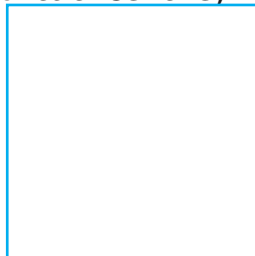




# Contested Commons Trespassing Publics

A Conference on Inequalities, Conflicts and Intellectual Property

6-8 January 2005  
India Habitat Centre, New Delhi





## Conference Brief

The past three years have seen conflicts over the regulation of information, knowledge and cultural materials increase in intensity and scope. These conflicts have widened to include new geographical spaces, particularly China, India, South Africa and Brazil. Moreover, a range of new problems, including the expansion of intellectual property protection to almost all spheres of our social life, has intensified the problem. It is important to recognize that the nature of the conflict gets configured differently as we move from the United States and Europe to social landscapes marked by sharp inequalities in Asia, Latin America and Africa. In the light of these transformations, we would like to revisit earlier discussions on creativity, innovation, authorship, and the making of property. Is it possible to draw comparative registers between earlier histories of violence and dispossession that accompanied the making of property, and the current turbulence around intellectual property on world scale? At this conference, we would like to push comparative discussions between earlier and contemporary moments of dispossession and criminalisation, between the open source movement and discussions on traditional knowledge and biodiversity. We would also like to build a dialogue between different moments in media history – print, film, music and the new media – so as to prise open questions around culture, circulation and property.

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6 January 2005

**9.00** Registration

**9.30-10.00**

Welcome Address by Suresh Sharma  
*Director, CSDS, Delhi*  
Conference Introduction

**10.00-11.00**

Plenary

**New World Order and the Public Domain**

John Frow

*University of Melbourne, Melbourne*

Chair: Ravi Vasudevan

*Sarai-CSDS, Delhi*

**11.00-11.30:** Tea

**11.30-1.30**

**Rewiring the Circuit:**

**Property and the Public Domain**

Chair: Siva Vaidhyanathan

**A Rights Based Conception of the Public Domain**

Sudhir Krishnaswamy

*Pembroke College, Oxford*

**Location, Location, Location:  
Property and Cultural Critique**

Danny Butt

*Development for The Waiapu Trust, Auckland*

**Species-Beings:**

**Towards a Twenty-First Century  
'Commonism'**

Nick Dyer-Witheford

*University of Western Ontario, Ontario*

**1.30-2.00:** Lunch

**2.00-4.00**

**The Not Quite Publics and the Public Domain**

Chair: Sudhir Krishnaswamy

**Intellectual Properties and the Limits of  
Human Rights Categories Claiming  
Cultural Rights in Neoliberal  
Environments**

Rosemary Coombe

*York University, Toronto*

**Benefit-sharing: The Public at Stake**

Cori Hayden

*University of California, Berkeley*

**The Construction of Indigenous Authors  
and Owners in Australia**

Jane Anderson

*The Australian Institute for Aboriginal and  
Torres Strait Islander Studies, Canberra*

**4.00-4.30:** Tea

**4.30-6.00**

**Patents, Publics Health and the Public  
Goods Problem**

Chair: Phillipe Cullet

*School of Oriental and African Studies,  
London*

**Access to Medicines, Para 6 of the Doha  
Declaration on Public Health  
And Developing Countries in  
International Treaty Negotiations**

Daya Shanker

*University of Deakin, Melbourne*

**Access to Medicines in Post-TRIPS Era**

K M Gopakumar and Anand Grover

*Affordable Medicines Treatment Campaign  
(AMTC), Mumbai*

**7.00-8.30**

**The Contested Commons Public Lecture**

Lecture Series Introduction: Rajiv Mehrotra

*PSBT, New Delhi*

**Between Anarchy and Oligarchy:  
The Prospects for Sovereignty  
and Democracy in a Connected World**

Siva Vaidhyanathan

*New York University, New Delhi*

Introduced by Sudhir Krishnaswamy

Conference Venue: Gulmohar, IHC

Public Lecture Venue: Auditorium, IHC





7 January 2005

**9.30-10.30**

Plenary

**The Persistence of Authorship**

Peter Jaszi (with Martha Woodmansee)  
*Washington College of Law, Washington*

Chair: Lawrence Liang  
*ALF, Bangalore*

**10.30-10.45:** Tea

**10.45-12.15**

**The Possessions of the Author**

Introductory Remarks  
Moinak Biswas  
*Jadavpur University, Kolkata*

**A Tale of Two Books**

Sibaji Bandopadhyay  
*Centre for Studies in Social Sciences, Kolkata*

**The Textual Scholar in the Electronic Wilderness**

Swapn Chakravorty  
*Jadavpur University, Kolkata*

**12.30-1.30**

**Authors, Owners and Appropriators**

Chair: Sanjay Sharma  
*University of Delhi, Delhi*

**The Debates on Authorship in the Early 20<sup>th</sup>-Century Hindi World**

Avinash Kumar  
*Sarai/CSDS, Delhi*

**Culture At Crossroads: Anthropology, Aesthetics and Intellectual Property**

Narendra Pachkhede  
*Independent Media Artist, Curator and Theorist, Ottawa*

**1.30-2.00:** Lunch

**2.00-4.00**

**Media Empires and the Figure of the Pirate**

Introductory Remarks  
Nitin Govil  
*University of Virginia, Charlottesville*

**Early Cinema, Heyday of Copying**

Jane Gaines  
*Duke University, Durham*

**Breaks, Flows and Other In-between Spaces: Rethinking Piracy and Copyright Governance**

Shujen Wang  
*Emerson College, Boston*

**Global Modernity and Movie Piracy**

Laikwan Pang  
*Chinese University of Hong Kong, Hong Kong*

**4.00-4.30:** Tea

**4.30-6.30**

**Culture Beyond Property**

Chair: Shuddhabrata Sengupta  
*Sarai/CSDS, Delhi*

**Information Wants to Be Free [But Is Everywhere in Chains]**

McKenzie Wark  
*New School University, New York*

**Tales of the Commons**

Armin Medosch  
*Independent Curator, London*

**Excessive, Dense, Speedy, Complex, Empty...But Humane**

Hou Hanru  
*Independent Curator, Paris*

**7.00-8.30**

**The Contested Commons Public Lecture**

**US Path to Wealth and Power: Intellectual Piracy and the Making of America**

Doron Ben-Atar  
*Fordham University, New York*

Introduced by Ravi Sundaram  
*Sarai-CSDS, Delhi*

Conference Venue: Gulmohar, IHC  
Public Lecture Venue: Auditorium, IHC



8 January 2005

**9.30-10.30**

**Embodied Property to Disembodied Signs**

Chair: Tahir Amin  
*ALF, Bangalore*

**Improbable Voices.net:  
On the Intellectual Property of  
Individuals Whose Bodies Are Property  
of the State**

Sharon Daniel  
*University of California, Santa Cruz*  
Cassandra Shaylor  
*Justice Now, Oakland*

