

Piracy, Creativity, and Infrastructure

Rethinking Access to Culture

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Prologue: Once upon a Time in Malegaon

Approximately an eight-hour bus ride from the bright lights of India's financial and film capital, Mumbai, is a small, nondescript town called Malegaon.¹ The town is populated mainly by migrant Muslim laborers from North India, who work in the power loom sector. Malegaon became infamous in 2006 after a series of bomb blasts. Serious communal riots broke out after the destruction of the Babri Masjid (a mosque in Ayodhya, in the state of Uttar Pradesh, that was demolished by Hindu zealots in 1992). The town has however been in the news recently for another reason. It has emerged as the center of a parallel film industry that churns out remakes of Bollywood hits, contextualizing them to address local issues and to cater to local tastes. Thus, one of the biggest blockbusters of India, *Sholay (Flames of the Sun, 1975)*, is remade as *Malegaon ki Sholay*; and the Oscar-nominated *Lagaan (Taxes)* is remade as *Malegaon ki Lagaan*, and instead of opposition to colonial taxes, the film addresses problems of civic amenities. All the actors in the films have become stars within the local community, and one of the reasons cited for the popularity of these remakes is the fact that the local people get to see people they recognize on the big screen.

The average budget of a Malegaon production is around Rs. 50,000 (\$1,000US) and runs in one of the fourteen local video theaters in the town. It all started when Naseer, a local videographer who shot wedding videos, decided to borrow money to make his own film. He shot the film on video and used two videocassette recorders to edit the film in real time. The film turned out to be a surprise hit and thus started the Malegaon film industry. Local people working in the various small-scale industries double as actors, and the filmmakers try to stay as close to the original as possible, including camera angles, lighting, and other production details. Understandably, it is difficult to emulate a large Bollywood film with its mega-budgets in a small town like Malegaon, so the Malegaon crew has learned to adjust and innovate using local resources to re-create these films.

So a cycle stands in for a dolly, and a bullock cart is used for crane shots. While remaking an expensive Hindi film, *Shaan*, the director realized that with a total budget of Rs. 50,000, there was no way he would be able to hire a helicopter, so his crew simply made do with a toy helicopter and shot it in a way that made it look as authentic as possible.

In the past few years, the Malegaon films have created a market of their own, and now there are film distributors who are willing to buy such films for nearby towns and cable operators who regularly get requests from their customers to screen a Malegaon film. The director of *Lagaan*, one of the films remade in Malegaon, when shown the remake said, “It is remarkable, what they have managed to achieve. Using video theatres as a film school, they have managed to create an alternative to the Hindi film industry in the Hindi language [sic]” (Sukhija, 2003).

The Malegaon phenomenon is very similar to the emergence of Nollywood, the film industry in Nigeria (Hausa, English, and Yoruba films), which emerged through a creative history of appropriation and localization of Bollywood films. What was remarkable about the rise of Nollywood was that it arose in the absence of either private or state investment in cinema, and it started out as a cottage industry and has now emerged as a significant film industry in the African region (Larkin, 2008). There are a number of similarities between the Malegaon film industry and that of Nollywood, but one significant difference between them is that Malegaon remains a very local industry that serves as a counter to the more well-established Hindi film industry, which is often seen as the “national cinema” of India.

We read the Malegaon phenomenon in many ways. It is on the one hand a story of local creativity that uses remixes as a mode of appropriating dominant culture. It could also be read through the prism of copyright to see how creativity relies on pastiche and quotation, and how a regime of copyright would inhibit such forms of creativity. But it has to be stated that despite using copyrighted material from films to music, the question of copyright has thus far been a nonexistent one in Malegaon. Like Nollywood, the Malegaon film industry arose out of an infrastructure created by media piracy. The proliferation of video stores, video theaters, the availability of video cassettes and now VCDs and DVDs for the distribution of these films, have all contributed to the Malegaon success story.

I have chosen to begin with the Malegaon story because it illustrates for me the relationship between quotidian media piracy and the creation of an infrastructure for cultural production. When thinking of cultural production, we tend to focus on what gets produced, or the content, and we do not pay sufficient attention to the conditions of its production, circulation, and reproduction. Thus infrastructures of cultural production could include video cameras, computers, cars, Internet bandwidth, cycles, printing facilities, sound mixers, and, as we have seen, even toy helicopters and bullock carts. In a number of developing countries the biggest hurdle to access to knowledge and culture is the question of poor infrastructure. The aim of this chapter is to look at the relationship between infrastructure and creativity—not as distinct domains, but to see how they inform each other and to introduce a materialist understanding into our understanding of creativity.

The innovativeness of the Malegaon films, for instance, lies as much in their remixing of narratives as it does in the ways in which low-cost infrastructure is recycled to make the films possible. Working with extremely low budgets and yet wanting to emulate the big-budget blockbuster, these filmmakers use everything from cycle rims to bullock carts as replacements for expensive equipment. The mode of production of the Malegaon films reminds us that the materiality of knowledge and cultural production cannot be ignored in any examination of process of creativity.

In many debates on the politics of intellectual property and access to knowledge, much of the focus is on the availability of content, whether it is in the form of books, software, or cultural objects. This is undoubtedly

an important area, and the battle over the control and dissemination of knowledge and cultural goods will keep us busy in the years to come. But in these debates there is often a lack of any discussion on the infrastructure that enables the creation and dissemination of knowledge and culture. By “infrastructure,” I refer both to a range of things, from computers to photocopiers and from cameras to cycles, but equally to a network of services and support systems that either provide these goods or provide services in relation to these goods.² Infrastructure has always been the key to the expansion of global capital, enabling the movement of people and goods across space and time. One of the markers that distinguish developed from developing countries has had to do with the state of infrastructure in the latter, where often infrastructure is seen to be either missing or in a state of collapse.

With the shift to the knowledge economy, and the coalescing of value around intangibles, intellectual property emerges as the new cluster of primary commodities made up of culture and information. These are also brought into the world through transcontinental networks and through infrastructure consisting of telecommunication networks, such as broadband cables that traverse the seas, much as the ships of maritime capitalism did, carrying spices, tobacco, and silk to many continents. It is important to locate the transformation to the information economy across different temporalities, where countries marked by historic inequalities are invited to enter the information economy of the twenty-first century as though it were an equal playing ground. It is also important to bear in mind that even in countries like India that are linked to the global economy, only a very small section of the population finds itself “wired in,” and for large sections of the population, access to information and technology is as distant as access to basic infrastructures of housing, water, and health care.

When thinking about access to knowledge, it is vital to keep in mind the fact that for populations largely ignored by the state or corporations, the building of infrastructure becomes a self-organized and organic task involving kinship networks. This is well documented in the ways in which cities have incrementally developed, and it is perhaps time to start looking at how a similar form of informal infrastructure, built through piracy, enables the entry into the information and knowledge economy of a large of number of “entrepreneurs” from developing and underdeveloped countries.

Another challenge that the Malegaon story presents for us is in terms of how we think beyond ideas of access when we think of knowledge and culture. While the idea of access has been central to the imagination of the Access to Knowledge (A2K) movement, it is the argument of this chapter that ideas of access cannot be examined without simultaneously looking at issues of desire and subjectivity. There has been a tendency to frame the issue of access to knowledge via the trope of “development,” and the history of developmentalism has tended to favor a top-down approach wherein the needs of people are defined in pedagogic terms.

