – of the artists' own music broadcast on the
national airwaves.

These frustrations about cultural ownership, production and circu-
lation coincided with a *coup d'état* in November 1968, the immediate
aftermath of which (following a brief period of hopeful jubilation; see
Sanankoua 1990: 55) exacerbated artists' woes. Following the coup,
all cultural troupes, orchestras and ensembles were disbanded by the
ruling military junta, the Comité Militaire de Libération Nationale,
and remained so for more than a year (Traoré 2007). Without salaried
contracts, given their status as unofficial agents of national culture
under the previous regime, Malian artists were confronted by two
stark choices: leave the country and embark on indefinite exile, or stay,
weather the storm of military rule and hope for the best. Many left.
Abidjan, the booming capital of Côte d'Ivoire, Mali's richer and more
liberal (but no more democratic) southern neighbour, became the
destination of choice. Sorry Bamba, himself recently returned to Mali
from Côte d'Ivoire (where he had fled from the tyranny of Modibo
Keita's revolutionary socialism in the late 1960s), described sentiments
shared by many Malian artists in the post-coup years:

> Suddenly, I understood the scope of a Coup d'Etat. All regime
> changes shake people's spirits. Everyone must learn to observe the
> new methods of those who claim power … What's more, I must fight
> vigorously against the despair that surrounds me, faced with so much
> aggression, so uncommon in the artistic community. Why so much
> hostility toward the pioneering musicians of Malian music? Our

music, born with our country's Independence, does it not belong to everyone? If, in my own country, creativity no longer has a place, so much the reason to get back on the difficult path of exile.

<div align="right">(Bamba and Prévost 1996: 112)</div>

The 1970s Ivoirian economy, bolstered by lucrative cocoa and coffee exports and President Houphouët Boigny's clientelist politics, provided for a strong patron class in Abidjan. Some of these wealthy and well-placed entrepreneurs had personal ties to Mali and favoured the arts, like Souleymane Koli, who recruited expatriate Malian artists into the famed *Ballets Koteba* (see Skinner 2004: 144–5). Flush with cash and a fondness for popular culture, Abidjan quickly emerged as the capital of the regional music industry. '[M]usicians came from the four corners of francophone Africa to try their luck in Côte d'Ivoire', writes Chérif Keïta in his important biography of Malian singer Salif Keïta, one of Abidjan's seminal figures in the late 1970s and early 1980s. 'This situation imposed a new kind of rationality on the African artist, who could no longer hope to survive by courting local audiences or counting on the patronage of the State' (Keïta 2009: 76). In Abidjan's highly competitive, market capitalist music scene, 'artistic rationality' meant seeking out patrons, cutting records and embarking on tours in the regional, continental, and increasingly international African cultural industry. Back in Bamako, the state oligarchy (now in civilian guise as the Union Démocratique du Peuple Malien) maintained its grip on cultural production, patronizing select groups that practised the art of political flattery (Keïta 2009: 37); though, by the end of the 1970s, political and economic changes were underway that, within a decade, would herald the end of the centralized and authoritarian regime itself (see Pauthier 2012).

The neoliberal turn

In 1977, Mali enacted its first copyright law (77–46/CMLN), providing for the protection of the 'literary and artistic property' of culture

producers, or 'authors'. This was followed in 1978 by the creation of the Bureau Malien du Droit d'Auteur (BuMDA) whose mission was to 'defend the intellectual, moral, and pecuniary interests of authors and their rights therein' (Cissé and Traoré 2001: 5). However, without a clear mandate to enforce intellectual property rights, and given the persistence of statist sponsorship of the arts through the mid-1980s (despite increasingly austere socioeconomic conditions), real changes in artists' professional status and identity (though not necessarily those envisaged by the laws) would not come until the mid-1980s. In July 1984, in a brochure commemorating the closing of the 8th Biennale Artistique et Culturelle, a state-sponsored biannual cultural festival, the Director of Arts and Culture, an adjunct to the Minister of Culture, prepared a series of responses to questions concerning the event's successes and failures.[9] His response to the fourth, penultimate question was revealing and prescient given the changes occurring not only in the Malian culture economy but also in the political economy of the postcolony more broadly.

> 4.) *Monsieur le Directeur*, you know better than anyone else that broadcast and circulation are the best ways to encourage cultural creation, yet the works from the last Biennale were not widely broadcast or circulated. Why?
>
> RESPONSE : 4th QUESTION
>
> I am obliged to say what many people would not like to hear. Nonetheless, it's the sad reality. In fact, the reason these works have not been broadcast and circulated is due to a lack of means. And as you have so well put it, the broadcast and circulation of these works is our objective. But it is necessary for us to recognize that we do not possess for the moment the national structure allowing [us] to broadcast and circulate works not only from the biennales, but those of our different artists in a general manner. …
>
> You see, as our proverb says so well, 'when you sweat in the rain, no one notices' [*quand on sue sous la pluie, les gens ne peuvent pas s'en*

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[9] 'Special Clôture', *8ième Biennale Artistique et Culturelle* (1984), edited by the Commission de Presse et d'Information. Unfiled archival document at the DNPC.

rendre compte].[10] But I have to say, to conclude with this question, that the solution to the problem of broadcast and circulation of our artists' works in general and of those from the Biennales in particular, can only be found in the creation of a production facility for cassettes and [vinyl] discs in Mali. Thus, *we call on our businessmen both in and out of the country to help us to definitively resolve this thorny problem that dangerously hinders artistic creation in our country, not to mention the danger of seeing our artists emigrate to find a record company in the best of cases, and, in the worst of cases, to find themselves estranged from the fruits of their labor by the illicit production of discs and cassettes* [emphasis added].

This question/answer passage effectively captures the shifting socio-political position of Malian artists and the changing perceptions of their work in the mid-1980s. The question succinctly makes the point that proponents of free culture (Lessig 2004) have long advocated: that cultural creativity benefits from greater public access to cultural products, in this case through increased broadcast and circulation of recorded works on the airwaves and in the marketplace. The response, however, signals the new orientation of Malian cultural policy – towards an emergent neoliberal governmentality – in a time of socioeconomic austerity: the state, no longer possessing the means to manage the production and distribution of cultural works, must privatize public culture. Written in July, in the midst of the rainy season, the Director describes the state's anxiety – sweating in the rain – about producing and promoting new cultural works and calls on 'our businessmen both in and out of the country' to invest in the development of a private culture industry. This call to liberalize Mali's stagnant cultural economy responds to two problems that 'dangerously hinder artistic creation': (1) emigration of national artists (discussed above); and (2) 'the illicit production of discs and cassettes' (or what would later be called, simply, piracy), the latter being the worst of cases, suggesting the emergent state of the counterfeit market at the time.

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[10] In Bamanakan: *Sanjikòròwòsi te dòn.*

As this statement was written, major changes in the social, economic and political character of the arts in Mali were already underway and would accelerate by the decade's end. In June 1984 (a month before the Biennial), a law was passed (84–26/AN–RM) to replace the 1977 ordinance defining 'artistic and literary property' in Mali. The updated document more specifically elaborated the notion of copyright and included a statement outlining what constitutes the illicit reproduction of copyrighted material (articles 31–6) and a list of sanctions for various infractions (articles 135–48) – making media piracy an object of governmental intervention. Two years later, in March 1986, the government passed legislation (86–13/AN–RM) to reform the code of commerce, effecting a radical liberalization of the national economy, largely in response to the exigencies of IMF-sponsored Structural Adjustments Programs (SAPs), including the privatization and liquidation of many state-owned businesses – making public sector retrenchment an object of governmental intervention. Enter the private sphere. In 1988, a French entrepreneur, Philippe Berthier (who had become disillusioned with the punk rock scene in Lyon, where he managed a record store, and decided to turn his sights towards Africa) moved to Bamako, where he set up Mali's first private multi-track recording studio. In 1989, Berthier opened the country's first cassette duplication factory, which, along with his studio, formed the base of his new company, Ou Bien Productions (Maillot 2002). A private music industry was, thus, born in Mali, founded on the codification of copyright, the criminalization of media piracy, investment in private infrastructure, and a radical divestment in public institutions, including state-sponsored artistic groups and festivals.

Yet, expectations of a rationalized cultural economy soon encountered the limits of neoliberal governmentality within the fragile Malian political economy. On 26 March 1991, the dictatorial regime of Moussa Traoré fell to a *coup d'état*, following months of protests in the capital city. As an interim government stepped into power, civil society expanded, signalled by the mushrooming of private radio stations in Malian towns and cities (Couloubaly 2004: 24). Often cited as evidence

of a new democratic spirit surging throughout the continent in the early 1990s, cultural authorities perceived the proliferation of these new media outlets with trepidation. The BuMDA, which was given further autonomy and greater authority to represent and defend the pecuniary interests of artists in a 1990 ordinance (90–55/P–RM), witnessed what it viewed as an unprecedented affront to artistic copyright with the sudden increase in private radio broadcasts. Recorded music of all kinds filled the airwaves as new stations vied for listening publics (see Tower 2005). However, no royalty payments were made for the broadcast of these recorded works, setting an unlawful precedent for private radio broadcast in Mali that continues to this day (Diakité 2007). Since 1984, in accordance with article 29 of the intellectual property law 84–26/AN–RM, the Office de Radiodiffusion et de Télévision du Mali has paid a fixed annual sum of 5 million CFA (US$10,000) to the BuMDA, a fee recently (2002) complemented with a further annual 100 million CFA (US$200,000) government subsidy (Couloubaly 2004: 169). A 1994 amendment (94–043) to the 1984 copyright legislation (84–26/AN–RM) requires private radio stations to pay a similar flat annual fee for the use of musical works; though such payments remain disputed and, thus, commercial radio broadcasts in the private sphere remain, officially, unlawful.