**Trespasses of the State:  
Ministering the Copyright/Trademark to  
Theological Dilemmas**

Naveeda Khan  
*Johns Hopkins University, Baltimore*

**10.30-11.30**

**Network Conflicts**

Chair: Monica Narula  
*Sarai-CSDS, Delhi*

**The Communications Commons:  
Lessons from Contests in Electrospace**

Dorothy Kidd  
*University of San Francisco, San Francisco*

**ÄÄNIradio : Participatory Open Radio  
Project**

Sopheia Lerner  
*Centre for Music and Technology, Helsinki*

**11.30-12.00:** Tea

**12.00-1.30**

**Spatial Conflicts and Property Regimes**

Chair: Awadendhra Sharan  
*Sarai-CSDS, Delhi*

**Multi-Headed Hydra of East Delhi**

Solomon Benjamin  
*Centre for Emerging Urbanism, Bangalore*

**The Street Sellers in the Heart of Illegal  
Market of Brazil**

Lenita Cunha e Silva  
*University of Sao Paulo, Sao Paulo*

**1.30-2.00:** Lunch

**2.00-4.00**

**Media Practice and the Figure of the  
Pirate**

Chair: Nitin Govil

**Technology and the Domain of Piracy**

Brian Larkin  
*Barnard College, Columbia University,  
New York*

**Beyond Representation?  
The Problem of the Pirate**

Lawrence Liang, Ravi Sundaram and  
Jeebesh Bagchi  
*ALF and Sarai/CSDS*

**4.00-4.30:** Tea

**4.30-6.30**

Open Roundtable

**7.00-8.30**

**The Contested Commons Public Lecture**

**Magna Carta and the Commons**

Peter Linebaugh  
*University of Toledo, Ohio*

Introduced by Prabhu Mohapatra  
*University of Delhi, Delhi*

Conference Venue: Gulmohar, IHC  
Public Lecture Venue: Auditorium, IHC





## Day One: Thursday, 6 January 2005

### Plenary

#### New World Order and the Public Domain

John Frow

*University of Melbourne, Melbourne*

The commons in information has been the major source of new property rights in the contemporary capitalist order, and it has been exploited and degraded in an increasingly systematic manner through a range of international institutions and treaties, and by way of a constant pressure on trading rights. In its international dimension this system of unequally distributed immaterial property rights has all the markings of an imperialist order. At the same time, the privatisation of the public domain affects many areas of everyday life. The paper gives an overview of struggles over intellectual property and explores some of the tensions they create.

### Rewiring the Circuit: Property and Public Domain

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#### A Rights Based Conception of the Public Domain

Sudhir Krishnaswamy

*Pembroke College, Oxford*

David Lange is often credited with inaugurating the contemporary scholarship on the public domain. More recently, he revisited the topic only to conclude that though there may be many public domains, the one that he finds particularly attractive is derived from a special status of citizenship measured by creativity and imagination which any conception of the public domain must service.

The first part of this paper will re-examine David Lange's analysis of the various versions of the public domain: as the opposite of property or intellectual property (Boyle), constitutionally sanctioned versions of the public domain (Benkler, Rubinfeld). In the second part of the paper we will consider two accounts of the public domain which Lange did not consider: an ecological conception, and more recent political economy analysis of free software and copyleft movements.

The third and concluding part of this paper will show that while several rival conceptions are theoretically plausible and provide us with useful insights into the variety of issues of stake, a constitutional rights-based conception is particularly valuable for three reasons: first, it accommodates most of the theoretical concerns advanced by other accounts; secondly, it allows for a normative

**John Frow** is Professor of English Language and Literature at the University of Melbourne, and was previously the Regius Professor of Rhetoric and English Literature at the University of Edinburgh and the Darnell Professor of English at the University of Queensland. He is the author of *Marxism and Literary History* (Harvard 1986), *Cultural Studies and Cultural Value* (Clarendon Press 1995), *Time and Commodity Culture* (Clarendon Press 1997), and (with Tony Bennett and Mike Emmison) *Accounting for Tastes: Australian Everyday Cultures* (Cambridge 1999). A book on Genre is forthcoming from Routledge in 2005.

**Sudhir Krishnaswamy** is a College Teaching Fellow in Law at Pembroke College, University of Oxford. He is currently reading for a Doctor in Philosophy degree in Law at the Faculty of Law, Oxford University, focusing on 'The Basic Structure Doctrine in Indian Constitutional Adjudication'. He pursues his interests in intellectual property law as an Independent Research Fellow at the Sarai Programme on Intellectual Property Law and the Knowledge-Culture Commons at the Centre for Study of Developing Societies, Delhi, India. His research interests include constitutional law, intellectual property law and the reform of legal systems.

analysis of practices and expectations of citizens as users and producers in all scenarios of knowledge production and consumption; and finally, as it enjoys a doctrinal and normative hierarchy over other private law methods of structuring access and use of information and knowledge.

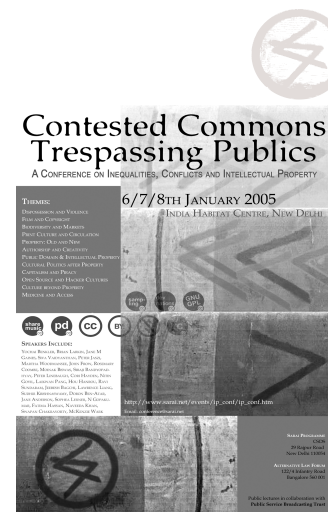
### Location, Location, Location: Property and Cultural Critique

Danny Butt

*Development for The Waiapu Trust, Auckland*

Will Fisher has remarked that Locke's conception of "property rights that one acquires through labor upon resources held in common" do and should last forever – that is, property rights are "alienable, devisable, and inheritable indefinitely". The legal activity in support of these rights has been focused on two areas: i) the extension of this conception of rights to increasingly broad areas of activity, through intellectual property laws and international trade agreements; and ii) cementing the mechanisms for maintaining these "rights" over time, in order to deflect attention away from the questionable legitimacy of the production of these rights. Framed in this way, the discourse of property rights shares its mythography with the broader project of colonisation – expressed in the simultaneous desire for expansiveness and the denial of history. In a classic colonial move, legal discourse also creates the Western autonomous subject under the nation-state as the only valid container for those rights. Or, as Rosemary Coombe describes it, "legal theory perhaps defines itself as theory by its loathing to address specific processes of hegemonic struggle or the political economies of communication in a late capitalist era".

However, we could now be seen to be in a 'property crisis'. The widespread disregard for the rent-seeking behaviour of the entertainment industry through the expansion of intellectual property is one such marker. But as Spivak notes, value generally is increasingly seen as textual and notional, even among the controllers of finance capital. This 'notionality' has been increasingly recognised in the cynical exclusion of indigenous groups from the class of legitimate property-owning subjects, drawing further attention to property's historically shaky foundation. This paper suggests that these networked, culturally-specific struggles against epistemological hegemony are making important contributions to a historical critique of property, raising questions for a Euro-American political activism that tends to marginalise issues of cultural identity in capitalist critique.



**Danny Butt** is Director, Development for The Waiapu Trust, a foundation for cross-cultural development of the arts, technology, and the environment, currently under development on the East Coast of Aotearoa, New Zealand. Previously, he was founding Director of the Creative Industries Research Centre at the Waikato Institute of Technology, Hamilton. He is a facilitator for Fibreculture, Australasia's peak network for Internet research and theory; the New Zealand member of ORBICOM - the UNESCO Chairs in Communications; and New Zealand representative on the Panel of Authors for the UNDP's *Digital Review of Asia Pacific*. His research interests centre on the social impact of new media technologies, settler-indigenous relations in the Asia-Pacific, and development within the creative industries.



### **Species-Beings: Towards a Twenty-First Century 'Commonism'**

Nick Dyer-Witthford

*University of Western Ontario, Ontario*

In the "Economic and Political Manuscripts" (1844), Karl Marx deployed the concept of 'species-being' to describe humanity's capacity to cooperatively change the conditions of its collective existence, and transform its own very nature. In 2004, the era of the Human Genome Project and the World Wide Web, this capacity has been staggeringly magnified. Today's technologies are, moreover, only a faint anticipation of the species-changing possibilities likely to appear by, say, 2044, placing us on the brink of the post-human. This paper, an exercise in archeological futurism, reinterprets the categories of the young Marx within an autonomist and post-structuralist optic. It argues that techno-scientific manifestations of species-being, such as networked intelligence and genetic engineering, are currently subject to a dual alienation by the forces of cognitive capitalism and fundamentalist religion. The antagonisms between and within these agencies give high-technology development a destructive, neo-exterminist trajectory. The counter-globalisation and anti-war mobilisations that have erupted in recent years can, however, be seen as movements reclaiming the potential for collective self-transformation, harbingers of an emergent, twenty-first century politics of species being devoted to the creation of a new 'commonism'.