There is a tendency toward a kind of division of labor in the progressive circles looking at information politics. People working with initiatives like the Creative Commons tend to speak a universal language of creativity while glossing over issues of political economy, development, and equity. There is an assumption, for instance, that most people across the world have access to technologies that enable the process of ripping, remixing, and sharing. At the same time, people in the A2K movement tend to focus on issues of equity and access but rarely look at questions of creativity and curiosity. They thus speak of more equitable access to lifesaving medicines but deemphasize the joys of storytelling and music-making that make life worth living.

By reframing the way in which we look at the relationship between piracy, development, and creativity, I hope to be able to question some of the existing assumptions in the debate on IP and public interest, as well as suggest ways in which we can move forward.

Introduction

In civilizations without boats, dreams dry up, espionage takes the place of adventure, and the police take the place of the pirate.

Foucault, *Of Other Spaces*

Over the past decade and a half, technological changes have significantly altered the ways in which we create and disseminate knowledge and culture. These developments have been accompanied by the expansion of intellectual property and its transformation from an esoteric legal sub-

ject to a topic of daily conversation. The aggressive expansion of property claims into every domain of knowledge and cultural practice has inserted almost everyone, from the academic to the musician, into the heart of the debate. No account of our contemporary times would be complete without an examination of the dominance of the copyright sign or the small print of the trademark 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 the trespassing into private property has been through much of human history.³

While the anxiety and conflict over IP may be universal, the nature of the conflict gets configured differently as we move from the United States and Europe to parts of Asia, Latin America, and Africa. In the United States the crisis is represented in terms of the shrinking of the public domain and the commons by the extension of copyright. In South Africa the main concern has been the availability of cheap generic antiretroviral drugs. And in many parts of Asia the proliferation of cheap technologies of reproduction has created a parallel economy that threatens the monopoly of old media players.

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. In many ways this is exemplified by various processes and through the important scholarship that has arisen on the public domain and the increasing popularity of nonproprietary modes such as free software, open content, and so on. A number of these concerns have historically emerged from the experience of Europe and the United States and traveled to the rest of the world. But when one attempts to translate the terms of the IP debate into the contemporary experience of countries in Asia, Latin America, and Africa, it is not easy to locate any easy indexical reference to ideas like the “digital commons.” There are challenges ahead of localizing the language of the commons through an exploration of ways in which cultures have shaped their relationship to knowledge and culture, and how such practices may inform contemporary sensibilities toward intellectual property (Liang, 2007).

The ways in which IP unfolds in many of these countries are through the dual tropes of a triumphalist fantasy of harnessing IP to “catch up

with the West" or being perpetually condemned as pirate nations by the U.S. Trade Representative (USTR) in the Annual Special 301 reports (Mertha, 2007). Pressures from the USTR, backed by the threats of trade sanctions, have translated on the ground to an increase in criminalization of piracy, rise in police and private raids, the hyperprofiling of piracy in mainstream media, and the emergence of the figure of the pirate as one of the key defining figures of criminality in the twenty-first century. One of the challenges for us as critical scholars of IP will be to question the dominant narrative of criminality that marks the contemporary discourse on piracy and look at the relationship between piracy and the democratization of knowledge and culture. It may, however, be useful first to lay out a broad map of the kind of IP scholarship and activism that have emerged in the past few years, before examining how they play out in Asia.

- The most visible research thus far has sought to look at the expansion of IP and its impact on creativity and innovation. Public domain scholars have argued that this expansion has resulted in a world in which information is increasingly privatized, and hence threatens the public domain of knowledge and the possibility of creativity in the future. The work of scholars like Boyle, Benkler, and Lessig, to name just a few, is important here as they strive to make an argument for a stronger understanding of the public interest that underlies IP policy.⁴ There is also a convergence between research and activism as evidenced in the Creative Commons initiative and the burgeoning A2K movement.
- The second strand that can be identified would broadly fall under a political economy critique of IP. Scholars like Peter Drahos, Carlos Correa, Susan Sell, and others have been looking at context in which IP has been globalized, critiquing the unequal north–south character of IP. Their targets are often the institutional players such as WTO, WIPO, and the TRIPS agreement, charging them with "information feudalism" or of neocolonialism.⁵
- The third critical strand has been shaped by the coming together of literary theory and legal theory in the form of the critique of the myth of authorship in copyright law and theory. Inspired by the works of post-structural thinkers like Barthes, Foucault, and Derrida, scholars like Peter Jaszi and Martha Woodmansee have been highly critical in inaugurating

a critical interrogation of the figure of the author as an isolated romantic genius, through a historical identification of the emergence of the author function, as well as problematizing the idea of the romantic author in the age of digital production.⁶

- A fourth strand that can be identified would broadly be the historical approach, which looks at the emergence of particular strands of IP in its historical context and especially the context of the history of industrialization. This strand has been very important in countering the usual claims made by IP proponents such as those who argue that that without a strong patent regime there would be no innovation.⁷
- The response to the question of IP from “developing countries” has generally been framed around the “epistemological question” or the “nationalist approach.” In the former, the argument made is that IP is not a universal mode of relating to knowledge and that it emerges in the specific history of the Western enlightenment discourse, carrying with it presumptions such as originality and authorship. IP therefore faces an epistemological problem when it encounters other forms of knowledge production such as traditional knowledge and aboriginal art and when it seeks to translate the latter into the terms of a modern IP framework. The second strand that developing countries have adopted is a more strategic and instrumental one that looks at whether IP is beneficial to developing countries, and this approach has often produced contrasting results.⁸

The sheer diversity of the responses to the question of IP poses interesting intellectual questions and challenges for us. First, it is clear that it would be a mistake to presume an absolute uniformity that exists between these different strands. The idea of these various strands’ being united by a “single enemy”—namely, intellectual property—may actually conceal more than it reveals. In fact, a number of the strands, far from being complementary, may have contentious relationships with one another, and the challenge for us would be to look at the kind of questions that we can raise when we look at the different registers in which the critical debate on IP operates.

What do these differences reveal in terms of the intellectual project that lies ahead of us? What are the intellectual and philosophical fault lines that exist between the different approaches, and in what way

can questions asked by a particular strand be extended or enriched when it encounters a competing vision of the commons or the public domain? What are the limitations even within such an array of ideas of the discourse of intellectual property, and what new terms may have to be introduced to the debate before we can attempt to construct a theory of knowledge practices that interlinks the historical, the ethnographic, and the normative imperative? What are the critical cultural resources that we have to build and draw on to provide new alternative accounts?

The Problem of Piracy

A quick survey of the range of debates reveals the relative absence of any serious engagement with the world of quotidian nonlegal media consumption and circulation, or piracy. This is surprising, given that the everyday life of IP plays itself out through an extraordinary focus on the pirate. What is it about the nature of piracy that creates this uncomfortable silence around it? Scholars like Lessig and others have been responding to a debate on IP by looking beyond the binaries of legality/illegality that are set up by traditional copyright, but yet when it comes to piracy, there is still a problem of accommodation.