Where media goes, the musicians follow. From the late 1980s, many state-sponsored artists were offered severance benefits, including early pensions for those who qualified, in an effort to reduce civil servant expenses in line with SAP protocols. As a matter of policy, the process of cultural privatization had been underway since the late 1970s, spearheaded by Minister of Culture Alpha Oumar Konaré. Artists departing the state-sponsored orchestras and ensembles at this time (including popular divas Kandia Kouyaté, Amy Koita, Tata Bambo and Nahawa Doumbia from the Ensemble Instrumental National) formed new groups and introduced the notion of the solo artist to regional audiences (Maiga 2011). Bolstered by the presence of a domestic and private (if limited) record industry (that is, Ou Bien Productions), the decline of Abidjan as a regional centre of music production, an influx

of foreign capital in the form of World Music (then, a new concept; see Feld 2000: 146–51), and the subsequent proliferation of private radio following the 1991 coup (which did much to promote the work of Malian artists, despite official accusations of copyright infringement), many musicians' careers did, in fact, take off. This has been described as a period of 'effervescence' in Malian music (Touré 1996: 98). No longer bound to the state, artists were now free to explore private enterprise in an unfettered capitalist terrain. But, just as conditions were ripe for the rise of prominent solo artists in the early 1990s, so too were circumstances ideal for the further criminalization of the Malian culture economy (see Bayart et al. 1999) and a parallel effervescence of neoliberal *wariko* ('money trouble') in the artistic community.

When musicians go, the state turns its back. In many ways, this criminalization begins not with piracy, but with the state's Voluntary Early Retirement (VER) programmes, first authorized in August 1986.[11] Between 1987 and 1989, the USAID (United States Agency for International Development) sponsored a pilot programme to offer *fonctionnaires* ('civil servants') a single lump-sum pension before their anticipated retirement. A total of 644 people left the civil service during this first wave of VER. A second wave, which transpired sporadically between 1991 and 1995,[12] saw 5,023 state employees leave, including *subventionnaires* ('subaltern civil servants'), a category which included many state-sponsored artists. The lump sum offered to *fonctionnaires* was 2,500,000 CFA (US$5,000). *Subventionnaires* received 1,500,000 CFA (US$3,000) (Diarra 2008). In the early 1990s, under the leadership of now-President Alpha Oumar Konaré, the state encouraged artists in particular to opt for the VER, using their pension as start-up capital to form new orchestras and ensembles (Fofana 2008). While many private music groups did form during the 1980s and 1990s, I found no

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[11] *Journal Officiel de la Republique du Mali*, 15 August (1986: 42–4).

[12] Bourama Diarra, the President des Partants Volontaires à la Retraite at the Bourse de Travail (Labour Exchange) in Bamako, states that the VER programmes persisted until 1995 (Diarra 2008). My own inquiries revealed VER legislation pertaining to the 'second wave' up until 1993 (see *Journal Officiel de la Republique du Mali*, 28 February (1991: 155–8); 15 March (1991: 167); 15 October (1992: 694); and 15 April (1993: 258).

evidence that VER funds contributed to the formation of *any* orchestra or ensemble. Those groups that did emerge and succeed outside the aegis of the state benefited from the renown of already established artists, as with the solo divas of the National Instrumental Ensemble mentioned above (see Durán 1995). Most artists who opted for VER saw their capital disappear into extant debt, family obligations and everyday expenses. If private sector aspirations were ever envisioned, they soon became a source of bitterness and despair (Diabaté 2006; Fofana 2008).

Anarchy and control

As state authorities pushed artists into a growing private sector, they did little to monitor or regulate the emergent culture economy which that sector fostered. Even so, state discipline, the punitive corollary to privatization, was not entirely absent and, in hindsight, seems merely to have been deferred. In June 1993, the BuMDA conducted a police seizure operation in media markets throughout Bamako and collected 39,500 cassettes, of which 12,274 were determined to be pirated (it is not clear what happened to the remaining 27,226 legitimate cassettes). As Mandé Diakité reports, '[t]his action was condemned by the authorities, and "the fight against piracy", judged inopportune, was suspended until September 1994 due to the insecurity that reigned over punitive actions of any kind in Mali' (Diakité 2006: 4). In an effort to secure the legitimacy of the new Democratic Republic and distance themselves from the recently ousted junta, government authorities under the leadership of President Alpha Oumar Konaré strategically refrained from any overt acts of state intervention. Indeed, after two decades of political misrule (Diarrah 1991), the state had become a conspicuous target of popular animosity. As Diakité describes:

> After the coup d'état [in 1991], there was a period when the authorities could not collect taxes. Why? Because, at the time, there was a sense

of overwhelming freedom [*la grande libérté*]. People would say, 'I
don't respect the State. I don't respect the actions of the State …'. Well,
each time that we [at the BuMDA] attempted to conduct seizures [of
pirated media], we were told 'no, all such operations are prohibited'.
Thus, when [democracy and economic liberalization] came, they
manifest themselves as a rejection of authority, [and] this rejection
spread to all sectors [of society].

(Diakité 2007)

'Henceforth,' Diakité writes elsewhere, 'piracy would take root with
impunity and become habitual among merchants,' adding, more
polemically, that 'over the course of three years, the pillaging of artists
and producers would occur everywhere and at all times without risk to
the offenders' (Diakité 2006: 4).

While Diakité's passionate and unambiguously critical take on this
history of piracy is clearly driven by his long-time work with the Malian
Copyright Office, his observation of the increasingly habitual nature
of economic informality within an unregulated media marketplace
is important. This is because habit engenders assumptions of natural
conditions and a certain acceptance of things as they are, however
disquieting, dangerous, or destructive those things may be. In the
context of *laissez-faire* capitalism, media piracy did, as Diakité argues,
become an entrenched fixture of the Malian culture economy. Yet, as
described above, this cultural economic condition – of the counterfeit
reproduction and sale of commercial media – was preceded by the
habit of public divestment in the arts, in line with prescribed SAPs,
combined with the similarly structured habit of governmental deregu-
lation – to say nothing of the habits of (re)production and circulation
that the media themselves produced (see Larkin 2008). Later, a habit
of periodic police discipline would develop to confront the counterfeit
culture economy; thus criminalizing piracy, too, became a habit. In
other words, the habitual problem of piracy is rooted in the paradig-
matic and hegemonic habits of neoliberalism: divestment, deregulation
and discipline. The result is a postcolonial culture economy that is torn
between perceptions of *anarchy* and prescriptions of *control* (Comaroff

and Comaroff 2006), a position that only serves to further entrench neoliberal habits, not redress them. These habits would gain steam through the 1990s. In March 1994, the legal mandate of the BuMDA was once again strengthened by an amendment (94–043/AN–RM) to the 1984 copyright law (84–26/AN–RM). The same year, music critic Banning Eyre reports that the Malian government made an unsuccessful attempt to shut down Radio Kayira, a private Bamako-based radio station that was fiercely critical of the government (Eyre 2000: 198), on the grounds of copyright infringement (Diakité 2007). The following year, global music production house EMI, affiliated with Ou Bien Productions since 1992, closed its operations on the continent (with the exception of South Africa). Ou Bien chief Phillippe Berthier, lacking a strong international backer, turned to local entrepreneur and Grammy Award-winning musician, the late Ali Farka Touré (Maillot 2002). With Touré's partnership, a move that bolstered the local legitimacy of this previously foreign-owned company, a new business, Mali K7 (pronounced, in French, *Mali cassette*), was created. Yet, this symbolic act of cultural political control, providing an air of authenticity to Mali's small private record industry, materialized on the margins of a marketplace in which the perceived anarchy of media piracy predominated.

Banning Eyre's account of record producers' dealings with cassette piracy during his six-month research trip to Bamako in 1995/56 describes the industry's extraordinary (and perhaps foolhardy) attempts to negotiate this disjuncture in the production and circulation of commercial culture, asserting control in the midst of anarchy:

> The moment a new cassette goes public, its producer enters a race with time. He must hustle to sell as many legal cassettes as possible before cheaper pirate copies flood the market. The difference between a two-week and a three-week delay can mean thousands of legitimate sales, maybe tens of thousands in the case of a major artist.
>
> (Eyre 2000: 198–9)

Eyre goes on to cite Oumou Sangaré's husband and manager, who presents his own home-grown tactic to combat piracy: 'Most of the

pirate copies come up from Guinea, and when the rains start, some of the main roads close. That might delay the arrival of pirate copies a week or more' (Eyre 2000: 199).

Such dramatic efforts (timing a release for the onset of the rainy season) may make sense for an artist of Sangaré's stature, who, with domestic media sales in the tens (if not hundreds) of thousands of cassettes and compact disks, has much to lose to counterfeit commerce. For most Malian musicians, however, the media market, from which earnings are either limited or non-existent, is of far less concern than the highly competitive live music scene in the capital, Bamako, and the possibility of tours and recording contracts abroad, in Europe and the United States. For these artists, local live performances are, at best, a way to promote themselves and their work in the hope of being discovered by industry-connected World Music enthusiasts, who, over the past decade, have listened in to Bamako's popular music culture with growing interest (see e.g. Hammer 2005). At worst, such performances represent a recurrent source of personal and professional discouragement.