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### **The Not Quite Publics and the Public Domain**

#### **Intellectual Properties and the Limits of Human Rights Categories: Claiming Cultural Rights in Neoliberal Environments**

Rosemary Coombe

*York University, Toronto*

In this paper I will consider the increased tendency of social movements, particularly in the Americas (Mexico, Columbia, Bolivia, Ecuador) to make rights claims in cultural terms which often evoke or make analogy to intellectual property rights norms, in order to assert rights to alternative forms of development and culturally distinct forms of production. Focusing on the struggles in which respect for traditional environmental knowledge is asserted, I will suggest that the limits of modernity's categories for imagining social justice claims are thereby exposed. Can intellectual property norms be expanded to engage these claims?

**Nick Dyer-Witthford** is an Associate Professor in the Faculty of Information and Media Studies at the University of Western Ontario, in Canada. He is the author of *Cyber-Marx: Cycles and Circuits of Struggle in High Technology Capitalism* (University of Illinois, 1999), and, with Stephen Kline and Greig de Peuter, of *Digital Play: The Interaction of Technology, Culture and Marketing* (McGill-Queens University Press, 2003).

**Rosemary Coombe** (B.A., LL.B., LL.M., Ph.D.) is Senior Canada Research Chair in Law, Communication and Culture at York University (Toronto, Canada). Her first book *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law* was published by Duke University Press in 1998. She works at the intersection of anthropology, law, and cultural studies on issues relating to the politics of globalizing intellectual property and cultural rights. A list of publications and copies of some recent articles may be found at [www.yorku.ca/rcoombe/](http://www.yorku.ca/rcoombe/)



### Benefit-sharing: The Public at Stake

Cori Hayden

*University of California, Berkeley*

This paper draws on my ethnographic work on bioprospecting agreements in Mexico to explore the ways in which public-ness is under active construction in particular domains of pharmaceutical politics and practice. Of particular significance is the reconfiguration of resource collection in the wake of the 1992 UN Convention on Biological Diversity and associated mobilisations to codify, commercialise and 'compensate' indigenous or traditional knowledge. The paper asks whether and how the new exigencies of benefit-sharing – and the historical legacies on which they rest – help us understand the implication of particular public domains as sites of refuge and contested claims. How do current and historical developments in pharmaceutical R&D help us think through notions of the public as the state, the public as a source of contest, the public as the not-private? What is the relationship between these publics and the ethics and politics of the public domain in the context of open source/free software and new media?

### The Construction of Indigenous Authors and Owners in Australia

Jane Anderson

*The Australian Institute for Aboriginal and Torres Strait Islander Studies, Canberra*

Determining ownership of Indigenous knowledge is an area of intense political debate both internationally and within nation states. In Australia, Indigenous claims are firmly articulated within a property discourse, where law functions as the primary vehicle through which control and ownership rights in Indigenous knowledge could potentially be delivered. For example, a key feature of these ownership claims is that they evoke Indigenous knowledge as property, therefore looking to laws such as intellectual property to secure ownership rights. To date, much of the literature in this field has uncritically accepted the position of Indigenous knowledge within a discursive field of property and law. This means that the diverse politics surrounding how such ownership claims have come to be made are relegated to the margins. In this context, the more interesting question is not 'who owns Indigenous knowledge' but rather 'how has Indigenous knowledge come to be understood as owned?'

The location of Indigenous knowledge within a property discourse has not been opened to sustained critique. Nor has attention been directed to the way in which the property discourse has increasingly come to provide a tool of leverage for Indigenous claims to intangible cultural heritage. Moreover, in both international and national spheres Indigenous perspectives have been repetitively presented as

**Cori Hayden** is Assistant Professor of Anthropology at the University of California, Berkeley, and has worked extensively in the areas of the anthropology of science and intellectual property, benefit-sharing, and the politics and practice of bioprospecting in Latin America, particularly in Mexico. Recent publications include *When Nature Goes Public: The Making and Unmaking of Bioprospecting in Mexico* (Princeton University Press, 2003) and "From Market to Market: Bioprospecting's Idioms of Inclusion" *American Ethnologist* 30 (3):359-371.





singular and undifferentiated, despite vastly different experiences of colonisation and legal frameworks. The intersection of Indigenous knowledge with a property discourse affects how Indigenous people interpret and understand concepts of cultural heritage. It also prompts questions about the manifold ways in which law demarcates and manages property claims. Thus there is an urgent need to develop further appreciation of the significant role of political advocacy and representation in shaping Indigenous claims of ownership.

This paper will begin by revisiting the significant copyright and Aboriginal art cases of the 1980s and 1990s. These cases are important not only because they emerged at a period when intellectual property law had become sufficiently self conscious about its historical contingency and hence what had been excluded from its domain, but also because they illustrated the extent that cultural differences in terms of authorship, ownership and originality could be translated into the legal framework, inevitably changing expectations of law. As legal decisions are an event formative to law itself, the second section of the paper will take these cases as the point of departure in order to understand how Indigenous knowledge has been produced as an object of legal attention. For example, the development in Australia of legislation for Indigenous communal moral rights is illustrative of how Indigenous claims in this field have been constructed as 'communal' and hence ontologically 'different' to other claims made to intellectual property law. But efforts to legally define 'community', as well as community ownership in Australia, a country with a complicated and ambiguous colonial history, undermines a singular legislative solution to Indigenous rights in knowledge. Overall, the paper argues for reflection upon the power of law to construct legal subjects and how this affects the ways in which we understand and interpret the terms of the current debate.

**Jane Anderson** is a Research Fellow in Intellectual Property at The Australian Institute for Aboriginal and Torres Strait Islander Studies, an Indigenous organisation with a forty-year history in research and advocacy for Indigenous rights in Australia. She is currently working on a research project examining contested ownership rights existing in Indigenous cultural materials held in cultural institutions throughout Australia. The research centrally positions extended consultation with Indigenous people and communities about control and ownership of knowledge, in order to better facilitate the development of appropriate policy for national cultural institutions that hold extensive collections of Indigenous material. She holds a PhD in Law from the University of New South Wales and is the recipient of a Rockefeller Foundation 'Theorising Cultural Heritage' Fellowship at the Smithsonian Institution. This Fellowship will examine the political, social, legal and governmental influences that have positioned Indigenous intangible cultural heritage within a property discourse.

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## **Patents, Publics Health and the Public Goods Problem**

### **Access to Medicines, Paragraph 6 of the Doha Declaration on Public Health and Developing Countries in International Treaty Negotiations**

Daya Shanker

*Bowater School of Management, Deakin University, Melbourne*

Paragraph 6 of the Doha Declaration on Public Health dealing with access to medicines to countries with no manufacturing capacity for the required medicines became an important issue because its solution on 30<sup>th</sup> August 2003, on the basis of the Chairman of the TRIPS Council Perez Motta's Note, was perceived as changing the basic features of the TRIPS Agreement. Once the US, along with its allies the EC, Japan and Switzerland, did not agree with developing countries' proposal to permit export of patented products under Article 30 of Agreement on Trade Related Aspects of Intellectual





Property Rights (TRIPS) to countries without any capacity or insufficient capacity to manufacture the patented product, the stage was set for a long and arduous negotiation. Developed countries introduced an Article 31 solution with an extensive introduction of regulations under the pretext that the existing enforcement measures under the TRIPS Agreement address the possibility only of patent infringement and not of trade diversion. The reasoning given appears to be incorrect and wrongly raised, particularly when the EC had specifically raised this issue of diversion in the WTO dispute in Canada-Patent Protection and the Panel in its report had observed that any diversion of patented products is the responsibility of the patent holder through private infringement action. It appears that what the EC couldn't get through the Panel in the Canada Patent Protection dispute, it managed to get through in the Paragraph 6 of the Doha Declaration on Public Health Negotiation. The arguments from both the EC and the USA and repeated by scholars like Frederick Abbott asserting that the authoritative interpretation does not have legal certainty till it is decided by the Appellate Body had already been decided by the Appellate Body in Japan-Alcoholic Dispute where the World Trade Organization (WTO) Appellate Body observed that the decisions of the Panel and the Appellate Body are binding only on the parties concerned and only by the authoritative interpretations of the Ministerial Conference, can an interpretation be made binding on WTO Members as a whole. The incapacity or insufficient capacity of countries to manufacture a patented product raises two other important issues, those of enablement and local working. If the patented product cannot be manufactured in a country because of lack of wherewithal or lack of technically qualified personnel, no patent can be granted for such product in that country.