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, because many other acts, including downloading music, are also tainted by illegality. There are ways in which these acts find redemption, which the pirate just cannot. Is it a problem peculiar to the precise nature of the illegality, the domain that it operates in and the subjectivities that it interpellates?

Or is it possible that there is instead something about the way in which the critical responses to IP have been framed that makes it impossible for it 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 move beyond the impasse.

Lawrence Lessig, a copyright scholar and one of the founders of the creative commons, has this to say:

All across the world, but especially in Asia and Eastern Europe, there are businesses that do nothing but take other 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].

Piracy poses a representational problem in the contemporary discourse on law, public goods, and creativity. 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 produces a series of anxieties: from states, transnational capital, and media industries, and even—as the Lessig quote suggests—amongst liberal scholars critical of IP's excesses. The efflorescence of nonlegal media production and circulation exists as a series of publicly articulated facts, constantly referred to in media panics, national security discourses, and everyday conversations. A serious reconsideration of the relationship between piracy and democratization of knowledge and culture can present new questions that challenge our assumptions about creativity, subjectivity and transformation, commodification, and social life.

Let's try to identify the ways in which piracy seems to be "tainted" before offering different ways of reframing the question of piracy.

First, because piracy operates within the logic of profit and within the terms of commerce, it gets tainted as an activity that cannot claim a moral

ground in the way that other nonlegal media practices can. For critics of copyright working with the paradigm of legal reform, it would be an embarrassment to support any nonlegal commercial enterprise. Within copyright law, there is a history of allowing forms of uses in fair dealing provisions that are primarily noncommercial in nature, and hence it becomes easier to justify noncommercial piracy, such as that which is done via P2P networks.

The critics' 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 recognize that it would be counterproductive for them, in their struggle against stricter IP regimes, to be seen as espousing commercial piracy. On the other hand, a number of people, including Stallman and Lessig, would argue that if a certain law exists, and we do not agree with it, then we either reform the law or create an alternative legal paradigm. However, so far as the law exists, then we cannot encourage the violation of such a law. We shall, however, see that this division between commercial and noncommercial piracy breaks down when you look at it through the prism of infrastructure, and the vital role that commercial piracy plays in creating forms of access that would just not exist otherwise.

Another reason for the suspicion of commercial piracy, in relation to entertainment, stems from the fact that it pertains to the domain of pleasure. Unlike access to affordable medicines and access to learning materials, it seems that there is very little possibility of redeeming piracy that provides people with low-cost films and music. Access to films and music is seen as frivolous and not in the realm of the real-world concerns of the A2K movement. In the world of knowledge and culture there seems to be a very clear demarcation between essential and nonessential goods. The suspicion of pleasure and curiosity stems from an older history wherein the development discourse constructs the subject of development as a wretched figure that then enables all kinds of top-down interventions to improve their lives. But if we are to reverse the assumption of what are the essential needs of people, these divisions between the essential and nonessential needs get a little more complicated.

Finally, a major critique of commercial piracy is that unlike instances wherein people remix content, commercial piracy is unable to redeem itself by an act of creativity. Thus, while young people illegally download

music, they then remix the music to produce new music. In the case of commercial piracy, there is a slavish making of copies without any transformative redemption. Thus, Lessig says, “Efforts at justifying commercial piracy simply don’t cut it. This kind of piracy is rampant and just plain wrong. It doesn’t transform the content it steals; it doesn’t transform the market it competes in. It merely gives someone access to something that the law says he should not have. Nothing has changed to draw that law into doubt. This form of piracy is flat out wrong” (Lessig, 2004).

I shall argue that this understanding of transformative use, while important, has to be expanded if we are to understand creativity across countries where access to infrastructures of creativity are not the same.

Whose Public Domain?

Having set up the conceptual problems posed by piracy to public domain theorists, let us try and understand the terms of representation that public domain scholarship sets for itself. While the public domain has emerged as the most viable alternative to the expansion of IP, the question is whether the public domain is the only way through which we can understand contemporary conflicts around IP, and what are the limits of the “public domain” approach when you attempt to provide an account of piracy. Do we use the same conceptual and descriptive terms while attempting to narrate these two worlds? Can the world of the “public domain” and the world of the pirate be narrated as though there were a seamless web that should necessarily tie the two?

In many ways, the public domain argument deploys classical terms of representation that borrow from either political or cultural theory, and some of these include categories of citizenship, resistance, and creativity. I think it is important to take a slight detour into a debate about the history of citizenship to understand why certain classes of people always get left out in the imagination of the liberal public sphere.

One of the problems 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 (Dhareshwar, 1996). Dhareshwar uses this phrase to understand the emergence of the modern Indian citizen.

In the Indian context, the history of the citizen is clearly tied to the project of the nation,

the largest imagined space which claimed the nomenclature of the new, or at least with the Utopian projection of the ideal community, freed from colonial domination, and free to create a world untainted by inequalities of caste-class, community or gender. It was a community, however, only of those who were eligible to be citizens, and the question of how citizenship was conferred is in many ways the same question as how the nation was imagined. Nationalism was a marker of the readiness to enter the “modern” age, and the modern person produced as “Indian” was also the free, agentic, romantic subject of liberal humanism.⁹

Dhareshwar claims that the citizen emerged as the juridical category that would erase older histories of caste, religion, and gender, and the occupation of the space of the citizen simultaneously implied a movement from older identities. His claim is that certain forms of historic inequalities make it impossible for most people to occupy the space of the unmarked citizen, and the histories of violence and oppression writ large on their bodies.

In a similar manner, the idea of the public domain imagines a free, open space wherein people can participate in the world of ideas and cultural production. And when this space is threatened by the taint of illegality caused by copyright law, there arises a need for a theory that redeems the illegal act and inserts it within the terms set up by the normative ideas of the public domain.

One way 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 is often done through doctrines such as the idea of transformative authorship. But then what happens to entire realm of nontransformative authorship or the “Asian piracy” that does not necessarily transform but merely reproduces ceaselessly using cheap technologies? How do we read this 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 a little difficult not to miss the linkages in this paragraph to older accounts of illegality in which Asia, where many accounts of the urban experience in Asia and Latin America have been narrated in terms of its preponderant criminality and illegality. This, for instance, 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. While the United States has always narrated itself through the tropes of constitutionalism and the rule of law, the crisis arrives when all of a sudden the very language of criminality and illegality that accounts for much of the world arrives home in the form of the criminalization of students downloading music. But clearly one cannot have an account of illegality in a country that prides itself on its constitutional tradition and its emphasis on the rule of law.

One of the narrative strategies is then to redeem the acts of “ordinary” American citizens, and what better way to do this than through the discursive construction of an “other,” in this case an Asian other. The categories of the public domain serve as the neutral ground over which the two kinds of pirates are pitted against each other, and the terms of reference of this public domain are creativity and innovation. This kind of framing is a bit misleading because it relies on the presumption that creativity and transformation are only at the level of content, and, when it is framed thus, we are delivered a *fait accompli* when we encounter quotidian media piracy.