While living in Bamako in the late 1990s and early 2000s, I worked closely with kora (21-stringed Mande harp) virtuoso Toumani Diabaté, whose group, the Symmetric Orchestra, played every Friday at a popular (but now defunct) nightclub, Le Hogon. For Symmetric members, the professional significance of these gigs had little to do with earnings (with a nightly take per musician of around US$10.00); more important was the possibility of joining their globe-trotting bandleader on one of his many concert tours abroad. Yet, to their recurrent dismay, Diabaté would leave with his Mande Jazz Trio (still together and very popular at the time), fellow kora master Ballaké Sissoko (with whom he had just recorded an album), or foreign collaborators like blues legend Taj Mahal (whose collaboration with Diabaté produced a global best-seller).[13] For Bamako bands like the Symmetric Orchestra, the

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[13] Albums associated with Diabaté's internationally touring groups in the 1990s include the Mande Jazz Trio's *Djelika* (1995), *New Ancient Strings* (with Ballaké Sissoko) (1999) and *Kulanjan* (with Taj Mahal) (1999).

tantalizing – though rarefied – ideal of a global music career must be weighed against the harsh reality of making do and getting by at home, scraping out a meagre living at nightclubs and local ceremonies, and waiting for the next chance to get out.[14] This is, perhaps, the most salient everyday condition of musical *wariko* ('money trouble') in the late twentieth- and early twenty-first-century Malian art world.

Such professional concerns, which emphasize artistic persons over products in an otherwise depersonalized culture economy, have, since the late 1990s, gone largely unacknowledged by state and industry authorities, for whom control over the media market remains the predominant political and economic issue. Foreshadowing the piracy crises of the mid-2000s (see Skinner 2012a: 730–9), Mali K7, still the sole music production house in the country, announced in December 1999 that it would halt its operations and lay off its employees. Discouraged by what he considered to be the state's failure to take action against the influx of counterfeit cassettes in the Malian marketplace, CEO Phillippe Berthier threatened to move his company to neighbouring Burkina Faso (*Rhythmes 19* 1999). Perhaps as a gesture of good faith, the BuMDA, in an act of punctuated police discipline, confiscated and destroyed 60,000 counterfeit cassettes on 1 February 2000 (Cissé and Traoré 2001: 24). Mali K7 reopened its doors the following March (*Rhythmes 20* 2000). Reflecting on these events, Berthier had the following to say:

> It created a national crisis! I made a televised appearance on the evening news, artists organized a march and went to see the Prime Minister at the time, [and] there was a big national conference including producers, artists, police, [and] customs agents. This didn't solve all the problems, but this crisis did raise awareness.
>
> (Maillot 2002: n.p.)

This crisis did, in fact, herald a period, however brief, of greater control in the Malian culture economy. In September 2000, ordinance

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[14] Symmetric Orchestra band members would eventually get their break in the decade that followed, for those who endured the wait, with the group's internationally acclaimed release, *Boulevard de l'Indépendance* (2006).

00–042/P–RM established the BuMDA as a 'legal entity' with 'auton-
omous finances' equipped to 'organize and represent authors of literary
and artistic works as well as their beneficiaries' (articles 1 and 2). The
government thus established a normative institutional framework
within which the pecuniary interests of artists could, in theory, be
guaranteed and the revenues derived from their works managed
and accounted for. In 2002, Seydoni (a Burkina Faso-based record
company) opened recording and cassette/CD duplication facilities
in Bamako to become the second music production house in Mali
(Traoré 2004). The same year, the BuMDA, building on the experi-
ences of copyright agencies in Ghana, Côte d'Ivoire and elsewhere on
the continent, introduced a hologram decal designed to distinguish
authentic cassettes and CDs from counterfeits. The stickers would
cost 60 CFA (US$0.12) and be applied to album jackets prior to the
duplication of the cassettes or CDs. Producers were expected to pay
this fee, which would finance artists' copyright allowances. They were
also encouraged to produce only as many cassettes and CDs as they
expected to sell, given the up-front copyright expense the sticker
fees imposed. Yet, despite repeated televised national campaigns
to educate the population about the ethics of buying marked legal
media – with dramatic claims about the pauperization of artists and
the decline of Mali's cultural heritage – the stickers have not proven
efficacious in the marketplace (Diakité 2007).

    State authorities have therefore turned to other modes of
enforcement, largely replacing didactic discipline with martial disci-
pline, manifest, in recent years, in periodic confiscatory raids. These
acts of commercial sanction serve to dramatize state power while
affirming the culture industry's commitment to normative media
production and circulation, but they do little to curb media piracy; that
is, they have little impact on the non-governmental culture economy:
those performances, broadcasts and exchanges that lie outside the
purview of official culture, which neither fully accede to assertions of
control, nor wholly ascribe to accusations of anarchy. Rather, the most
tangible effects of police raids are exacerbated socioeconomic tensions

and, sometimes, violence between the plaintiffs and enforcers of such actions, artists and police, and their criminal targets, media broadcasters and vendors. Politicians, too, are lambasted for their failure to contain and suppress commercial anarchy, or media piracy, when these actions inevitably fail to produce long-term or even short-term results (see e.g. Skinner 2012a: 734–9). Among these varied casualties of *la lutte contre la piraterie* ('the war on piracy'), we encounter, once again, the social, political and economic distortions – the exacerbated *wariko* – that neoliberal governmentality engenders when applied to the culture economy.

Yet, everyday transgressions of this cultural political hegemony persist, though such persistence should not be confused with outright protest or resistance. In concluding, I will consider, briefly, those practices of ostensible anarchy that arguably account for most cultural production and circulation in contemporary Mali (see, for a comparative study, Karaganis 2011), what I am calling non-governmental culture. I do so by returning to the Triton Stars concert with which I began this chapter. To hear this band's performance in the context of the history recounted above is to appreciate the essential ambivalence of a political economy that champions legality at the expense of livelihoods, in which a degraded public sector and an unruly private market necessitate a certain amount of creative infringement of the rule of law – that is, non-governmental culture – in an era of neoliberal governmentality.

A non-governmental mix

At the end of their set, the Triton Stars invited one of their guest MCs, *animateur* Man Ken, who, earlier in the evening, had implored the audience to purchase legal copies of the group's new album, to join them on stage for one final song. As a radio and television personality, Man Ken is known for his admiration for and spot-on musical impersonation of Ivoirian reggae superstar Alpha Blondy. *Reggae-manw*

bè yan wa? ('Are there any reggae fans here?'), he asked the crowd, eliciting a collective *Awò!* ('Yes!') and a volley of applause. As the noise died down, he proceeded to sing the *a cappella* introduction to Blondy's 'Silence Houphouët d'Or' (1996) – a tribute to the late Ivoirian President Félix Houphouët Boigny (1905–93).

> Le soleil s'est couché ce matin,
> ('The sun has set this morning,')
> et tous les drapeaux on baissés les yeux
> ('and all the flags have lowered their eyes')
> Devant ce chart d'assaut,
> ('In front of this tank,')
> nos sanglots montent là haut
> ('our cries rise up on high')
> Et seul, dans son linceul,
> ('And alone, within its shroud,')
> Orange, Blanc, Vert …
> ('Orange, White, Green …').

With this final, cadenced and colour-coded reference to the Ivoirian flag, repeated twice – Orange, White, Green – the Triton Stars joined in with the rocking accompaniment – rising and falling between A minor and G major 7th chords – to Bob Marley's 'War' (1976).[15] *Houphouët! Reveille-toi!* ('Houphouët! Wake up!'), wailed Man Ken, as the group fell into a sustained reggae groove. *Sabali! Sabali! Sabali! Sabali!* Man Ken sang, repeating the Bamana word *sabali* ('patience and tolerance') over and over again in an improvised verse. Now, with the crowd on their feet, some spilling over onto the stage, the inspired vocalist layered Marley upon Marley, singing, 'Get up! Stand up! Stand up for your right!' At this point, it was no longer apparent what song the group was playing, but it didn't matter – or did it? The mix of Blondy's lament and Marley's musical and lyrical calls to arms offered a clear

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[15] It is, perhaps, worth noting that Blondy recorded his own version of Marley's 'War', entitled 'La Guerre', on the album *Dieu* (1994), which preceded *Grand Bassam Zion Rock*.

enough commentary on the civil war raging in Côte d'Ivoire at the time (see McGovern 2011), and the energy of the performance delivered this message with a sonic vibe that brought artist and audience together in soulful communion. But whose song was it exactly?

The Triton Stars' curtain call performance offers a good example of non-governmental music culture in contemporary Mali. No permissions were sought, nor royalties paid for the copyright-protected sounds and lyrics the group performed. The music and words were likely learned through repeated listening to other unlicensed shows, unauthorized broadcasts on the radio, or playback of cassettes and CDs, themselves copied and recopied at home, or pirated in the marketplace. Yet, this dramatic display of musical and lyrical borrowing, embedding and layering is haunted by a culture economy that proscribes such practice, an official discourse echoed, ironically, in the same group's calls, made earlier in the show, to buy legal cassettes and save artistic livelihoods (their own in particular). So, is this a case of cognitive dissonance, or just plain hypocrisy? With regard to the history of cultural policy and intellectual property in Mali, I would say neither.