The other issue is that of local working where if the patent is not worked during the specified period, i.e. if the patented product has not been manufactured by the patent holder in the territory of the patent, a compulsory license can be granted without payment of any remuneration at all as per Article 5A(2) of the Paris Convention as incorporated in the TRIPS Agreement. During the negotiations leading to the Paragraph 6 Solution, a number of proposals from different countries were submitted either individually or in groups. All the proposals were combined by the TRIPS Council for discussion. However, the TRIPS Council Chairman removed all the proposals coming from developing countries while incorporated restrictions as mentioned in the US and the EC communications in a repeat of the 1990-1991 TRIPS negotiation where in a similar fashion after all the proposals coming from different countries were combined together, Lars Anell and then GATT Chairman Arthur Dunkel removed all suggestions coming from developing countries from the final TRIPS Agreement with Article 1.1 of TRIPS permitting unlimited increase in trade restrictions and trade exclusion. The developments during the TRIPS Negotiations and the Para 6 Solution suggest that developing countries' participation in international negotiations is neither genuine nor effective, and the results can only be explained in terms of power as a string of negatives-rejection, barriers, repression, exclusion, denial and dissimulation.

**Daya Shanker** is Course Convenor and Chair of International Business, Bowater School of Management and Marketing, Deakin University, Burwood (Melbourne), Victoria. He has been working with the Government and non-government organizations in India and abroad in different managerial, administrative and academic positions. He has written extensively on the TRIPS Agreement and other agreements dealing with anti-dumping and government subsidy measures. He has a number of publications in major journals such as *Journal of World Trade*, *Journal of World Intellectual Property* and *Journal of Law and Technology*.





## Access to Medicines in the Post-TRIPS Era : Critical Issues

Anand Grover and K M Gopakumar

*Affordable Medicines Treatment Campaign [AMTC], Mumbai*

Trade Related Aspects of Intellectual Property Rights agreement (TRIPS) prescribes universal minimum protection to intellectual property rights. The commitments under the TRIPS agreement compelled India to amend its Patent Act, (1970) in the year 1999 and once again in 2002. India is in the process of amending its patent law to comply with the obligations under TRIPS patent regime. The introduction of product patent regimes will seriously compromise both accessibility and availability of drugs, two important components of the fundamental right to health. This presentation attempts to throw light on how India has used the flexibility available within the TRIPS agreement and the substantial and procedural amendments carried out in 1999 and 2002 and the proposed changes to be introduced through the third amendment. The two amendments carried out in the Patents Act in 1999 and 2002 have gone beyond the TRIPS requirements and created TRIPS plus obligations. At the same time, the public interest elements incorporated through the amendments fell short of using the manoeuvring space available within the TRIPS. The third amendment was therefore an opportunity to undo past mistakes as well as to put certain concrete measures to ensure availability and accessibility of medicines and drugs in the post-product patent era. However, the proposed provisions in the third amendment also fail to make use of the flexibility available within TRIPS.

**Anand Grover** is an Advocate at the Mumbai High Court, and also the Coordinator of the Affordable Medicines and Treatment Campaign (AMTC) of the Lawyers Collective HIV/AIDS Unit. He has participated in and led all the litigation and advocacy efforts of the Unit at the national, local and global level, including over 110 HIV-related cases filed in India, and workshops with the judiciary, policymakers, legislators, healthcare workers, HIV+ persons, influencing policy and drafting legislation around HIV/AIDS in India.

**K M Gopakumar** is currently working as Advocacy Officer with the Affordable Medicine and Treatment Campaign, a national campaign to ensure affordable treatment. His earlier assignments include National Innovation Foundation (NIF), Ahmedabad and Institute of Intellectual Property Development (IIPD), New Delhi. He holds an LL.M (IPR and Human Rights) from the Raoul Wallenberg Institute, Lund, Sweden. His recent article "The WTO Deal on Cheap Drugs: A Critique" was published in the *Journal of World Intellectual Property* in January 2004.



## Day Two: Friday, 7 January 2005

### Plenary

#### The Persistence of Authorship

Peter Jaszi (with Martha Woodmansee)

*Washington College of Law of American University, Washington*

The 'critique of authorship' project was launched in the early 1990s as a unique contemporary collaboration between academics in the disciplines of literary studies and law. It has two fundamental premises - that the modern law of copyright was shaped (beginning c. 1800) in a interaction between cultural theoreticians and lawmakers, and that the rhetorical structures that emerged from that conversation continue to be consequential. Today, the impulse behind the project continues to inspire significant contributions in non-legal literature. But, for the most part, enthusiasm for it has waned among progressive copyright scholars, due in significant part to their decade-long infatuation with 'law and economics' methodology, which met a significant rebuff in the 2003 U.S. Supreme Court decision in *Eldred v. Ashcroft*. There now exists a space for a renewal of critical inquiry into the author-centered rhetorics (including the powerful tropes of property and piracy) that dominate copyright discourse in the present moment. This research program might yield insights into possible alternative discursive framings for policymakers and the public. A useful undertaking would be to explore how the rhetorics of authorship persist in the connection with some of the most progressive practices in today's copyright environment, including the movement to open scholarly journals, FLOSS, and the voluntary commons. A significant concomitant of this 'persistence of authorship' has been the tendency to affirmative access rights to protected content as a theoretically and practically significant structural feature of copyright. This is a matter of special concern because, at least in some domains, 'secessionist' approaches will not yield the level of information access required to promote social, economic, and cultural development. Albert O. Hirschman's well-known trichotomy of "voice, exit, and loyalty" aptly describes the dilemma facing activist copyright scholars: In today's climate, loyalty (through compliance with the expansionist agenda of the copyright industries) simply is not an option. Exit (by means of various forms of alternative social ordering) certainly is, but may be insufficient standing alone. Thus, there is an urgent need to reexamine the utility of responses based on voice (i.e. reformist initiatives that directly confront the excesses of copyright law itself). The critique of authorship is one mechanism for advancing exploration of that important alternative.

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## The Possessions of the Author

### Introductory Remarks

Moinak Biswas

Jadavpur University, Kolkata

### A Tale of Two Books

Sibaji Bandyopadhyay

Centre for Studies in Social Sciences, Kolkata

1. (About) 1847: a press named Sanskrityantra is established in Calcutta. A joint venture, the press is owned by two professors of Calcutta Sanskrit College. The partners (also boyhood friends) are, Madanmohan Tarkalangkar and Iswarchandra Vidyasagar.
2. 7 May 1849: John Elliot Drinkwater Bethune establishes the Calcutta Female School (known later as Bethune School. The first batch comprises 21 students. The first two girls enrolled in the school are two daughters of Madanmohan Tarkalangkar.
3. 1849: *Sishusiksha*, a primer written by Madanmohan Tarkalangkar is published by Sanskrityantra. The Third part of *Sishusiksha* is brought out in 1850 by the same press. The primer is primarily meant for girls.
4. (About) 1850: for reasons unknown, the relationship between Tarkalangkar and Vidyasagar gets to be progressively bitter.
5. 1855: *Barnaparichoy* (Parts One and Two), a primer by Vidyasagar, is released. The two books are published by Sanskrityantra.
6. 1858: Vidyasagar decides to sever all relations with Madanmohan. He offers to buy Madanmohan's share of Sanskrityantra. Madanmohan agrees. But before the deed could be signed, Madanmohan passes away. Madanmohan's widow completes the formalities. Vidyasagar becomes the sole proprietor of Sanskrityantra as well as of *Sishusiksha* and *Barnaparichoy*.
7. (About) 1871: Madanmohan's son-in-law, Jogendranath Vidyabhusan, accuses Vidyasagar of having usurped the rights of *Sishusiksha*. Vidyasagar promptly takes steps to counter the charge.