Underlying much of copyright’s mythology is a certain understanding of creativity that draws on ideas of creativity, innovation, and progress. These specifically emerge within the history of modernity and have served as the foundational reasons for the existence of copyright itself. The idea of creativity as a universal good is shared by advocates of stronger copyright as well as advocates of the public domain. Our having established the progress myth of copyright, the question of dispute is whether we arrive at the ultimate public good through the route of more copyright or through more freedom. By setting themselves up as alternative accounts of the idea of progress and creativity, public domain arguments nonetheless share the assumption of copyright theory that the end goal is to maximize creativity. Advocates of the public domain argue that 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 public domain scholars 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 “transformativity”—and distinguishes the Asian pirate as the other of creative transformation. But the creative subject invoked here is in fact a very particular *kind* of creative subject—a liberal, disembodied one. The difference between the idea of an embodied and disembodied way of understanding of creativity can be stated in the following manner: When creativity is seen as a transcendental virtue, it acquires an ability to move beyond time and space and can in fact be used to measure practices that may be situated in local histories. On the other hand, if we do not see creativity in a universal sense but attempt to draw it out by situating it historically in time and in particular spaces, we have an idea of creativity that may be far more open-ended and flexible and able to accommodate not just similarities in processes of creativity but differences as well.

Returning to the point of the close link between ideas of public domain and the realm of political representation, we could say that the public domain is bracketed as a space of equal participation in which everyone can participate as equal rights-bearing citizens. The linking of public domain theories to freedom of speech and expression is not accidental, and the very model of the public domain as the sphere of rational communication borrows from existing accounts of the public/private divide.

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 citizen subject category demanded a move away from the oversignified body of the individual marked by religion, gender, and caste into an unmarked subject position, “the citizen,” a category based on equality and access and guaranteed rights within the constitutional framework. But 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 elite in India do. Instead, the manner

in which they access institutions of democracy and “welfare” is often through complex negotiations and networks, often marked by their illegal status.

In their work on citizenship, Dhareshwar and Srivatsan suggest that the discursive figure of the citizen always throws up its other, the denizen, and in fact the denizen may be essential for the definition of the citizen itself. 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 for 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? I suggest there lies a great deal of work to be done on engaging with how people create vibrant spaces outside of official plans through which they participate, and more often than not these spaces are marked by their high degree of illegality.

One way of understanding the place of the “illegal” in the India context is through Partha Chatterjee’s notion of political society. From the very beginning of the independent career of the Indian nation-state, he argues, there was a contradiction between its modernizing aspirations and its commitment to democracy, which was sought to be managed on the terrain of political society. This was the large and muddled field on which compromises had to be made, from point to point, moment to moment. Political society, he says, constituted a field which lacked the clarity of moral language and legal concepts that were supposed to define the relations between state and civil society. It meant bending the rules, recognizing that the legal fiction of equal citizenship did not always apply, that the laws of property and contract might sometimes need to be overlooked. It meant speaking in both languages—of rights as well as policy—often using the one to overcome the limitations of the other.

Similarly, pirates who merely reproduce without producing are unable to shed the illegal excesses to enable them to play a role or become a part of the reconstituted public domain. The pirates contribute nothing and cannot play a role in the public domain, because they cannot claim the

representative status given to the transforming creator within the productive public domain. There are very few possibilities of the pirate occupying the normative terms set up by the public domain of the creative citizen. And yet despite the expulsion, a look at history and at the present seems to indicate that there is a certain stubbornness on the part of those who do not find a representative space in the public domain, and they refuse to disappear and instead coexist at the margins of any transformative accounts that exist.

Copyleft, Copyright, and Copy Centers

It will be the argument of this chapter that conventional criticisms of piracy are premised on narrow ideas of creativity, because of their exclusive focus on the question of authorship and content to the exclusion of infrastructure. The Malegaon story has shown us that the creativity that goes into the making of the remakes lies as much in the way that the film is made as in the content of the film. There is also a tendency within these critiques to look at the copy as an uncomplicated object, but fetishized for its illegal status. This is not very different from the ways in which the entertainment industries also fetishize the object (held up in press conferences as evidence, mass destruction by steamrollers, etc.).

Historically, for instance, there is an entire realm inhabited by figures such as the trickster, the copier, the thief, the pirate who inhabit a marginal site of production and circulation. How does the recovery of various histories assist us in unpacking the idea of creativity and later the terms of the linear progressive account that is often provided of the public domain? 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 are the intellectual horizons that open up? We would also ask for patience from public domain scholars and ask of them the same careful attention that they pay to understanding the larger political and cultural politics of copyright when they look at the phenomenon of piracy.

One of the ways, then, of moving beyond the impasse is to reformulate our object of enquiry. Let us take for granted the illegal status of

piracy, but let us not stop there. Instead it might be more useful for us to ask the question of 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 into light the very nature of the law that names a particular act as an illegal one. Does the naming of the deed as an illegal one prevent us from reflecting on the nature of the act?

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 that public domain advocates argue for and are often unable ever to achieve. The best example is in the domain of cheap books, wherein public domain advocates try to reform copyright law to enable more educational exceptions, pirated books, and unauthorized photocopies. Rather than looking at the neat spaces of legal/illegal it might be more advantageous to consider the spaces in which piracy plays itself out, the transforming urban landscapes, the specific histories of the nooks and crannies that render this space an illegal one, the accumulated histories of regulation, tactility and negotiation that renders this topography intelligible.

One way of looking at what piracy does, rather than at what piracy is, is offered by the following. In a comparative study on the price of books in South Africa, India, and the United States, we had an opportunity to examine the sharp inequality in purchasing power, as well as what seems to be the difference between two countries where access is clearly a problem (Liang and Prabhala, 2006).

We begin by taking the per capita income (PCI) for different countries (the United States, India, and South Africa), as well as the absolute cost of one particular good/commodity in major bookstores in these three countries. We then calculated the percentage/ratio that the price of this commodity would be in relation to the per capita income of the country—for example, if GDP per capita of India is \$750 and the price of a book is \$10, then the cost of purchasing the book would be 1.33 percent of the GDP per capita income of the country; if the PCI of the United States is \$37,500, then the cost of purchasing the book would be 0.026 percent of the per capita income of the United States.

TABLE 4.1. *Absolute Cost of Three Book Titles in South Africa/ India/ USA*

Country	<i>The God of Small Things</i> , Arundhati Roy (US\$)	<i>Long Walk to Freedom</i> , Nelson Mandela (US\$)	<i>Oxford English Dictionary</i> (US\$)
South Africa	16.23	24.30	47.00
India	6.60	15.40	14.10
USA	10.50	12.10	21.50

TABLE 4.2. *Cost of Three Book Titles as a Percentage of Average Income in South Africa/ India/ USA*

Country	<i>The God of Small Things</i>	<i>Long Walk to Freedom</i>	<i>Oxford English Dictionary</i>
South Africa	0.0046%	0.0069%	0.0134%
India	0.0117%	0.0273%	0.025%
USA	0.0002%	0.0003%	0.0005%

TABLE 4.3. *Cost of Three Book Titles in USA at Proportions of Income Paid in India and South Africa*

Book	Projected cost in USA at South Africa proportions (US\$)	Projected cost in USA at India proportions (US\$)
<i>The God of Small Things</i>	173.00	440.50
<i>Long Walk to Freedom</i>	259.77	1027.80
<i>Oxford English Dictionary</i>	504.50	941.20

This exercise provides several layers of insight. One: Absolute prices of books can be higher in the South than in the North, as the South African figures indicate. Two: Consumers in the South have to commit significantly higher proportions of their income to consume these books. If consumers in the United States had to pay the same proportion of their income for these books as their counterparts in South Africa and India, the results would be ludicrous: \$1,027.50 for Nelson Mandela's *Long Walk*

to *Freedom* and \$941.20 for the *Oxford English Dictionary*. It is instructive, then, that the prospect of paying \$440.50 for Arundhati Roy's *God of Small Things* in the United States is assumably alarming. Yet, the notion of paying \$6.60 for the book in India (which in Indian terms is exactly the same value as \$440.50 in the United States) is not treated with similar alarm.