When, in the 1980s, the logic of structural adjustment was applied to a postcolonial economy largely divested of its public servants and resources, through gross domestic mismanagement and the global vogue of privatization, the conditions were created for a radical disjuncture between the unregulated free market, on the one hand, and disciplinary state institutions, on the other. In the Malian art world, this division would manifest in the perceived anarchy of the informal marketplace (piracy) and the prescribed control of intellectual property (copyright), resulting in a culture economy of endemic money trouble (*wariko*). In this context, non-governmental culture, such as the Triton Stars' reggae jam, routinely refuses the neoliberal dichotomy of anarchy and control, without, however, altogether refuting its governmentality. In a world of *wariko*, in which 'everything is tied to money trouble', as singer Karounga Sacko earlier proclaimed, groups like the Triton Stars must continually cross the threshold between the licit and illicit, the formal

and informal. There, in the everyday interstices of neoliberal govern-mentality, commitment to copyright and its performative violation are less conflictual than contrapuntal, keeping multiple means to secure artistic livelihoods, however precarious, at play and in the mix.

References

Amselle, J.-L. (1978), 'Le conscience paysanne: la révolte de Ouolossébougou (juin 1968, Mali)', *Canadian Journal of African Studies/Revue Canadienne des Études Africaines*, 12(3): 339–55.

Arnoldi, M. J. (2006), 'Youth Festivals and Museums: The Cultural Politics of Public Memory in Postcolonial Mali', *Africa Today*, 52(4): 55–76.

Askew, K. (2002), *Performing the Nation: Swahili Music and Cultural Politics in Tanzania*. Chicago, IL: University of Chicago Press.

Bamba, S. and Prévost, L. (1996), *De la tradition à la World Music*. Paris: L'Harmattan.

Barchiesi, F. (2012), 'Precarity as Capture: A Conceptual Reconstruction and Critique of the Worker–Slave Analogy', *UniNomade 2.0*, 10 October. Web.

Bayart, J.-F., Ellis, S. and Hibou, B. (1999), *The Criminalization of the State in Africa*. Bloomington: Indiana University Press.

Becker, H. (1982), *Art Worlds*. Berkeley: University of California Press.

Cissé, N. M. and Traoré, O. S. (2001), 'Les aspects théoriques et pratiques de la lutte contre la contrefaçon au Mali'. Master's thesis, Faculté des Sciences Juridiques et Economiques, Université du Mali.

Comaroff, J. and Comaroff, J. L. (eds) (2006), *Law and Disorder in the Postcolony*. Chicago, IL: University of Chicago Press.

Couloubaly, P. B. (2004), *Le Mali d'Alpha Oumar Konaré: ombres et lumières d'une démocratie en gestation*. Paris: L'Harmattan.

Counsel, G. (2006), *Mande popular music and cultural policies in West Africa*. Ph.D. dissertation, The University of Melbourne.

—(2012), 'Discography of Malian Vinyl Recordings', *Radio Africa*, 30 August. Web.

Diakité, M. M. (2006), 'La piraterie des oeuvres musicales dans le district de Bamako: cas du Dabanani'. Master's thesis, L'Institut National de la Jeunesse et des Sports, Mali.

Diarrah, C. O. (1991), *Vers La IIIe Republique du Mali*. Paris: L'Harmattan.

Diawara, Mamadou (1997), 'Mande Oral Popular Culture Revisited by the Electronic Media', in K. Barber (ed.), *Readings in African popular culture*. Bloomington: Indiana University Press, 40–8.

Diawara, Manthia (1997), 'The Song of the Griot', *Transition*, 74: 16–30.

Durán, L. (1995), 'Jelimusow: The Superwomen of Malian Music', in G. Furniss and L. Gunner (eds), *Power, Marginality and African Oral Literature*. Cambridge: Cambridge University Press, 197–208.

Eyre, B. (2000), *In Griot Time: An American Guitarist in Mali*. Philadelphia, PA: Temple University Press.

Feld, S. (2000), 'A Sweet Lullaby for World Music', *Public Culture*, 12(1): 45–71.

Foucault, M. (2007), *Security, Territory, Population: Lectures at the Collège de France, 1977–1978*. New York: Palgrave Macmillan.

Guilbault, J. (2007), *Governing Sound: The Cultural Politics of Trinidad's Carnival Musics*. Chicago, IL: University of Chicago Press.

Guyer, J. (ed.) (1995), *Money Matters*. Portsmouth: Heinemann.

Hammer, J. (2005), 'The Siren Song of Mali', The *New York Times*, 2 April, Section 5: 10–11.

Karaganis, J. (ed.) (2011), *Media Piracy in Emerging Economies*. New York: Social Science Research Council.

Keïta, C. M. C. (2009), *Salif Keïta: L'ambassadeur de la musique du Mali*. Brinon-sur-Sauldre: Éditions Grandvaux.

Laing, D. (2004), 'Copyright, Politics and the International Music Industry', in S. Frith and L. Marshall (eds), *Music and Copyright*, 2nd edn. New York: Routledge, 70–88.

Larkin, B. (2008), *Signal and Noise: Media, Infrastructure, and Urban Culture in Nigeria*. Durham, NC: Duke University Press.

Latournerie, A. (2001), 'Petite histoire des batailles du droit d'auteur', *Multitudes*, 5: n.p. Web.

Lessig, L. (2004), *Free Culture: The Nature and Future of Creativity*. London: Penguin.

Maillot, E. (2002), 'Mali K7, l'usine à rêve', *Radio France Internationale*, 17 January. Web.

Mangin, A. (1998), *Malick Sidibé*. Berlin: Helvetas.

McGovern, M. (2011), *Making War in Côte d'Ivoire*. Chicago, IL: University of Chicago Press.

Ntahokaja, J.-B. (1963), 'Réunion africaine d'étude sur le droit d'auteur', *Le Droit d'Auteur*, 76(10): 250–9.

Pauthier, C. (2012), 'La musique guinéenne, vecteur du patrimoine national

(des années 1950 à 1984)', in D. Gary-Tounkara and D. Nativel (eds), *L'Afrique des saviors au sud du Sahara (XVIe–XXIe siècle): acteurs, supports, pratiques*. Paris: Karthala, 129–54.

Rhythmes 19 (1999), 'Fermeture pour cause de piraterie', 6(4).

Rhythmes 20 (2000), 'La piraterie: l'ennemi à abattre', 7(1–2).

Sanankoua, B. (1990), *La chute de Modibo Keïta*. Paris: Editions Chaka.

Skinner, R. T. (2004), 'Determined Urbanites: Diasporic *Jeliya* in the 21st Century', *Mande Studies*, 6: 139–62.

—(2011), 'The Ethics of Ambiance, the Morality of the State: Popular Culture and Political Society in Bamako, 1956–1966', paper presented at the annual meeting of the African Studies Association in Washington, DC, 19 November.

—(2012a), 'Artists, Music Piracy, and the Crisis of Political Subjectivity in Contemporary Mali', *Anthropological Quarterly*, 85(3): 723–54.

—(2012b), 'Cultural Politics in the Post-Colony: Music, Nationalism, and Statism in Mali, 1964–1975', *Africa*, 82(4): 511–34.

Touré, Y. (1996), 'La Biennabe Artisique et Culturella du Mali, 1962–88: Socio-anthropologie d'une action de politique culturelle africaine.' Thesis. Ecole des Hautes Etudes en Sciences Sociales, Marseille.

Tower, C. (2005), '"Arajo Efemu": Local FM Radio and the Socio-Technical System of Communications in Koutiala, Mali', *The Radio Journal: International Studies in Broadcast and Audio Media*, 3(1): 7–20.

Traoré, R. (2004), 'Music Industry in Burkina Faso and Mali – The Case of Seydoni Production', in S.-M. Thorsén (ed.), *Sounds of Change: Social and Political Features of Music in Africa*. Stockholm: Sida, 107–19.

Wooten, S. (ed.) (2005), *Wari Matters: Ethnographic Explorations of Money in the Mande World*. Münster: LIT Verlag.

Yudicé, G. (2004), *The Expediency of Culture: The Uses of Culture in the Global Era*. Durham, NC: Duke University Press.

Discography

Blondy, Alpha, and the Solar System (1994), *Dieu*, EMI France. CD.

—(1996), *Grand Bassam Zion Rock*, EMI France. CD.

Diabaté, T., Diabaté, K. and Kouyaté, B. (1995), *Djelika*, Hannibal. CD.

Diabaté, T. and Sissoko, B. (1999), *New Ancient Strings*, Hannibal. CD.

Diabaté, T. and the Symmetric Orchestra (2006), *Boulevard de l'Indépendence.* World Circuit, Nonesuch. CD.

Diabaté, T. and Taj Mahal (1999), *Kulanjan*, Hannibal. CD.

Epic, historical, political and propaganda songs of the Socialist government of Modibo Keita (1960–1968) (1977), Vols 1 and 2. VPA 8326. Albatross. 33.3 rpm disc.

Marley, B. and The Wailers (1976), *Rastaman Vibration*, Island. 33.3 rpm disc.

Orchestre Régional du Mali: Mopti (1970), *Les meilleurs souvenirs de la 1ère Biennale Artistique et Culturelle de la Jeunesse*, BM 30 L 2602, Bärenreiter–Musicaphon. 33.3 rpm disc.

Panorama du Mali (1973), Mali Music, Mali 1002. 33.3 rpm disc.