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8. 1884: the 91<sup>st</sup> edition of *Sishusiksha* (Part Three) is printed. Vidyasagar informs the readers (i.e. the guardians of the “actual addressees” of the primer) that he has “drastically revised” the text.
9. 1888: Vidyasagar writes *Niskritiluv Prayas*. In this rather elaborate self-defense, Vidyasagar presents his case vis-à-vis the ‘controversy’ surrounding the property rights of *Sishusiksha*.
10. For a long period of time, *Sishusiksha* was in great demand. The market was extremely friendly towards it. It was equally so towards *Barnaparichoy*. But eventually, *Sishusiksha* faded away. In the domain of primers *Barnaparichoy* enjoyed, for about a century, a kind of unchallenged monopoly that has no parallel in the history of Bengali primers. It is yet to be forgotten.
11. ‘Property’, both in its economic and intellectual dimensions, seems crucial to the textual history of *Sishusiksha* and *Barnaporichoy*. The two together offer a case that resonates with ‘theory’: it invites all who are deeply interested in mapping ‘colonial’ (or otherwise) modernity.

### The Textual Scholar in the Electronic Wilderness

Swapan Chakravorty  
Jadavpur University, Kolkata

What does the electronic text and the Internet imply for such a traditional discipline as textual criticism? Authorship studies has traditionally been one of the key strengths of the discipline, and the computer, by easing access to sample pools and controls, has emerged as a strong means of exercising its tried methods. One can even argue that hypertexts have done away with the need to privilege readings, and has thereby altered the protocols of editing, if not of reading itself. But with earlier writers, we are still dealing with manuscripts and printed texts as material to process. Does the concept of authorship that underlies the textual scholar's assumptions suffer a radical change with

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texts of more recent origin, often generated and disseminated in machine-readable forms? And what of the attendant problem of the erasure of erasures?

### **Authors, Owners and Appropriators**

#### **The Debates on Authorship in the Early Twentieth-Century Hindi World**

Avinash Kumar

*Sarai/CSDS, Delhi*

This proposal concerns itself with exploring some aspects of the debates which took place around the idea of authorship, originality and translation in the early twentieth-century Hindi world. The attempt is not only to look into the debates which took place around writings of various kinds of texts but also to explore the translation industry which had a major presence in that period.

The apparent conflict between the idea of 'genius' and the idea of a historicized intellectual being, which would render the question of *maulikta* (originality) meaningless. To cite a few examples, the writings, especially in Hindi prose in the early decades of the twentieth century were still evolving, to the extent that one person was writing several pieces under different names (as in the case of Mahavir Prasad Dwivedi for early editions of *Saraswati*, the legendary periodical). Even these pieces would be mainly based upon cannibalising from various kinds of sources, depending upon the author's command of different languages. In Dwivedi's case it would be Hindi, Sanskrit, Bengali, Marathi, Urdu, Persian and English. It is another interesting point that most of the contributors at that time came from a multilingual background and hence their 'influences' came from a wide range of sources. This very often led to accusations of people 'lifting' from these sources and calling them as their own. It is relevant to mention here that most of the early Hindi books mentioned the author's name as the 'producer' of the book, i.e. referring as *yeh pustak banai*. At the same time, the debate was so intense that Dwivedi had to publicly raise the question about the validity of the idea of 'originality', arguing that after all no one develops his/her ideas in a vacuum.

Yet, there always remained a conflict about the idea of the original genius. This was more apparent in the case of literature. With the institutionalisation of the 'literary genius of English civilisation' through various kinds of discourses, the idea of the one and only Shakespeare or Kalidas had taken roots deep enough to force these writers to locate their own 'Hindi genius'. This avenue in a way was most ably opened by the idea of the 'genius poet', no less because of the twin roles of the poet which were established by then: i) The poet's apparent ability to give voice to the civilisational aspirations of a country; and ii) the poet's ability to stir and mobilise the masses for the cause of the nation by his/her magical skills. Even Dwivedi firmly believed in this despite the fact that the first such poet of twentieth century, Maithilisharan Gupt (whose epic *Bharat Bharati* became the first bestseller of 'high Hindi'), was literally churned out by Dwivedi's constant patronage, editorial skills and by his forcing

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Gupt to read and emulate Altaf Husain Hali's Urdu epic *Musaddas*. Again a poetic 'genius' like Suryakant Tripathi Nirala was accused substantially of lifting many passages from Tagore. Another interesting debate which took place at that time was about Premchand's *Ghaban* now, regarded as a modern classic. He was accused of lifting from a 'cheap detective English novel', against which Premchand talked of the 'creative rendering in his own context'.

This brings us to the issue of the different translations which were taking place at that time. The question of translation becomes important here as it gives us an entry point from two opposing ends. First, the idea of 'the creative rendering' of the 'original text', as it were; and second, the formative influences of the 'original text' in question. In this context, the attempt would also be to take a look at the massive translation industry in Hindi which was coming about via various sources and in various forms. It ranged from literary pieces and detective fiction to political texts like Mill's *On Liberty* etc. Hence pioneering critic Ramchandra Shukla (whose *Hindi Sahitya ka Itihas* is still regarded as the most authoritative in its field) would cite liberally from the Rigveda, medieval Indian texts etc., while translating Heckel's *Riddle of the Universe* as *Vishva Prapanch*.

These concerns can be traced through some important case studies. One would be Gopalram Gahmari's detective fiction who based many of his writings on English and Bengali detective genres, but used citations from Braj poetry and located his plots in a variety of places ranging from Calcutta and Bombay to Mughal Sarai and Ara. Another case in point would be to trace this 'emergence of the genius' in the early fiction of Premchand, which hasn't received the kind of attention it deserves.

### **Culture at Cross Roads: Anthropology, Aesthetics and Intellectual Property**

Narendra Pachkhede

*Independent Media Artist, Ottawa*

With 20% of Canadian exports being attributed to revenues from intellectual property, the debate in Canada on the emerging regime of intellectual property is getting very engaging. Recently, the Canadian 'copyright trilogy', on which the Supreme Court of Canada has ruled, has focused on contested issues ranging from the fundamental theories underlying copyright, to the limits of when copyright may be claimed, to the applicability of copyright in cyberspace.

What do all these empirical developments suggest? What are the normative undercurrents in Canada on these issues? In the age of iPod and Vinyl, as we find culture increasingly at crossroads, this paper attempts to look at the shifts in the disciplinary discourses and practices surrounding it. At a normative



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level, the paper explores the relationship between culture and law. Articulating the imperatives of exploring law culturally, it looks at the argument that 'the heuristic value of exploring law culturally is a more focused and politicised emphasis upon meaning in disciplinary spaces traditionally preoccupied with questions of power'. Such a narrative will situate the significance of intellectual property, considered part of the field of cultural studies, in anthropology, sociolegal scholarship and cultural studies.

Given the discursive scenario of contestation, the paper explores how artists have intervened in the polemics of conceptual and philosophical arguments. I will look at the work of Canadian composer John Oswald (Plunderphonics or Audio Piracy as a Compositional Prerogative), *Deconstructing Supper* by Marianne Caplan, Canadian independent filmmaker, and "Free the Mermaid", the work of the appropriationist group Negativland.

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## Media Empires and the figure of the Pirate

### Introductory Remarks

Nitin Govil

*University of Virginia, Charlottesville*

### Early Cinema, Heyday of Copying

Jane Gaines,

*Duke University, Durham*

Here I am urging that we return to the period, 1895-1909, when "copying" was most prevalent in the emerging world film industries. The following advocates an inversion of our approach to the phenomenon, a study not of the success of containing an illegal act, but of the conditions that gave rise to copying as well as something of the magnitude of it. The renewed interest on my part stems from a recent consensus among lawyers and arts funding agencies that, in the case of US practice, copyright defence has gone too far; it now threatens the very creativity that it was designed to foster. Organisations such as 'Creative Commons' have appeared with the goals of both copyright education and the "free" exchange of images and sounds between artists. Here I return to some of the concerns with the domain of "available" signs as worked out in *Contested Culture: The Image, the Voice, and the Law* (1991). First, I want to ask why we know so little about the conditions of copying in this period. Certainly these conditions can tell us much about distribution practices. The entire question requires that we begin with exhibitors rather than producers. It is well known that the earliest practice

**Nitin Govil** joined the University of Virginia in 2003 as Assistant Professor of Media Studies. He has also taught at the City University of New York and at New York University, where he is completing his doctoral work in the department of Cinema Studies. He is the co-author of *Global Hollywood* (2001), which is about to be issued in a new, revised, edition; the book has also been translated into Spanish and Chinese. His other publications include work on new developments in in-flight entertainment, the globalisation of labour in the Asian multimedia industry, race and US television, television and broadband technology, and science fiction and the city. Currently he is completing a co-authored study of the contemporary Indian film industry, and is also working on several projects considering the intersections between cultural flows, audiovisual piracy, and global media policy.