The interesting difference between India and South Africa is that while both countries are majorly affected by the high costs, all the books mentioned are easily available in pirated form at a fraction of the costs in India. The pirated versions of *The God of Small Things* and *The Long Walk to Freedom* are available on most Indian streets for approximately two dollars. And if one were to photocopy either of the books, they would cost around a dollar. The difference, then, on questions of access between India and South Africa seems to be around the infrastructure of distribution (both organized print piracy as well as the innumerable number of copy centers). And the problem of access in South Africa is precisely the absence of a strong pirate market that makes the books available to a much wider population.

In a study on copyright piracy in India, the Ministry of Human Resources and Development had the following to say:

Book piracy, in India, primarily depends on two factors, namely, the price of the book and its popularity. These two factors positively contribute to piracy. Piracy is generally confined to foreign and good indigenous books. Because these books are demanded in large quantities and are also priced high. The types of books pirated mostly are medical, engineering and other professional books, encyclopaedia and popular fictions. The piracy is also wide spread with respect to books published by National Council of Educational Research & Training (NCERT), National Open School and Board(s) of Secondary Education. These books even if priced low are having large demand.

Besides the above, piracy in the form of mass photocopying of books is largely prevalent in India, especially in and around educational institutions. Students borrow books from libraries and then get these photocopied from the photocopier kept at the institution where from the books are borrowed. While copyright law permits photocopying of literary works

for limited private uses such as research, review or criticism what happens, many a time is that the entire book is photocopied including the cover pages. In the process student community and the photocopy operators gain, but the publishers lose a huge revenue. Unfortunately, the institutions turn a blind eye to this.

While the report is supposed to be critical of piracy, if one were to see it in light of the situation in South Africa, which does not have a vibrant pirated books market, it seems to me that the problem of access in India is partially addressed by the infrastructure of piracy that exists, and if a similar infrastructure existed in South Africa, we would be addressing many of the problems.

But the question that remains is this: How do pirate infrastructures get built? The very idea of pirate infrastructures suggests to us a certain derivative nature of these infrastructure. Infrastructure has traditionally been the domain of the state or of private business. It seems to me that pirate infrastructures lies somewhere between the two. Just as slums have been described as shadow cities, and just the copy is seen in terms of the shadow of the original, the world of pirate infrastructure emerges through organic forms that are not immediately obvious to us, if we focus only on their visible form.

At the heart of pirate infrastructures and at the core of conflict marking the battles over copyright is the copy, whether it is the ubiquitous DVD or the fake Adidas shoe. The world of the copy is an intriguing site from which we can look at the larger question. Marx famously remarked that the commodity was the place from which we could understand the larger dynamics of global capitalism, and it seems to me that in the era of immaterial value, it might well be the copy, the thing itself, which is the point of origin.

Rethinking the Creativity of the Copy

If this world of everyday media experience transforms our contemporary experience and yet paradoxically does not make a claim to creativity, does it invite us to revisit our ideas of creativity's relation to the copy? Ravi Sundaram suggests 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 we can understand the general anxiety around the consumption and circulation of cheaply reproduced media commodities. The reproducible work that brings into play a network of circulation also inaugurates a series of cultural possibilities and readings.

We have seen that one objection to piracy is the fact that it operates within the domain of slavish reproduction, without any transformative act of creativity allowing for its redemption from its status as an illegal object. We are therefore forced to reflect on the nature of the copy in contemporary culture: What is the precise cultural status of the duplicate CD or DVD in relation to the world of creativity and innovation? In a brilliant story, Borges narrates of the efforts of an eclectic scholar, Pierre Mernard (author of a range of scholarly and taxonomic works), who decides to rewrite Cervantes’s *Don Quixote*. It is certainly not a version that he wants to rewrite, but to rewrite in whole, and reproduce the Cervantes classic. Mernard proceeds to copy the book verbatim, but when he completes it and compares the two books, he finds that they are different.

In a typically Borgesian fashion, he lays out the entire complex history of the interaction between the original and the copy. After Borges, is there anything such as the untransformed copy at all? Roland Barthes and Michel Foucault have already enabled us to shift the locus of originality and creativity from the text and look for it instead at the process of consumption. What would happen if we also extended the search into the domain of circulation, for instance?

Consider, for instance, the ubiquitous pirated DVD, that prized commodity of pirate aesthetics. Does this new product of digital reproduction still allow for differences to be produced? After all, it is the machine, instead of human hands, that does the copying. Laikwan Pang examines a very interesting aspect of the pirated DVD to raise a set of interesting questions and concerns about political economy and cultural politics around our contemporary culture of the digital copy. One of the strange things that people who have watched films on pirated DVDs will find is the phenomenon of the subtitles’ being different from the actual words

that are being spoken onscreen. The reason for this is that the pirates usually get an early copy of the film, usually a screening copy, that does not yet have all the frills and extras that the actual DVD will eventually have. So a number of features, including the dubbing or the subtitling, will have to be done by the pirates themselves.

Laikwan Pang uses an example of a pirated DVD of *Kill Bill* in which the politics of translation results in very interesting results. The scene is of the conversation in kitchen of Vernita Green (Copper Head), when the two fighting women are taking a break after Green's daughter comes back home from school. The dialogue between the two is as follows:

GREEN: "You bitch, I need to know if you will gonna starting more shit around my baby girl."

THE BRIDE: "You can relax for now, I'm not going to murder you in front of your child, ok?"

GREEN: "I guess you are more rational than Bill led me to believe you are capable of."

THE BRIDE: "It's mercy, compassion, and forgiveness that I lack, not rationality."

But the subtitles of the pirated version translate them as:

GREEN: "You bitch, never want to hurt my daughter."

THE BRIDE: "Can we have a chat? I won't hurt your child."

GREEN: "I can't believe you have such a temper."

THE BRIDE: "That's my way, passion; not nationality."

One can imagine a modern-day Pierre Mernard struggling to reproduce *Kill Bill* in its exact form, wanting to reproduce the digital aura and authenticity that subsist in the original and yet submitting to destiny something else altogether. *Kill Bill*, of course, positioned itself not as an original film but an assemblage of movie quotations.

Brian Larkin's work on piracy in Nigeria similarly forces us not merely to look at and listen to the onscreen content but also to consider the conditions under which texts are pirated and circulated. Larkin demonstrates the critical importance of paying attention to infrastructures of produc-

tion in developing countries where the very process of cultural production is also tied to the relative lack of infrastructure and also becomes the basis for the transformation of the conditions of production by generating a parallel economy of low-cost infrastructure.