Regard sur le passé à travers le present (1973), Mali Music, Mali 1001. 33.3 rpm disc.

Interviews

Dembelé, Panka (2007), Former member and director of the Orchestre National du Mali, 3 May. Bamako, Mali.

Diabaté, Djelimory Nfa (2006), Former member of the Ensemble Instrumental National du Mali, 9 November. Bamako, Mali.

Diabaté, Jeli Magan (2006), Former member of the Ensemble Instrumental National du Mali and VER participant, 23 November. Bamako, Mali.

Diakité, Mande Moussa (2007), Adjunct Director at the Bureau Malien du Droit d'Auteur, 21 January. Bamako, Mali.

Diarra, Bourama (2008), Representative of VER participants at the Malian Labor Exchange, 16 December. Bamako, Mali.

Fofana, Amadou (2008), Former member of the Badema National (Malian National Orchestra) and VER participant, 15 August. Bamako, Mali.

Maiga, Bruno (2011), Former administrative director of the Théatre National du Mali, 17 August. Bamako, Mali.

Traoré, Amadou (2007), Former member and director of the Orchestre National du Mali, Section B, 26 June. Bamako, Mali.

Hacking and Difference

Reflections on Authorship in the Postcolonial Pirate Domain

Satish Poduval

Philip K. Dick famously observed about science fiction that 'Jules Verne's story of travel to the moon is not SF because they go by rocket but because of where they go. It would be as much SF if they went by rubber band' (Dick 1995: 57). A remark like that is peculiarly resonant in postcolonial spaces where historical experience tends to be framed as a story of travel, as a destinal narrative[1] in which modernity is simultaneously a destination to be reached *and* the ensemble of mechanisms destined to accelerate the journey. However, in recent decades, the helical loop of this narrative appears to be unravelling. Neither the vision nor the vehicle of modernization is any longer monopolized by the state or the older national elites, and earlier conceptions of a shared Third World identity forged by imperial exploitation and industrial backwardness do not typify the global South uniformly today. In India, for instance, the historical ground on which the Nehruvian programme of 'development' was enacted has shifted in significant ways since the 1990s: the present conjuncture is characterized, on the one hand, by the rapid accumulation of wealth by the state and a growing middle class, and on the other, by the rise of subaltern movements for social justice and empowerment at the blunted edges of civil society.[2] Tangential to the political flux is the rapid and relatively low-cost proliferation

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[1] The term is borrowed from Geeta Kapur who suggests that it means 'at once destiny and destination, immanent life and a metanarrative that proxies for transcendence' (Kapur 1999: 224).

[2] Sudipta Kaviraj (2011), Partha Chatterjee (2011) and Satyanarayana and Tharu (2013) present incisive analyses of these developments.

of digital technologies and networks, a substantial portion of these beyond the ambit of governmental or corporate control, facilitating a distinctive breed of practices that have been termed 'recycled' or 'stolen' or – most popularly – 'pirate' modernity.[3]

The pirate domain is constituted by various acts of *hacking*, in diverse senses of the term. The figure of the 'hack', until the mid-twentieth century, was an object of derision: an uninspired *doppelganger* of the modern author, a contemptible grub-street 'wit-pyrate' and mercenary. Since the 1960s, two very different discursive practices have resulted in a more complex engagement with existing notions of authorial originality and the hack's 'creativity'. First, within the field of computer programming, the early sense of hacking as playful and exploratory (rather than goal-oriented) interactions with the computer soon developed into a pride associated with the ability to innovate and bypass proprietary controls, moving towards an ethic of keeping information – as content and as tool – open and free. The classic definition of hacking that emerged from this impulse was 'an appropriate application of ingenuity'.[4] Second, appreciation for the patchwork nature of a computer hack's transgressive inventiveness was paralleled, with the growing impact of post-structuralism, with a new perspective on the significance of *bricolage* (of adapting available instruments to unforeseen operations) and of the 'author-function' within literary discourse (as a means of regulating/delimiting meaning rather than its proliferation). Setting aside as 'pure romanticism' the hasty proclamations about the 'death' of the author, Michel Foucault had suggested that ongoing societal and juridical changes would eventually lead to the refashioning of the author function in its historically familiar form. In the place of concerns about authorial intentions and self-expression would emerge newer questions about cultural production:

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[3] For a compelling account of this phenomenon, see Sundaram (2001, 2009) and Prasad and Kumar (2009).

[4] Stephen Levy puts it with characteristic aplomb: 'To a hacker, a closed door is an insult, and a locked door is an outrage. … When a hacker needed something to help him create, explore, or fix, he did not bother with such ridiculous concepts as property rights' (Levy 2010: 95).

[W]hat are the modes of existence of this discourse? Where has it been used, how can it circulate, and who can appropriate it for himself? What are the places in it where there is room for possible subjects? Who can assume these various subject functions?

(Foucault 1984: 120)

This cluster of questions has prompted new research on intellectual property and copyright piracy worldwide. Extending Foucault's leads, scholars such as Martha Woodmansee, Peter Jaszi, Mark Rose, Ramon Lobato, Ronaldo Lemos and Kavita Philip have sought to historicize forms of creativity not 'limited by the figure of the author'. In India, key debates on these questions at Sarai (New Delhi) and the Alternative Law Forum (Bangalore) resulted in the drafting of *The Delhi Declaration of a New Context for the New Media* (2005), which underscored the importance of the heterogeneity of forms and protocols of communicative practices in contemporary South Asia – as opposed to the tendency in much ongoing intellectual property legislation to situate cultural production only within a proprietary framework. The Delhi Declaration also sought to move beyond the prevailing developmental pietism of granting the digitally deprived of the global South 'access' to the new media networks. It emphasized the need to shift focus from striving to 'catch up' with the latest technology to being responsive to 'the ecology of the media landscape as well as to the vitality of the relationships between actually existing practices'. Lawrence Liang, in a similar vein, has pointed to the significance of the sheer scale and modes of *functioning* of the informal economy in the South, noting that 'the majority of people in India are only precarious citizens who often do not have the ability to claim rights in the same manner as the Indian elite' (Liang, Chapter 2, this book). According to Liang (2009), instead of endorsing only instances of transformative authorship and criminalizing other acts of copying as 'bad' Asian piracy, it may be more useful to examine the transformations that might be wrought by what such piracy *does*; that is, by looking at:

(a) the ways in which piracy facilitates the lowering of the costs of

technologies, since ordinary people cannot become content producers until the infrastructure for the means of production of culture is within their reach;

(b) the ways in which the apparently non-transformative acts of piracy have much in common with the aspiration to create a more plural and diverse public sphere of cultural production and participation supported by the transformative authorship approach within the open source and free software movements in the western world; and

(c) the ways in which the pirate may be seen as the subterranean other of the hacker, lacking his urbane *savoir-faire* and seemingly bereft of the higher moral ground, but whose activities effectively promote the normative considerations that public domain advocates argue for – and yet are unable to achieve immediately.

Such arguments problematize the tendency to slide from a moral condemnation of imitation into a legal attack on theft. They valorize, instead, the 'porous legalities' that open up newer democratic vistas in postcolonial societies where the tug of war between the imperatives of accumulation and redistribution are especially sharp. Liang views this porosity as the result of social relations of power, and argues that

social struggles, whether they constellate around power, law or knowledge, also have an internal logic of their own where they tend to be performative, as they actively produce (rather than merely reproduce) the forms of power, law or knowledge that best suit their horizon of expectations.

(Liang 2005: 16)

In this chapter, I will briefly examine how the horizon of expectations of the subaltern shapes the fraught relationship between the public and the pirate domain in postcolonial spaces such as India. I wish to focus not on the widely discussed figure of the software pirate or hacker but that of the relatively obscure literary *hack*: someone who brings into play a 'fake' ticket to ride into no-entry zones of the cultural economy, who seeks entrée rather than sublime finale, and whose acts of appropriation or mimicry, in certain contexts, unexpectedly menace

the sway of authorship and cultural authority. The idea is not a mere reversal of the terms or protocols of literary evaluation or celebration of neglected creativity 'from below', but to examine certain specific conditions under which a hack-writer emerges into visibility – and perhaps effectivity – within the field of cultural production. I seek to do this by considering two distinct and striking instances of literary 'hacking' in the south Indian state of Kerala: the first involving an acrimonious copyright dispute within left-wing literary circles in the mid-1990s about the unauthorized use (rewriting) of a classic Malayalam drama; and the second involving a blockbuster Malayalam film from 2005 in which an auteur's screenplay is stolen by an 'incompetent' actor who then achieves rapid/vapid success within the seemingly inaccessible film industry (the comic plot culminating with the revenge of the auteur against the 'hack-star'). At stake in both these instances of literary 'piracy' is the nature of the relationship between culture and democracy within postcolonial spaces. Engaging with the legal and moral concerns articulated on behalf of author-as-proprietor in both of these instances may enable us to reframe the terms of the debate about what a hack-writer *is* and *does*.