**Jane Gaines**, Professor of Literature and English at Duke University, founded the Film/Video/Digital Program there. She is the author of two award-winning books: *Contested Culture: The Image, the Voice, and the Law* (University of North Carolina Press, 1991), and *Fire and Desire: Mixed Race Movies in the Silent Era* (University of Chicago Press, 2002). In addition, she has published on documentary film theory and is one of the founders of the Visible Evidence Convergence. Her current project is an encounter with the problem of early women producers in the international film industries during the silent era: "Fictioning Histories: Women Film Pioneers".





of outright purchase of prints by the foot contributed significantly to what was perceived by film producers or manufacturers as a problem. If the exhibitor owned the print, he assumed that he could duplicate it, and there is evidence that he did. What we don't know is the degree to which the ease of reproduction encouraged an outgrowth of new "businesses" or whether it was a sideline of theatre ownership and management, and whether the existence or non-existence of copyright (the case with French or British titles) made a difference in this enterprise. What, finally, does the shift from outright purchase to rental as the basis of exhibition tell us or not tell us about rental as a strategy to discourage copying? How did print rental work to shift the competitive advantage back to manufacturers? One of the reasons that these issues have not been more central to film history as it has been written is explained by a contradictory dual bias built into these histories: for industry and for artistry. Film histories, beginning with Terry Ramsaye's *A Million and One Nights*, have sided with the manufacturing companies whose titles were copied. But we encounter immediate difficulties with histories following Ramsaye, the consequence of the usage of both the terms "copying" and "piracy". The reference to "copying" often fails to make a distinction between print duplication and remaking, and "piracy" assumes an illegal use of an underlying copyright. For all of the early companies in both the US and Europe, both reduplication and remaking was common practice. Another story of the heyday is there, however, in both numerous conflicting references to titles as well as in extant archival prints.

*Le Jardinier* (1895, Lumière)  
*L'Arroseur Arrosé* (1896 or 1897, Lumière)  
*Arroseur et Arrosé* (1895-1897, Lumière)  
*L'Arroseur* (Scène Comique, 1896, Méliès)  
*The Gardener and the Bad Boy* (1895, Lumière) or American remake (Musser)  
*Bad Boy and the Gardener/Garden Scene* (1896, Edison)  
*Gardener with Hose or The Mischievous Boy* (W. H. Smith)  
*The Bad Boy and the Garden Hose* (1896, J. Stuart Blackton and Albert E. Smith)  
*L'Arroseur Arrosé* (Comique, 1897-1898, Gaumont, Alice Guy Blaché)  
*L'Arroseur Arrosé* (1897, Léar and Frère Brazile)

### **Breaks, Flows, and Other In-between Spaces: Rethinking Piracy and Copyright Governance**

Shujen Wang  
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Framed as the parasitic, the shadow, the underground, the illicit, the criminal, and the hellish and

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nightmarish, optical media (i.e., CD, VCD, DVD, CD-R, DVD-R, CD-ROM) piracy is also often equated and used synonymously with Asia in general, and China in particular. Lisa Movius, for example, calls China a “piracy-crazed” “imitation nation”. The International Intellectual Property Alliance (IIPA) also describes China as the “piracy capital of the world” (2001:25). The numerous United States Trade Representative (USTR), Motion Picture Association of America (MPAA), the International Federation of the Phonographic Industry (IFPI), and other trade organizations’ reports are replete with convincing statistics of rampant piracy rates in Asia. This popular narrative of excess – in emotions, numbers, and rhetoric – reflects global copyright holders’ desperate need to contain piracy by inducing shock and sympathy from policy makers and the public. It also obscures the complex and conflicting realities of piracy that are not reducible to solely the realm of the economic, the legal, the political, the cultural, or the technological. I contend instead that the structural porosity and the paradoxical processes of global informational capitalism have rendered piracy a crucial site for critical intervention and for the rethinking of globalisation, power, and theory.

Using optical media piracy as a point of reference, I hope to identify the interlocking, intersecting, and conflicting power systems and relations among different actors and networks. By re-framing the intricate relations between the licit and the illicit, and between the state and piracy, and by using China as a case study, this paper will also reflect on the “in-between spaces” in global copyright governance: between copyright legislation and law enforcement, between global copyright governance and national/local compliance, between global actors and national networks, and among different levels of juridical spaces and overlapping sovereignties.

### Global Modernity and Movie Piracy

Laikwan Pang

*The Chinese University of Hong Kong, Hong Kong*

The cultural realm is the most complex and dynamic arena of human activities, which always resists any monolithic form of control. The involvement of many vested parties trying to own and control culture through the manipulation of copyright reveals the thickness and sometimes irrationality of the law. In this paper I first demonstrate why Frederic Jameson and Arif Dirlik stress the importance to conceptualize global modernity in its singular form. Copyright’s will to control our global culture lays bare the fallacy of the wide spread concept of ‘alternative modernities’. Copying is such an essential mechanism of culture, and copyright’s tight regulation of copying only reveals its fear and its lack, that through copying we can reach the unknown ‘Other’. I then use a pirated DVD copy of *Kill Bill* as an example to demonstrate how product piracy can also be ‘productive’, adding new dimensions to or revealing the ideological make-up of the original.

**Laikwan Pang** is Assistant Professor of Cultural Studies at the Chinese University of Hong Kong. She is the author of *Building a New Cinema in China: The Chinese Left-wing Cinema Movement, 1932-37* (Rowman and Littlefield, 2002), and her book on copyright and cinema, titled *Cultural Control and Globalisation in Asia: Copyright, Piracy and Cinema*, is forthcoming in 2005 by RoutledgeCurzon. She is also currently coediting two academic anthologies: *Masculinities and Hong Kong Cinema*, forthcoming by Hong Kong UP, and a special issue on “Chinese Culture in an Inter-Asian Context” for *Modern Chinese Literature and Culture*. Her academic articles can be found in *Social Text*, *boundary 2*, *Culture, Theory and Critique*, *positions*, *Feminist Media Studies*, *Quarterly Review of Film and Video*, etc.



## Culture beyond Property

### Tales of the Commons

Armin Medosch

*Independent Curator, London*

<Kingdom of Piracy> has developed from a project that was originally meant to be the first major net art exhibition in Taiwan. That exhibition was tactically called <Kingdom of Piracy> because it set itself the goal to relate to the situation of Taiwan and encourage digital and networked art works that deal with copyright, copyleft and related issues such as censorship and corporate power. Since then <KOP> has had exhibitions and projects at Ars Electronica, DEAF, FACT and Yerba Buena Arts Centre. Each of those shows was marked by a step in the conceptual and qualitative development of the project. After having had legal trouble in Taiwan <KOP> became a floating virtual kingdom and established virtual havens at Ars Electronica and FACT. In Rotterdam, at DEAF, <KOP> focused on the abusive potential of data retention. At FACT, Liverpool, emphasis was placed on collaborative networked works, by showing Last.FM, Nine9 and Frequency Clock. Instead of confrontation, those works build alternative platforms for communities to express their culture. The cultural needs of communities and their 'social knowledge' is often not general but local and situated, so that it is important to work with such online platforms in workshop situations. We became 'good pirates', so to speak, not wielding the dagger to the corporate behemoth but constructing our own worlds which is possible because of Free Software, the GPL, etc. A fourth work on show was BURN, a <KOP> production, which contrasts the celebration of sharing music online with show destructions of pirated CDs in China on the eve of China entering the WTO. At this occasion <KOP> produced the catalogue and CD Rom DIVE, a complete documentation of <KOP> and a guide into the world of Free and Open Source Software and collaborative environments. <KOP> has since focussed on an articulation of the 'games commons', with a small show in San Francisco in January 2004. At each stage of the project <KOP> has commissioned articles which dealt with specific and particular formulations of ideas about the commons and networked and collaborative environments. Currently <KOP> is launching a research platform under the title "Tales of the Commons" which will look at sustainable models of collective resource management. Each of these 'stories' will be articulated, questioned and analysed by an interdisciplinary and transcultural research collective. The telling of tales about the commons brings together the supposedly 'neutral' technical online space with stories rooted in specific cultures, spaces and political economies.