He says:

My interest in technological collapse is somewhat different. It is not in extravagant spectacles like collapsing bridges or exploding space shuttles but in the small, ubiquitous experience of breakdown as a condition of technological existence. In Nigeria, cars, televisions, VCRs, buses, and motorbikes are often out of service. Even when they work, electricity supplies are unreliable and beset by power surges that damage consumer equipment. NEPA, the Nigerian Electric Power Authority, is famously known by the epithet “Never Expect Power Always,” and phone lines are expensive and difficult to obtain. Poverty and the disorganization of the Nigerian economy mean that consumer technologies such as scooters and cars arrive already used and worn out. After their useful life in Belgium or Holland, cars are exported to Nigeria as “new” second-hand vehicles. After these vehicles arrive in Nigeria, worn parts are repaired, dents are banged out, and paint is resprayed to remake and “tropicalize” them. This is, of course, a temporary state of affairs. Other parts expire, second-hand parts break down, while local “innovations” and adjustments designed to make cars, televisions, and VCRs work fail. 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.

This economy of recycling, which Ravi Sundaram also describes as the “pirate modern,”¹⁰ becomes the arena for all sorts of technological innovation to begin with and extends further to experiments with cultural forms such as parodies, remixes, cover versions, and the like. 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. In this case 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, degrading image and sound, overwhelming the signal of media content with the noise produced by the means of reproduction. Larkin says that because pirated videos often have 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 uses the question of pirate infrastructure to open up the debate on intellectual property and foreground the importance of addressing the question of content while looking at a legal aspect of culture. If infrastructures represent attempts to order, regulate, and rationalize society, then breakdowns in their operation, or the rise of provisional and informal infrastructures, highlight the failure of that ordering and the recoding that takes its place. By subjecting 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.

One of the significant approaches used by public domain scholars is their emphasis on the ability to create new content by building on existing works. They in fact use metaphors of infrastructure (“bridging the knowledge divide,” “information highway”) to understand the public domain of ideas. But it often ignores the material linkages between content and infrastructure. The overemphasis on the creation of new content of course raises the question of who uses the new content, and what is the relationship between such content and the question of democratization of infrastructure.

In most cases the reason for the fall in price of electronic goods and computers, great access to material, and an increase in photocopiers (the infrastructure of information flows) is not through any radical revolution such as free software or open content but really through the easier availability of standard mainstream commodities like Microsoft and Hollywood. When Stallman and others castigate people for pirating Hollywood, it is only from a position of being able to disavow the global. But

in many countries, the very question of what it means to be modern has always been defined in relation to an idea of the global; thus the culture industries of the United States have always created economies of desire and access to the latest films and music has also been a part of the subjectivity of “being in with the latest.” While these aspirations are complexly configured and sustained through political economies of monopoly and control, they are also experienced by most people precisely as a “lack.” So even as a person working in a sweatshop in Thailand produces a pair of Nike shoes, s/he is unable to buy one. For Stallman and other copylefters coming from a position of privilege, opportunity abounds to engage through alternatives. But for many people at the world’s peripheries, the idea of finding their place within the global demands engaging with a world of counterfeit commodities, replicating the global directly.

We can either play the higher moral ground game and lecture consumers on their real information needs or provide crude theories of how they are trapped by false consciousness. Or we can move away from these judgmental perspectives and look at other aspects such as the impact of the expansion of the market for these gray market goods has on the general pricing of these goods, the spread of computer/IT culture, the fall in price of consumables such as blank CDs, DVDs, the growing popularity of CD writers. I find it a little strange and dogmatic that people who preach access also preach the kind of access that should be given.

I would like to end this segment by quoting an interesting conversation. There is currently a lot of excitement about the contemporary art scene in China, and indeed it seems to be the flavor of the month in the global art circles. Thousands of people are lining up to join art schools, and one of the Chinese curators had this to say: “When you can buy a Tarkovsky film for a dollar, you will obviously produce many more artists.”

The existence of contemporary art and other forms of cultural production is always predicated on the material conditions of the life of its practitioners. The myriad daily acts of practicing, reading, inscribing, interpreting, and repurposing the substance of culture, across cultures, constitute these conditions of life. The availability of texts, of machines and of spaces, in which these ideas can be accessed, debated, and discarded, are all interwoven, and to understand a complete picture of the

transformative possibilities of new technologies, we need to pay closer attention to how these forces interact. 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.

The Waiting Room of Culture

The idea of access has generally been centered on the question of cost and availability. But I think another crucial element to consider while thinking about access is its relation to temporality. We are aware that the global licensing regime in copyright attempts to maintain the ordered flow of commodities—in time and in space. But if the information and communication technology that erases time and space facilitates the global flow of commodities and services, it also leaks out through unofficial channels to create alternative journeys that resists official maps.

Copyright uses the logic of windowing and licenses to control the temporal and spatial dimensions of film circulation. This temporality is, however, tied to its status as a commodity, but film as a cultural object exceeds its status as commodity, and in fact the commodity phase of the life history of an object can never exhaust its social biography.

Thus, cinema—that great eraser of time—can never be limited to a one-sided temporal logic. The circulation of the DVD traverses diverse worlds, from that of monetary exchange to barter to gift to ubiquitous reproduction, and acts of circulation always exceed the monetary idea of exchange value. The movement of the DVD from monetary economies to psychic economies has to be thought of as a transaction between imaginary capital confronting the world of imagination and desire. We therefore need to shift our attention to the temporal life of cinema in psychic economies.

The temporal nature of distribution is tied not just to an economic logic but also to an economy of anticipation. The buildup to the latest film, the trailers, the posters, the release of the soundtrack, the first-day/first-show phenomenon all work within an economy of waiting. At the heart of the temporal logic of film is also a culture of aspiration, fulfillment of desire or deferred pleasure. The windowing system of distribution unequally distrib-

utes the share of waiting, with the wait getting longer as you move away from the northern hemisphere and toward different parts of the global south, or from the metropolises to small towns and villages.

In films like *Main Madhuri Dixit Banna Chahti Hoon* (2003), *Haasil* (2003), and Pankaj Kumar's documentary *Kumar Talkies* (1999), we get a glimpse into this—waiting-room world of cinema—as a field of differently distributed sensibilities. The newness of the films, the high quality of their reproduction, and the experience of moviegoing come to stand for temporal and cultural difference, between the north and the south, between the town and the city, and between global modernity and those who are “not quite modern.” In a delightful scene in *Main Madhuri Dixit*, the protagonist goes to watch *Devdas*, but after a few reels the film stops and they have to wait for the arrival of the other reels from the neighboring village. The audience complains that the last time they had to wait for over two hours since the cycle in which the reels were being brought broke down, because of a flat tire, caused by the bad roads. The big city, not surprisingly, becomes the place where this fracture can be repaired, where films are shown in their entirety, and where audiences do not have to confront their physical and cultural marginality every time they attend the cinema (Larkin, 2004), and the social life of piracy occurs at the intersection of the economy of anticipation and the culture of aspiration. Cinema history involves the reinvention not merely of technological formats but also that of social selves (Vasudevan, 2003).