Hacking a communist classic

In January 1995, the Malayalam-language version of *India Today* published a play by Civic Chandran provocatively entitled *Ningal Aare Communistaaki* ('Whom did you make a Communist?') to emphasize polemically its quarrel with the landmark progressive play by Thoppil Bhasi entitled *Ningal Enne Communistaaki* ('You made me a Communist'), first published in 1952. Chandran, the then activist-secretary of the little-known Janakiya Samskarika Vedi,[5] asserted that his play was a 'counter-drama' directed at Bhasi's celebrated work which

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[5] The People's Cultural Forum, the cultural wing of the ultra-left 'Maoist' political movement that backed the claims for justice of the dalits and adivasis, the most oppressed sections of Indian society.

had been staged over 10,000 times during and after the 1950s by the progressive theatre group Kerala People's Arts Club (KPAC), and whose enormous influence is widely credited as a key factor in getting the first communist government elected in 1957.[6] Chandran's counter-drama was an unauthorized sequel, attempting to subject what he described as a 'myth' (of communism's success in democratizing social life in Kerala) to a 'post-mortem' (Chandran 2002: 9), and to examine the caste-based injustices committed by the communist leadership after assuming power.

Bhasi's original play was a socialist-realist critique of feudal conservatism urging the oppressed classes to organize and fight for a more equal society. The plot revolved around Paramupilla, a haughty patriarch of a declining feudal family resentful of the land reforms initiated by the communists, and his gradual conversion to communism after his son Gopalan (a communist organizer) is assaulted by the goons of the ambitious capitalist Kesavan Nair. Much of the narrative details the fight against the feudal set-up by the local communist organizers like Gopalan as well as the untouchable communist activists and supporters, notably Karampan and his daughter Mala. Two lines of development bring the plot to closure: (1) Mala, who has sacrificed much for the communist cause and has always been in love with Gopalan, is distraught when she realizes that he actually loves and plans to marry Sumam – the genteel daughter of the evil Kesavan Nair – without being able to explain why he cannot reciprocate Mala's feelings; (2) Paramupilla, Gopalan's conservative father, undergoes a change of heart upon realizing Kesavan Nair's heartlessness and 'becomes' a communist himself; in the closing scene, the transformed patriarch excitedly takes over the red flag from Mala and Karampan to lead the triumphal march through the village.

Civic Chandran's *Whom Did You Make a Communist?* 'borrowed' most of the characters, as well as several scenes and dialogues, from Thoppil Bhasi's play, but it was sharply critical of the casteism that it saw as overwhelming the original play as well as the communist movement in

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[6] See Nandagopal R. Menon (2001) and Jisha Menon (2010).

Kerala. The counter-drama broke away from the socialist-realist conventions of the original, splitting the stage into two different levels: in the foreground was the primary location, a graveyard of communist martyrs, from which various characters (including many from the original play) reflected on the political developments in Kerala during the decades after the communists had come to power in 1957; and in the background was a higher stage on which were presented some of the 'flashback' scenes from the original play with intermittent commentary by a chorus. In the counter-drama, Gopalan has become the communist chief minister of the state and married Sumam; Mala has died broken-hearted and her 'daughter' Bharati witnesses the wider betrayal of the aspirations of the untouchable poor by the communist party they had struggled to build up. While they are denied any share of power, upper-caste opportunists have turned supporters of the party and gained immensely.

Chandran's counter-drama, not surprisingly, sparked off heated responses from some Marxists who dismissed its heterodox political assumptions and protested against what they considered to be the unscrupulous vandalism of Thoppil Bhasi's classic play. Matters came to a head when a theatre group named Rangabhasha announced that it would start staging Chandran's counter-drama all over the state. In July 1995, just a day prior to its first performance, Ammini Amma (Thoppil Bhasi's widow who owned the copyright of the original play) and other communist workers obtained an interim legal order restraining the publication and performance of Chandran's play under Section 52 of the Indian Copyright Act, accusing Chandran of literary plagiarism/piracy. Their charge was that Civic Chandran was a mean-minded hack who had copied substantial portions – including several scenes, characters and dialogues – of Thoppil Bhasi's play with the motive of profiting from the original author's creative talent and labour. Chandran was also accused of attempting to defame Bhasi and to denigrate his political convictions. The judge of the Mavelikara trial court who had granted the restraining order stated:

> If he wanted to criticise the ideas expressed by Thoppil Bhasi in his

drama, Mr. Civic Chandran could have used his own characters, dialogues and manner of presentation in the counter-drama. Even if he had extracted portions of the drama for the purpose of such criticism it would not have infringed the copy right provided that he could show that is only 'fair dealing'. Copying down or extracting substantial portions of the drama, and using the same characters and dialogues of the drama with some comments here and there through two or three characters in the counter-drama cannot be treated as 'fair dealing' for the purpose of criticism. But that is what exactly is done by Mr. Civic Chandran. In such a case, he cannot claim protection under Section 52 of the Copy Right Act.

(Chandran v. Amma 1995)

Chandran immediately appealed against the restraining order in the High Court of Kerala. He did not deny that several well-known characters and scenes from *You Made Me a Communist* had been extracted in his counter-drama, nor did he claim that he had obtained the permission to do this from the copyright owners. Instead, Chandran's petition highlighted the following facts: (1) his counter-drama was a literary innovation that attempted to criticize the original play and its main characters for failing to achieve some of the stated goals of communism; (2) the reproduction of portions of the original play in the counter-drama was to be seen under the 'fair dealing' provision of the Indian Copyright Act, since the purpose of repro-ducing those scenes was to offer a critical evaluation of the play to the public; (3) the remaining parts of the counter-drama made it an original creative work on which the writer had expended much time, labour and literary skill himself; (4) the counter-drama was closely related to the contemporary political situation in Kerala and was therefore of great public interest, just as the original play had been four decades before – stopping its performance and publication would cause monetary loss to the producers, and would infringe both Chandran's freedom of expression and the public's right to benefit from a debate on literature and society; and finally (5) Thoppil Bhasi had not been personally defamed in the counter-drama, nor had his views been

misrepresented, since he himself, in his 1972 play *Innale, Innu, Naale* ('Yesterday, Today, Tomorrow'), made quite similar criticisms to those expressed in the counter-drama.

We will return to this legal controversy and its implications later in this chapter after looking at the second example which throws further light on the issues involved in acts of literary piracy.

The auteur versus the hack-star

Rosshan Andrrews's blockbuster *Udayananu Tharam* ('Udayan is the Real Star', 2005) satirizes the film industry in Kerala for resorting to unrealistic and formulaic narratives promoting the antics of the reigning superstars at the cost of original and socially meaningful cinema. It begins with two young friends struggling to make it big in the world of films: Udayan (played by superstar Mohanlal) is a talented assistant director who yearns to write and direct his own films in an industry driven by commercial greed, and his actor-friend Rajappan (played by Sreenivasan, who also wrote the screenplay of *Udayananu Tharam*) is unable to get substantial roles, as most directors dismiss him as ugly and without talent; there are subtle indications that his low-caste origin prevents him from finding favour with powerful directors and producers within the industry. Rajappan, however, keeps hoping that someday he will become as popular and successful as Rajnikant, a former bus conductor who had overcome the lack of conventional good looks or acting abilities to become the biggest star in south Indian cinema. When Udayan completes what he feels is a wonderful screenplay, and scoffs at Rajappan's request to be considered for the hero's role, stating that it required good looks and acting skills, the desperate/unscrupulous Rajappan steals the manuscript. He takes 'his' manuscript to an influential director-producer duo who are very impressed and are keen to make it into a film. Rajappan insists that he will only sell them the screenplay if they cast him in the lead role. Although the filmmakers are astonished that a dunce like Rajappan could have written such a great

script, they do not want to let the property go to others and reluctantly agree to his condition. Udayan discovers too late that his friend has stolen and sold his screenplay, is devastated and goes through a series of personal problems. But Rajappan's literary theft gives him a foothold in the industry and the success of this film leads to more opportunities and, despite everything that is initially said of his appearance and acting abilities, he becomes a superstar within the industry. The down-and-out Udayan is offered a chance to direct a film by a producer who recognizes his talent, but on condition that he would have to cast his friend-turned-foe Rajappan as the hero. Predictably, the fraught relationship between the two and their very different notions about good cinema lead to several conflicts during production. Rajappan, after his success in the field, feels no need either to put up with Udayan's lectures on the art of 'great' filmmaking or with Udayan's long-standing supercilious attitude towards him, and walks out before the completion of the film. Udayan and the rest of his team nevertheless manage to finish it by forcing Rajappan into appropriately staged situations in 'real' life and filming his reactions through strategically placed hidden cameras. Upon completion, the film turns out to be very successful, and at the end the repentant Rajappan declares publicly that Udayan the auteur was the real star of the film as well as within the industry.