**Armin Medosch** is a London-based writer, artist and curator. In 2003 he has written the book *Freie Netze - Free Networks* (2003), a non-fiction book about the politics, history and culture of (wireless) community networks, published in German by Heise Verlag. In 2003 Medosch also edited "DIVE – Collaborative Tools for Online Communities", a printed catalogue and CD ROM with texts, art projects and software. DIVE is a project by Kingdom of Piracy; DIVE was co-produced by FACT, Liverpool, commissioned by Virtual Media Center and launched at Ars Electronica 2003. It is a part of the Game Scenes exhibition at Yerba Buena Arts Centre, San Francisco, with the Game Commons exhibition plug-in, jointly curated by Armin Medosch, Yukiko Shikata and Shu Lea Cheang. Medosch has contributed articles and essays to numerous books, catalogues, magazines and newspapers. From 1996 to 2002 he was co-editor of *telepolis*, the award winning magazine of net culture.

He is co-initiator of the monthly Cybersalon events, co-organiser of the conference Art Servers Unlimited, @backspace and ICA 1998; member of University of Openness, an institution for self-learning, and associate senior lecturer at Ravensbourne College's postgraduate course on Interactive Digital Media.



### Information Wants to Be Free (But Is Everywhere in Chains)

McKenzie Wark

*New School University, New York*

The rise of intellectual property out of the conversion of patents and copyrights into absolute private property rights creates a whole new level of class conflict. Just as the private ownership of land creates conflict between farmers and landlords, and the private ownership of capital creates conflict between workers and capitalists, so too the emerging global IP regime creates a new and more abstract plane of class conflict, between what I call hackers and vectoralists. This new class conflict does not supplant but transforms its other levels. In the 'overdeveloped' world, we see a hollowing out of the old capitalist enterprise and an increasing reliance on portfolios of patents, trademarks, and copyrights to secure control over a now global cycle of production and consumption. A whole series of production processes are delegated to the 'underdeveloped' world, but not the control of the underlying intellectual property. The question arises of how to form a transnational, cross-class alliance of hackers, workers and farmers with an interest in the restoration or expansion of an information commons, to free information from its chains.

### Excessive, Dense, Speedy, Complex, Empty... But Humane

Hou Hanru

*Independent Curator, Paris*

This paper focuses on a recent project in Bruxelles for the Argos festival ([www.argosarts.org](http://www.argosarts.org)). The exhibition project at the Argos Festival was mainly set up around the link between the development of digital video and the developments of (post)modern urbanisation. Hanru is fascinated by the unexpected, extremely fast and almost irrational urbanisation, proper to the development of the modern metropolis. This high-speed pace of development forces the social, cultural and economic life into an equally speedy adaptation. Hanru defines this phenomenon as post-planning. He selected a number of artists who stay in various European as well as non-European metropolises. Either by their

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**Hou Hanru** trained at the Central Institute of Fine Arts in Beijing. Living in Paris since 1990, he works as an independent critic and curator. He is contributor to journals on contemporary art, such as *Art Monthly*, *Third Text*, *Art and Asia Pacific*, *Flash Art*, *Atlantica*, *Texte Zur Kunst*. He curates exhibitions all over the world. Hanru is advisor at the Rijksakademie van Beeldende Kunsten in Amsterdam. He is known for such ground-breaking exhibitions as *Cities on the Move* (co-curated with Hans-Ulrich Obrist), *Out of the Center*, *Parisien(ne)s* and the *Kwangju Biennial* in Korea. His work addresses questions of globalisation and identity, and understanding contemporary art practice as it exists beyond geographical and regional boundaries.



specific use of this digital medium or because of a specific conceptual sensitivity, they incorporate this pressing subject in a visual way.

**Day Three: Saturday, 8 January 2005**

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### **Embodied Property to Disembodied Signs**

#### **ImprobableVoices.net: On the Intellectual Property of Individuals Whose Bodies are Property of the State**

Sharon Daniel

*University of California, Santa Cruz*

Cassandra Shaylor

*Justice Now, Oakland*

This paper will discuss "A Proposal for an Improbable Monument to the End of the Prison Industrial Complex", an online audio archive of interviews with ten women who are incarcerated at the Central California Women's Facility (CCWF) in Chowchilla, CA, the largest female correctional facility in the United States. The project is a collaboration between Media artist Sharon Daniel and Justice Now, a human rights organization that works with women in prison to build a safe, compassionate world without prisons.

Currently, prisons in the United States function as both monument and repository, in the very worst sense of each term. They are monuments to the criminalisation of poverty in capitalist America and human repositories where the secrets of economic and political power are kept safe. The Prison Industrial Complex is the quintessential embodiment of power and authority in capitalist America – the economic and architectural manifestation of a political and social programme designed to sustain and support capitalism.

ImprobableVoices.net, commissioned for the online exhibition ImprobableMonuments at CameraworkSF.org, functions both as a proposal and a monument-cum-repository of, currently, 143 audio files. These audio clips include statements made by incarcerated women, their political analyses and descriptions of their experience in prison. Their imaginative proposals for a monument to the end of the prison industrial complex which are visualized for the site by a variety of artists.

This paper will provide an analysis of the project ImprobableVoices.net with an emphasis on questions regarding the authorial subject, subjection, and the status of the intellectual property of prisoners. In the US prisoners' bodies are literally property of the state and therefore their right to free speech,

**Sharon Daniel** is an Associate Professor of Film and Digital Media at the University of California, Santa Cruz, where she teaches classes in digital media theory and practice. Her research involves collaborations with local and online communities which exploit information and communications technologies as new sites for public art in the service of social justice. Daniel's goal is to avoid representation: not to attempt to speak for others but to allow them to speak for themselves. Her role as an artist is that of 'context provider', assisting communities, collecting their stories, soliciting their opinions on politics and social justice, and building the online archives and interfaces that make this data available across social, cultural and economic boundaries. (<http://arts.ucsc.edu/sdaniel>)

**Cassandra Shaylor** is a lawyer, a graduate of American University's Washington College of Law, winner of the 2001 Leadership for Change award, and co-director of the non-profit organization Justice Now, the only teaching law center in the United States solely focused on the needs of women prisoners. Justice Now's mission is to provide women prisoners with legal assistance and information, and to organize community-based campaigns against inhumane treatment within the penal system. Justice Now teaches undergraduates and law students how to provide women prisoners with direct legal services. The program also supports peer education in prisons, and partners with prisoners and community organizers to create public education campaigns. (<http://jnow.org>)



their claim to intellectual property, is contested. State and federal prisoners in the US are individuals who are no longer citizens of their state, but its property.

### **Trespasses of the State:**

#### **Ministering the Copyright/Trademark to Theological Dilemmas**

Naveeda Khan

*Johns Hopkins University, Baltimore*

By 1974 the Ahmadiya were “excommunicated” from the fold of Islam within Pakistan through a constitutional amendment that rendered them a non-Muslim minority. Yet between 1978 and 1992, the high courts of Pakistan continued to hear cases involving Ahmadiya encroachments upon Islam. These cases show the crystallisation of two distinct lines of legal arguments against the Ahmadiya, each deliberating upon the status of the copy within Islam. One line of thought deliberated upon what nature of copy Ghulam Mirza Ahmad, the originator of the Ahmadiya movement, claimed to be of the Prophet Muhammad. What theological significance did such claims hold within an already established culture of the copy among ordinary Muslims, more specifically, the pious imitation of the Prophet and his *sunna* (way). The second line of thought pursued the legal possibility of making more exclusive the entirety of the Islamic tradition and the achievements of Muslim civilisation, including honorific titles and modes of address, modes and spaces of worship, and citations from the holy book and the Prophet’s *hadith* (recorded accounts of the *sunna*). This particular trajectory culminated in an addition to the Pakistani Penal Code in 1985, disallowing the Ahmadiya access to the above.