Waiting for the latest Hollywood or Bollywood release then becomes an apt metaphor for those placed differently within the circuit of “technological time.” A useful way of connecting piracy to the temporal experience of cinema might then be to look at the infrastructure and technology that enable the circulation of films. Brian Larkin and Ravi Sundaram, who both study the conditions of the “pirate modern,” argue that in contrast to the dizzying, real-time global integration of the information era, a large number of people experience time not through the trope of speed but through the experience of interruptions and breakdowns; breakdowns create a temporal experience that has less to do with velocity and more to do with the process of waiting.

From waiting for e-mail messages to open, machines to be repaired, or electricity to be restored, the experience of technology is subject to

a constant cycle of breakdown and repair. In most countries the promise of technological prosthesis is thwarted by the common experience of technological collapse. Each repair enforces another waiting period, an often frustrating experience of duration brought about by the technology of speed itself. The temporal experience of slowness comes as a consequence of speed-producing technologies, so that speed and acceleration, deceleration and stasis are relative, continually shifting states. The experience of technological modernity in most countries is premised on waiting for it to trickle down, often through pirate indigenizing (Larkin, 2004).

An interesting instance of this in film technology is the history of VCDs and DVDs. Sony and Philips jointly introduced the VCD technology in 1993 to record video on optical discs the size of CDs. It was cheap, digital, and convenient and seemed to be setting the standard. At the time of the introduction of the new format, however, the development of the technologically far superior digital videodisc (DVD) was already underway. Even from the beginning, Philips was well aware of the pending arrival of the high-density DVD and the threat it would bring to VCD. Philips decided then not to further develop or produce VCD but rather to wait for DVD. Seeing the new format facing a more or less doomed future, Philips and Sony decided to launch VCD in China instead because it was “a technology that was fit for a poor cousin in laggard developing countries instead of cutting edge economies” (Wang, 2004). The introduction of VCDs into China proved to be the biggest boom to cheap reproduction technologies. Ironically, the industry at that time believed that CDs would help fight video piracy (Wang, 2003, 2004; Pang, 2006).

A large number of Asian markets adopted the format enthusiastically, bypassing global distribution networks in order to “steal” enjoyment. Darrell Davis calls VCD a form of cockroach capitalism because of its proliferation. Within a short period of time, VCD became the major movie carrier in many developing countries. If you take China’s VCD player production and household presence it is startling: In 1998 there were 16 VCD players per 100 households and by 2000, there were 36.4 VCD players per 100 households; in 2000, there were 14.5 million units manufactured, but by 2001 this number fell to 1.2 million units since the manufacturing move into DVDs.

VCD technology spread rapidly from east Asia to other parts of Asia, and within a few years of their introduction, VCDs replaced VHS as the standard format in most parts of Asia. In India, for instance, while the price of the VCR never fell below Rs. 10,000, a VCD player was available for as low as Rs. 1,000. VCD culture also spread from Asia into other parts of the world very rapidly. In Nigeria, which incidentally has the largest film industry in the world (producing more than 1,200 films a year), most of the films are available only on VCDs and DVDs. But given its complete absence in the Western market, there seems something distinctly “Asian” about VCD technology (Hu, 2007).

The VCD story for me is one in which the temporal questions of copyright encounter an indigenous modernity that feeds of and yet creates its own sense of the relationship between time, technology, and commodity culture.

Rethinking Access beyond Developmentalism

Finally, I would like to look at what these self-organized forms of infrastructure development mean for our understanding of access. There are two ways in which we can think of access. We can think of access either as paternal access or defiant access.

Paternal access implies a recognition of a “lack” that is sought to be corrected with benign intervention. Sometimes the language of paternal access dovetails into the language of rights (communication rights, information rights, etc.), but underlying the idea of paternal access are assumptions that are driven either by piety or by a pedagogic motivation. We advocate for access to the things that people *should* enjoy access to; learning materials but not popular films, rice and Dal but not McDonald’s. This is often the mode taken by scholars of access to knowledge.

The other way that one can think of access—one seen more commonly in the logic of consumers themselves—is in terms of a defiant access by virtue of which people attempt to access things that they are not meant to (whether by virtue of class, age, social status, or caste) have. This can range from pornography to academic textbooks. It would, however, be a mistake to assume that the instinct of defiant access stands only from an anticensorial instinct. Defiant access is also a form of self-mak-

ing that refuses to follow any preordained rule of social status and is best exemplified in the figure of the autodidact (from whom we shall have much to learn further). A large number of initiatives that seek to promote greater access in fact consciously or unconsciously recycle the idea of paternal access.

While concerns about inequitable access begin with statements about the “knowledge divide,” we must also recognize that in a country like India, it is just one of the many other divides and there is no guarantee that greater access to knowledge necessarily builds a more equitable country. Irrigation projects, dams, green revolution—there have been a host of technological fixes proposed in the past, each of which has ended up creating as many problems as solving them. A number of initiatives to promote digital access (ICT4D projects in particular) are marked by a political naïveté that would be touching if it were not so disastrous.

There is, however, another kind of critique I wish to propose regarding the conceptual field suggested by the notion of knowledge divide, viz. that issues of difference in the knowledge economy require us to think beyond the question of access and look instead at the simultaneity of desire and anxiety; of access and conflict; of knowledge and representation.

The point I am making is this: The rhetoric of inclusiveness is also always accompanied by the prospect of violence; the claims of the poor are always a matter of contests and negotiations rather than the benevolence of the state and the corporate world. There are anxieties that often translate into violence, lest the poor who are the objects of development take a path that cannot be justified in terms of liberal theory.

Let me then move to the next part—what happens when you do get access. What about thinking and creativity? Or are the non-elite merely destined to be the objects of the discourse of digital access and can never be the authors of digital imaginaries? For us to imagine other ways of inhabiting the digital world, we will have to do better than recycle the framework of the knowledge divide.

Earlier I mentioned that one of the problems of piracy seems to lie in the fact that it is associated more with the world of pleasure and desire than that of “pure needs.” In this segment, I will attempt to examine the intersection between the world of desire, subjectivity, and the experience of piracy.

Let me begin with an interesting story, which 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 (ICT4D) was conducting a workshop on accessing the Internet for the information needs of rural women trainers. The facilitator guided the women through the basics of the Internet, on accessing information relevant to their work ranging from rural credit to women's health. The training was highly appreciated, and all the women volunteers seemed to be enjoying themselves fiddling with the computers and exploring the Internet. At the end of the training, when the NGO started cleaning up the computers including the history and the cached copies, 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 link between pleasure, desire, aspiration, and trespass has always been a complicated one, 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 transgression that deal with questions of livelihood and survival, and in the case of intellectual property to free speech and access to information, when the matter involved is about new subjectivities and pleasurable transgressions, it gets very differently framed.

The uncomfortable relationship between public domain scholarship and pirates also partially stems from the fact that we are entering a terrain in which the pirated commodity is a tainted one. While the question of medicine and textbooks is far easier to deal with, movies, music, and software get characterized as being outside of the moral economy of development. The demand for low-cost entertainment commodities is seen to be one that is normatively more difficult to sustain. Yet at the same time, 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 through which people engage with the global economy of information, and about finding their place in the global. What, then, are the critical conceptual resources that we can draw on to be able to address this question of pleasurable transgressions and subjectivities that resist easy framing?