Udayananu Tharam is a rather curious work in many respects. For a film that asserts the importance of 'originality' and 'great' cinema, its success owed much to plot elements borrowed from B-grade comedies about Hollywood hacks (notably *Bowfinger*, dir. Frank Oz, 1999 and *Big Fat Liar*, dir. Shawn Levy, 2002). It cleverly combines these borrowed plot elements with locally familiar dynamics of the on-screen pairing of Mohanlal (usually playing a savvy upper-class/caste hero) and Sreenivasan (usually playing an inept lower-class/caste sidekick) that had been consolidated through many popular films over the past two decades. A striking feature of the film is that its overt valorization of the figure of the author/auteur is not fully carried through in the narrative. Udayan is introduced in a scene in which he is praying to the pantheon of directors he admires – ranging from

great 'artists' like Satyajit Ray, Akira Kurosawa and Aravindan, to great 'achievers' like Steven Spielberg and Priyadarshan – for inspiration. At several points, Udayan admonishes Rajappan for not studying cinema seriously and not taking in Stanislavski's views on acting; other respected characters from the film industry speak very highly in the film of Udayan's knowledge of cinema, and even Rajappan is forced to admit during the climax that Udayan was the real star in the industry rather than an impresario like himself. But although we see Udayan writing the screenplay which he and other characters within the film assert to be brilliant and highly original, we are never presented with any direct access to or evidence of the originality of what he has authored. What we do get are short glimpses of Udayan's 'brilliant' and 'extraordinary' screenplay, which Rajappan has stolen/ hacked, being assembled into a rather conventional commercial film, by the very same industry professionals who admire Udayan and with whom he would himself have made his film under normal circumstances. Further, the narrative seeks to persuade us that the brilliance of Udayan's 'original' screenplay compensates for the ineptitude of Rajappan the hack-star and leads to his initial success; it is also implied that Rajappan's subsequent hits which make him a superstar – unaided by Udayan's scripts – are merely the result of efficient publicity and undiscerning audiences. The later part of *Udayananu Tharam* swerves between satire and slapstick: we are presented with a slew of practices that make commercial cinema unsavoury yet successful (pirated ideas, repetitive plots, inept but megalomaniac stars, craven producers who overlook principles for profits, and immature audiences who patronize inane and unrealistic movies). The texts from which key plot elements were borrowed are primarily farcical: in *Big Fat Liar* the story that was stolen is merely a schoolboy's assignment, while in *Bowfinger* the film-within-the-film that gets made with hidden cameras without the knowledge of the arrogant superstar is an obviously appalling sci-fi thriller entitled *Chubby Rain*! *Udayananu Tharam*, on the other hand, seeks to present Udayan as a true auteur, although we see him only adept at making the formulaic (especially

his own film-within-the-film). But it 'succeeds' as a socially symbolic narrative for two interrelated reasons: first, despite its overt gestures towards valorizing 'artistic' or auteur-centred cinema and blaming imprudent audiences for the ills afflicting mainstream cinema, it basically functions within the conventions of mainstream cinema and seeks the approval and patronage of audiences as they exist; second, it effectively harnesses and anchors in the figure of the author prevailing notions of upper-class/caste *authority*, while dismissing, through supercilious derision and resentment directed at the success of the hack, efforts by social inferiors to share the spotlight.

We will now return to the earlier controversy surrounding Civic Chandran's counter-drama, and take a closer look at some of the issues at stake in plagiarism/piracy and acts of 'hacking' within the field of cultural production at large in postcolonial spaces.

The difference a hack makes

Why did Thoppil Bhasi's supporters and the official Left in Kerala respond to Civic Chandran's counter-drama, not by acknowledging – or refuting the validity of – the political critique it made from the stand-point of the most oppressed, but through legalistic attempts to defend their 'intellectual property'? Why did *Udayananu Tharam* represent Rajappan as an interloper in the upper echelons of the cultural sphere, attributing his earlier failure only to his lack of skill and his subsequent success only to his crookedness and to undiscerning audiences? It is worth pondering the extent to which both of these reactions to the figure of the hack are 'paranoid', using the term after Ghassan Hage to mean 'a pathological form of fear based on a conception of the self as extremely fragile, and constantly threatened … a tendency to perceive a threat where none exists, or, if one exists, to inflate its capacity to harm the self' (Hage 2003: 49). Civil subjectivities in the state of Kerala have been largely constituted over the twentieth century through liberal and Marxist discourses, and there is a widespread pride associated with

the celebrated Kerala Model of Development which has resulted in the attainment of much higher indices of living standards in comparison with most other states in India. The credit for this has largely been attributed to the political will and the sense of social justice of the Left after the 1950s, building on the legacy of secular modernity initiated during the 'Kerala renaissance' of the late nineteenth century. The sense of pride associated with this model of development has in recent years been criticized by the dalits and adivasis who perceive their gains from it to have been minimal. In the words of dalit intellectual Sunny Kapikkad:

> Class analysis and the philosophical resources of a determinist Marxism have been used in Kerala to obscure the decisive relationship between property ownership and caste. The surprise expressed by many over the pattern of uneven growth among communities is but pretence, made possible by ignoring the community markers of modern capital investment. … The cornerstone of the Kerala Model is supposed to be the land reform legislation of the EMS government in 1957 and implemented by the CPI-Congress government in 1970 – a legislation exalted as the ideal to be followed by the Third World. And yet [from] as early as the 1970s, dalit movements have been pointing out that the land reform legislation in Kerala has failed entirely to ensure land for dalits and adivasis.
>
> (Kapikkad 2011: 465–8)

Thus, for Kapikkad, the praise showered on the Kerala Model by left-liberal intellectuals is 'an argument for privilege' which obscures the fact that it was a 'thorough failure both as economic policy and social engineering' (472).

The early decades of the twentieth century in Kerala had witnessed large-scale social reform movements directed against caste inequalities – in particular, the widely known SNDP movement for the spiritual and economic uplift of the Ezhava community, and the more aggressive social and legislative reforms pushed by Aiyankkali for the untouchable castes. The early efforts of the socialists during the 1930s were successful primarily because they engaged with economic

as well as social inequalities, and tried to actively mediate with the caste-based reform movements. However, the strategy of the communist party (formed in Kerala in 1939) to engage with caste inequality was tempered with broader considerations of how to steer the party (and its upper- and middle-caste-dominated leadership) to power. It was only as late as 1948 that opposition to discrimination based on caste was officially made part of the party's 'Programme of the Democratic Revolution' – and even then, as Dilip Menon notes, discrimination against the untouchables was denounced instrumentally as a 'bourgeois attempt to keep the masses disunited' rather than as having deeper resonances at the experiential level for the self-dignity of dalits and their participation as equals in public life (Menon 2006: 54).

The response of E. M. S. Namboodiripad (EMS), the Brahmin founder of the communist movement in Kerala who was elected as the state's first chief minister in 1957 and remained an influential public intellectual for the next four decades, to Thoppil Bhasi's *You Made Me a Communist* is a revealing instance of how the communists responded to caste as a political issue. When the play became phenomenally successful during the 1950s, the well-known singer and left-wing activist from Bengal, Hemango Biswas of the Indian People's Theatre Association, wrote enthusiastically about its popular impact.[7] He criticized, however, the depiction of its communist hero Gopalan marrying the landlord's daughter Suma instead of his devoted and adoring untouchable lover Mala, arguing that even if this might well be what routinely happened in real life in a caste-ridden society, it could not be presented unproblematized from the standpoint of revolutionary realism. Other critics had objected to the characterization of Mala's father Karamban merely as an obedient and emotional leader

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[7] Biswas wrote that Bhasi's play 'took Kerala by storm and has come to be regarded as the greatest mobiliser of people. … Those who got scared by the title of the play and thought they would see political tub-thumping on the stage and went to scoff, came back all praise, thrilled by the inescapable realism and the aesthetic vision of a New Kerala' (Biswas 1982: 169).

of the untouchables who only gets angry when the landlord's goons assault Gopalan (and not when his own wife is killed or his daughter is insulted by the landlord). An erudite leader like EMS would surely have read these criticisms, yet his own reaction to *You Made Me a Communist* was that: (1) it was the best of the many plays written by the communists; (2) the only problem with Gopalan's character is that he is a jargon-spouting bore; and (3) 'the author is skilful in the portrayal of the agricultural labourers. … The old man and his daughter (Karamban and Mala) are perfect' (Biswas 1982: 405–7).

Civic Chandran's counter-drama *Whom Did You Make a Communist?* in the 1990s was thus as much a response to the prevailing communist smugness about the good they had done for the oppressed classes as it was to the dalit desire and search for a more dignified and empowered life in modern India. The reaction against it from the official Left – the ill-tempered polemics exemplified by Kaniyapuran Ramachandran's counter-drama *We Made Your Old Man a Communist*, and the decision to oppose it in court for stealing Thoppil Bhasi's literary property – reveals the extent to which the understanding of the Kerala communists regarding caste-based privileges and prejudices differed from the experiences of the dalits and the perception of the new radical Left. In any case, the legal attempt to quash Chandran's counter-drama as an act of literary piracy failed. In a landmark judgement delivered on 27 December 1996, Justice T. V. Ramakrishnan dismissed the charge that Chandran had merely imitated or 'pirated' the original work. The judgement was based primarily on the following legal considerations: (1) Civic Chandran had used characters and incidents from Thoppil Bhasi's play in order to comment on and to elaborate certain important differences in political perspective between the CPI (M) and other radical social movements. In addition, there were also new characters, situations, arguments and perspectives presented in the counter-drama. Thus, it was covered under the 'fair dealing' clause under Section 52 of the Copyright Act, and there was no copyright infringement; and (2) The publication and performance of the counter-play was, in a strictly legal sense, 'non-rivalrous': that is, the two plays as commodities were

not competing for the same paying audience. As Justice Ramakrishnan observed:

> By no stretch of the imagination, it can even be suggested that those who want to read or see the drama will read/see the counter-drama. … [E]ven now the drama is popular and is in demand for staging profitably. The exploitation of the drama by staging … or by printing and selling it will not in any way be affected by the printing and sale or staging of the counter-drama.
>
> (Chandran v. Amma 1996)[8]

In view of these considerations, the trial court's order granting an injunction against the counter-drama play was dismissed.

This judicial decision by no means indicates that a deeper understanding of or sensitivity towards caste-based privilege and prejudice has emerged within the cultural domain in Kerala. As mentioned earlier, the box-office success of *Udayananu Tharam* a decade later was the culmination of the long-standing pairing and face-off between the personas of Mohanlal (connoting an affable and worthy upper-class/caste winner) and Sreenivasan (connoting a bungling lower-class/caste rogue who finally gets his comeuppance). This popular on-screen pairing, and the 'comic' social tensions embodied in their relationship, had been established through a very long series of popular hits such as *Sanmanassullavarkku Samadhanam* (1986), *Nadodikaatu* (1987), *Vellayaanakalude Naadu* (1988), *Chithram* (1988), *Varavelpu* (1989), *Thenmavin Kombathu* (1994), *Chandralekha* (1997), *Ayal Katha Ezhuthukayaanu* (1998), and *Kilichundan Mampazham* (2003), to name just a few. The tenacity of such stereotypes in popular culture indicates how differentially the entitlements of modern citizenship are perceived and indeed distributed. The narrative of *Udayananu Tharam* re-stages the familiar and unequal contest between the on-screen personas of

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[8] It is interesting to note that this presages the better-known October 2001 judgement in the United States on a similar legal battle between two publishing firms, Suntrust and Houghton Mifflin, concerning the alleged plagiarism of Margaret Mitchell's *Gone With the Wind* by the black feminist writer Alice Randall in her revisionist *The Wind Done Gone*. For a detailed discussion of this controversy and judgement, see Schur (2003).

Mohanlal and Sreenivasan in the form of a battle between an author and a hack who steals his way into the kingdom.[9] In socially symbolic terms, this is also a battle for authority over the social imaginary, and on that level Udayan's eventual triumph is ambivalent. Rajappan may have been 'taught a lesson' by Udayan but he is not displaced as the reigning superstar, and it is hinted that Udayan and Rajappan would henceforth share space and success within the film world.

Foucault, in urging attentiveness to the historical functioning of the author-figure, criticizes the Barthesian celebration of *ecriture* or polysemic textual creativity by pointing out that this notion 'merely transposed the empirical characteristics of an author to a transcendental anonymity' (Foucault 1984: 104), thereby maintaining the author's privileges. Textual meanings are neither the exclusive product of the individual author's creativity, nor are they contained within the codes of writing or acts of interpretation removed from questions of power. Lawrence Liang's view (2005) that postcolonial piracy is involved in the redistribution of legalities and illegalities feeding off larger social conflicts over entitlements to modernity – conflicts that render the relationship between the legal and pirate domains in the postcolonial world 'porous' – offers us a more complex grasp on the activity of the hack. His is an unauthorized mimicking of modernity, feeding off the accomplishments of privileged subjects but with no 'loftier' an aim than sharing the spoils with those excluded by the disguised protocols of modernity. This notion of a mimic modernity is drawn from postcolonial adaptations of Lacan's insight about mimicry:

> The effect of mimicry is camouflage. … It is not a question of harmonizing with the background, but against a mottled background, of becoming mottled – exactly like the technique of camouflage practised in human warfare.
>
> (Lacan 1994: 99)

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9 The plot of *Udayananu Tharam* was subsequently borrowed for Tamil (*Vellithirai*, 2008) and Hindi (*Shortkut*, 2009) versions, but these fared poorly at the box-office. It may be argued that a key factor in their failure was the lack of depth in the sociocultural clash connoted by the Mohanlal-Sreenivasan screen personas, but that analysis is beyond the scope of this chapter.

The figure of the hack in the postcolonial pirate domain we have been considering is thus neither an exterior radical subjectivity opposed to elite modernity nor a sterile vector of its replication. In both of the instances under consideration, the hack performs a rearguard occupation of modernity: he mimics the accomplished models of modernity the best he can, yet he also renders visible the prevailing gaps and prejudices that bar his kind as not quite entitled to the privileges of modernity.[10] The hack may not be an enlightened radical; but he may have grasped that modernity is about aiming for the moon, whether by a rocket or by a rubber band.

References

Bhasi, T. (1952/1998), *Ningal Enne Communistaakki*. Kottayam: D. C. Books.

Biswas, H. (1982), 'You Made Me a Communist: Kerala People's Art Club's Epic Drama', in S. Pradhan (ed.), *Marxist Cultural Movement in India: Vol. 2 – Chronicles and Documents (1947–1958)*. Calcutta: Navana.

Chandran, C. (1995/2002), *Ningal Aare Communistaakki*. Kozhikode: Haritham Books.

Chandran, v. Amma (1995), I.A. No. 395 (Mavelikara District Court).

—(1996), (16) P.T.R. 142 (Kerala High Court).

Chatterjee, P. (2011), *Lineages of Political Society*. Ranikhet: Permanent Black.

Dick, P. K. (1995), *The Shifting Realities of Philip K. Dick: Selected Literary and Philosophical Writings*. New York: Vintage Books.

Foucault, M. (1984), 'What is an Author?', in P. Rabinow (ed.), *The Foucault Reader*. New York: Pantheon Books, 101–20.

Hage, G. (2003), *Against Paranoid Nationalism: Searching for Hope in a Shrinking Society.* Sydney: Pluto Press.

Jaszi, P. (1994), 'On the Author Effect: Contemporary Copyright and

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[10] As Liang puts it: 'The status of these transgressors as the "not quite" and yet "not quiet" citizens creating their own avenues of participation in the multiple worlds of media, modernity and globalization demands that we ask fundamentally different questions of the relationship between law, legality, property (tangible and intangible) and that which we call the public domain' (Liang 2005: 16).

Collective Creativity', in M. Woodmansee and P. Jaszi (eds), *The Construction of Authorship: Textual Appropriation in Law and Literature*. Durham, NC: Duke University Press, 293–320.

Kapikkad, S. M. (2011), 'Kerala Model: A Dalit Critique', in K. Satyanarayana and S. Tharu (eds), *No Alphabet in Sight: New Dalit Writing from South India*, Dossier 1: *Tamil and Malayalam*. New Delhi: Penguin, 75–80.

Kapur, G. (1999), *When Was Modernism? Essays on Contemporary Cultural Practice in India*. New Delhi: Tulika.

Kaviraj, S. (2011), *The Enchantment of Democracy and India*. Ranikhet: Permanent Black.

Lacan, J. (1994), *The Four Fundamental Concepts of Psychoanalysis*, trans. A. Sheridan. Harmondsworth: Penguin.

Lemos, R. (2007), 'From Legal Commons to Social Commons: Brazil and the Cultural Industry in the 21st Century', Working Paper No. CBS 80–07. Oxford: Centre for Brazil Studies. Web.

Levy, S. (2010), *Hackers: Heroes of the Computer Revolution*. Sebastopol, CA: O'Reilly Media, Inc.

Liang, L. (2005), 'Porous Legalities and Avenues of Participation', in M. Narula, S. Sengupta, J. Bagchi and G. Lovink (eds), *Sarai Reader 05: Bare Acts*. New Delhi: Sarai-CSDS. Web.

—(2009), 'Piracy, Creativity and Infrastructure: Rethinking Access to Culture', *Social Science Research Network*. Web.

Lobato, R. (2008), 'The Six Faces of Piracy: Global Media Distribution From Below', in R. C. Sickels (ed.), *The Business of Entertainment*, Vol. 1: *Movies*. Westport, CT: Greenwood Publishing Group, 15–36.

Menon, D. M. (2006), *The Blindness of Insight: Essays on Caste in Modern India*. Pondicherry: Navayana.

Menon, J. (2010), 'Urban Indian Plays Removed From Roots' (interview with Vikhar Ahmed Sayeed), *Frontline*, 27(18): n.p.

Menon, N. R. (2001), 'Pathbreaking Plays', *Frontline*, 18(10): n.p.

Namboodiripad, E. M. S. (1982), *Selected Writings*. Calcutta: National Book Agency.

Philip, K. (2005), 'What is a Technological Author? The Pirate Function and Intellectual Property', *Postcolonial Studies*, 8(2): 199–218.

Prasad, B. and Kumar, A. (2009), *Tinker. Solder. Tap*. New Delhi: Sarai-CSDS.

Rose, M. (1993), *Authors and Owners: The Invention of Copyright*. Cambridge, MA: Harvard University Press.

Satyanarayana, K. and Tharu, S. (2013), *Steel Nibs are Sprouting: New Dalit Writing from South India*, Dossier 2: *Kannada and Telugu*. New Delhi: HarperCollins.

Schur, R. (2003), '*The Wind Done Gone* Controversy: American Studies, Copyright Law, and the Imaginary Domain', *American Studies*, 44(1–2): 5–33.

Sreenivasan (2011), *Udayananu Tharam* (screenplay). Kottayam: DC Books.

Sundaram, R. (2001), 'Recycling Modernity: Pirate Electronic Cultures in India', Raqs Media Collective and G. Lovink (eds), *Sarai Reader 01: The Public Domain*. New Delhi: Sarai-CSDS. Web.

—(2009), *Pirate Modernity: Delhi's Media Urbanism*. New Delhi: Routledge.

Suntrust v. Houghton Mifflin (2001), No. 01–12200 (US Court of Appeals, Eleventh Circuit).

The Delhi Declaration of a New Context for New Media (2005). Web.

Udayananu Tharam (2005), dir. Rosshan Andrrews. Moser Baer. DVD.

Woodmansee, M. (1994), *The Author, Art, and the Market: Rereading the History of Aesthetics*. New York: Columbia University Press.

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