As noted earlier, the way in which the IP debate panned itself out in countries like India was that it was almost immediately linked to questions of development, and it was taken up by various civil society groups working on issues of development, especially in relation to agriculture and seeds. This also extended to the question of access to affordable medicines, and the linking of the IP debate to the development sector also brings with it the inherited language that frames the “subaltern subject of development.” But what happens when we move toward the realm of nonlegal media practices where all of a sudden the transgression is highly pleasurable, but not in any way connected to the essential character of the “subaltern subject”? In other words, how do we work through the fact that the terms set up by existing public domain scholarship 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 public domain discourse is necessarily accompanied by the prospect of exclusion, an exclusion that relies on either on piety or pedagogy.

Jacques Rancière in his brilliant rethinking of labor history paves the way for us to start thinking seriously about the hidden domain of aspiration and desire of the subaltern subject as autodidact, while at the same time thinking about the politics of our own aspirations and desires. Rancière goes into an unexplored aspect of the labor archive of nineteenth-century France, where he starts looking at 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. Instead, they were interested in writing poetry, about philosophy and the other pleasures to which nonworkers or intellectuals were entitled. At the same time, of course, intellectuals have been fascinated with the world of work and the romance of working-class identity. Rancière says, “What new forms of misreading will affect this contradiction when the discourse of labourers in love with the intellectual nights of the intellectuals encounters the discourse of intellectuals in love with the toilsome and glorious days of the labouring people?”

Rancière’s motley cast of characters includes Jerome Gillard, an iron-smith tired of hammering iron, and Pierre Vincard, a metalworker who

aspires to be a painter. In other words, a series of sketches of people who refused to obey the role sketched out for them by history and wanted to step across the line and perform the truly radical act of breaking down the time-honored barrier separating those who carried out useful labor from those who pondered aesthetics. He 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.

Thus, the moral dictates that govern the lives of the poor are not merely from the state (“Don’t steal,” “Don’t beg”) but equally from those who theorize the lives of the poor (“Be aware of your class,” “Don’t get trapped by false consciousness”), but when people start moving out of the frame of representation that has been so carefully and almost lovingly crafted for them, then they either have to be shown their true essence or their transgression has to be brought within the terms of their representative class. Thus when 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 was a classic instance of what Rancière would term an “exclusion by homage.” Just as the aspiration and desires of the poor have to be “something more than fine verse,” the information needs of the poor have to be 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, of the intellectuals, than they do about people engaging in the practice. We may do well to start rethinking the terms on which intellectual property scholars engage with the language of access.

Notes

1. Researcher, Alternative Law Forum. This chapter arose out of discussions with my colleagues Ravi Sundaram and Jeebesh Bagchi at Sarai. We first presented it collectively in the Contested Commons conference, New Delhi; and shorter versions of the paper and argument will appear in anthologies to be edited by Peter Jaszi and Amy Kapczynski respectively. I thank Lea Shaver for her insightful comments and her incredible patience.
2. An equivalent discussion in fair use law would be to distinguish between a case like *Campbell v. Acuff Rose*, which looks at whether parody falls within the ambit of fair use. This could be said to be addressing a content concern. In contrast, a case like *Sega v. Accolade* concerns itself with issues of monopolies and the value of competition and plurality in software development. This could be said to be a concern with an infrastructure of knowledge production. There are a number of equivalent examples in Indian Fair dealing law. Sec. 52(1)(j) of the Act allows for version recordings to be made. This is with a view to promote competition within the music industry.
3. See, Contested Commons Public Report: A Public Record (New Delhi: Sarai: CSDS, 2005), vi.
4. See David Lange, Recognizing the Public Domain, 44 Law & Contemp. Probs. 147, 147, 150 (Autumn 1981); Jessica Litman, The Exclusive Right to Read, 13 Carbozo Arts & Ent. L.J. 29, 32–33 (1994); James Boyle, The Second Enclosure Movement and the Construction of the Public Domain, 66 Law & Contemp. Probs. 33, 33–74 (Winter/Spring 2003); James Boyle, Foreword: The Opposite of Property?, 66 Law & Contemp. Probs. 1 (2003); James Boyle, Shamans, Software, and Spleens: Law and the Construction of the Information Society, at x–xiii (1996); Yochai Benkler, Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain, 74 N.Y.U. L. REV. 354, 364–86 (1999); Keith Aoki, (Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship, 48 Stan. L. Rev. 1293, 1333–38 (1996); Lawrence Lessig, Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity (New York: Penguin, 2004). But for a critique of the public domain arguments, see Anupam Chander and Madhavi Sunder, The Romance of the Public Domain, 1332 CALIFORNIA LAW REVIEW [Vol. 92:1331].
5. See Peter Drahos and John Braithwaite, Information Feudalism, (London: Norton, 2003); Susan Sell, Private Power, Public Law: The Globalization of Intellectual Property Rights (Cambridge University Press, 2003); Power and Ideas: North-South Politics of Intellectual Property and Antitrust (State University of New York Press, 1998).
6. Martha Woodmansee, The Author, Art, and the Market: Rereading the History of Aesthetics (New York: Columbia University Press, 1994); Martha Woodma-

nsee and Peter Jaszi, eds., *The Construction of Authorship: Textual Appropriation in Law and Literature* (Durham, N.C.: Duke University Press, 1994), 15–28; Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, Mass.: Harvard University Press, 1993).

7. Christine McLeod, *Inventing the Industrial Revolution: The English Patent System, 1660–1800* (Cambridge: Cambridge University Press, 2002); “The Paradoxes of Patenting: Invention and Its Diffusion in 18th and 19th Century Britain, France, and North America,” *Technology and Culture*, 32 (1991), 885–910; “Concepts of Invention and the Patent Controversy in Victorian Britain,” in Robert Fox (ed.), *Technological Change* (Harwood Press, 1996), 137–53; Doron Ben Atar, *Trade Secrets: Intellectual Piracy and the Origins of American Industrial Power* (New Haven, Conn.: Yale University Press, 2004), <http://www.cptech.org/>, www.eff.org. See also www.twinside.org.sg/trade.htm.

8. Vandana Shiva, *Patent, Myths and Reality* (New Delhi: Penguin, 2001). For more writings by Vandana Shiva, see <http://www.vshiva.net/>. See also Nagesh Kumar, *IPR, Technology and Economic Development: Experiences of Asian Countries*, EPW Jan. 18, 2003, 209.

9. Tejaswini Niranjana (1993) “Introduction to careers of modernity,” *Journal of Arts and Ideas* 25/26 (December): 115–126.

10. See Ravi Sundaram (1996) “Beyond the Nationalist Panopticon: The Experience of Cyberpublics in India,” available at <http://amsterdam.nettime.org/Lists-Archives/nettime-l-9611/msg00018.html>; “Recycling Modernity: Pirate Electronic Cultures in India,” *Sarai Reader* 01 93–99; “Uncanny Networks: Pirate, Urban and new Globalization,” *Economic and Political Weekly* 39(1).