Yet, as my paper will show, Ahmadiya claims of being a faithful copy of the Prophet or of ordinary Muslims were not conclusively dealt with by these earlier cases until a 1993 Supreme Court judgment. In this judgment these two distinct lines of arguments were brought together and displaced onto another playing field, from the realms of theology and state ideology to that of corporate protectionism. This was achieved through the court’s invocation and conflation of the power of the copyright, which was to protect the material manifestations of Islam and of Muslims, and that of the trademark, which was to affix protection to the state, now seemingly operating as a private company alone authorised to authenticate Muslims. These legal genres were put forth to better mark off the Muslim from the Ahmadi, the original copy from the heretical copy. In this paper I attempt to take seriously the court’s innovative invocation of the copyright and the trademark to suggest that we might think beyond the idea of publics as inherently trespassing to include the creative yet ultimately exclusionary trespasses of the state as well.

**Naveeda Khan** received her BA in history from Vassar College in 1992 and her MA in anthropology from the New School for Social Research in 1995. She completed her PhD in anthropology from Columbia University in 2003, writing her doctoral dissertation on how sectarian violence is folded into everyday life in urban Pakistan. She is the recipient of numerous research grants from agencies such as SSRC, NSF, and Wenner-Gren. Naveeda has also worked at BRAC (Bangladesh Rural Advancement Committee), UNHCR (United Nations High Commissioner for Refugees), and the Field Museum of Natural History (Chicago). At present she is a postdoctoral fellow in the Department of Anthropology at Johns Hopkins University and is currently engaged in turning her dissertation into a book tentatively titled *The Passage of a Promise: Spaces of Worship, Sectarian Violence, and Political Affect in Urban Pakistan*.





## Network Conflicts

### The Communications Commons: Lessons from Contests in Electrospace

Dorothy Kidd

*University of San Francisco, San Francisco*

Conflicts over the regulation of information and media technologies are an inseparable dimension of the European imperial project. This paper compares the communications commons in radio electrospace with contemporary projects in cyberspace. The early development of radio was marked by tensions between state and corporate enclosure of the medium for centralised management, surveillance and the extension of commercial exploitation, and the counter use by challenger groups who operated the airspace as commons regimes on the margins of both state and market to promote the self-representation of a plurality of social actors. Contemporary conflicts in radio electrospace are underscored by global strategies of privatisation and deregulation of public electrospace, and the criminalisation of counter uses. However, the radio commons continue to grow, devising autonomous means of governance, innovative use of technologies and creative programming that is representative of and responsive to rural and urban communities, in the very different contexts of Europe, North America, Latin America, South Korea, the Philippines and India. The critical analysis of these contests provides several lessons for the contemporary discussion of cyberspace.

### ÄÄNIradio : Participatory Open Radio Project

Sophea Lerner

*Centre for Music and Technology, Helsinki*

In August 2004 the Centre for Music & Technology, Helsinki, ran an experiment hybrid broadcasting, ÄÄNIradio (*ääni* in Finnish means both 'voice' and 'sound'). The broadcast ran throughout the month culminating in a range of special programming alongside ISEA 2004 wireless experience. ÄÄNIradio combined a special event FM licence with experimental tools for collaborative net radio to create a relatively low cost system for broadcasting across Helsinki and online live from the streets or the studio or anywhere in the world with and internet or telephone connection. As well as testing a range of programme production models for distributed broadcast control with open source tools, ÄÄNIradio also opted for a strictly creative commons/open content programming policy.

Both the technical realisation and the programming policy of ÄÄNIradio required a rethink of production practices and audience relationships as well as reflection on the local context, specifically

**Dorothy Kidd** is Associate Professor of Media Studies at the University of San Francisco. A long-time community radio and video producer, her research focuses on the history of autonomous media, and particularly the tensions between the communications commons and the state and corporate enclosure of information.

**Sophea Lerner** is an Australian radiomaker, sound engineer and new media artist currently based in Helsinki, where she teaches media and sonic arts at the Centre for Music & Technology. Her work brings together experience in group-devised physical performance with experimental radio and new media art into a collaborative art practice which explores audience interaction through gestural performance and sound. Recent projects include 'signal | process workshop' on sound in public space, ÄÄNIradio and *where\_are\_we\_eating?* a translocal sonic feast. She is currently planning 'particle/wave workshop' on hybrid radio and ÄÄNIradio 2.0 for April 2005.





the legislative environment for broadcasting and copyright issues. ÄÄNiradio is an ongoing experiment involved in the ongoing development of tools for participatory and distributed hybrid radio production.

### **Spatial Conflicts and Property Regimes**

#### **The Multi-headed Hydra of East Delhi**

Solomon Benjamin

*Centre for Emerging Urbanism, Bangalore*

This paper shows how sophisticated forms of interlinked production and innovation (*jugaard*) are related to diverse property regimes, and in particular to the evolution of a radicalised political space. We draw from a detailed historical study of a east Delhi neighbourhood spanning two decades to look at the underlying factors of a highly innovative locality built around non-IPR environment. We find here a political radicalisation that is not dependent and bound by 'social movements'. Instead, this space is constituted by complex congregations of street level 'politics by stealth' that has, over the years, transformed administration and opened up diverse legal regimes. This multi-headed hydra (drawing from Linebaugh) is threatening to big business, centralised party politics that find such fluid work structures difficult to define and hence control. The hydra of East Delhi seems to have at least two centres. First, fluid property regimes that question conventional notions and threaten international capital – now dominating city economy, planning, and politics. Second, shaping this radicalised locality is the artisan/entrepreneur/worker/artist whose amalgamate as an innovator helps us interrogate conventional notions of class mobilisation and consciousness

#### **The Street Sellers in the Heart of the Illegal Market of Brazil 25 de Março Street**

Lenita Cunha e Silva

*University of São Paulo, São Paulo*

The Illegal Market of Brazil is a complex result of the world phenomenon of globalisation that provides a bigger range and easier exchange of products provided by the cheapest conditions of production, pirate products, unemployment and reduction of the purchase power of the working class. These entire factors are combined and connected to a larger net of the world economy.

In the second half of 2004, the unemployment in the Metropolitan Area of São Paulo, according to SEADE, was 19%, and of those who declare that they have occupation, 21% work in the so-called Informal Sector, meaning that they are not included regularly in any of the traditional sectors of work.

**Solomon Benjamin** has recently initiated the Centre for Emerging Urbanism at Bangalore. He focuses on issues of urban governance, local economic development, and poverty. His doctoral thesis from MIT focuses on the civic politics of industrial districts. He has been a consultant to the UN system and several international development agencies, and been involved in several international research projects.

**Lenita Cunha e Silva** is student of the 8th Semester of History in the University of São Paulo. She worked in projects of Cancer and Industrialization Authomobilistic Syndicates in São Paulo. She is working as assistant researcher in a project about Communalism in India. Her areas of interest include the social history of medicine, sociology, economics and Indian history.





Generally these people have no guarantees of work, have no rights that are assured to the registered workers, as they have no employers, and cannot pay the onus of being registered working in autonomy. One of the most representative categories of this sector is the street seller, called popularly in Portuguese as *camelôs*.

In the old downtown of São Paulo there is one of the most happening places of Brazil: the 25 de Março Street. There are hundred of shops, street sellers, costumers and the constant eye of the State oppressing and controlling the market, eventually seizing products from the street sellers for its illegal provenance and non-registered jobs (without taxes and guarantees). Most of these people that work irregularly in this area proceed from the Northeast region of Brazil. This region has one of the biggest indices of migration and we find there as well one of the biggest concentrations of extreme poverty in South America.

In November 2004, the city of São Paulo came to know who is going to be the new major of the city for the next four years. Very common before elections are the reforms made in the city's public space. Particularly in the second half of this year, the Major, Marta Suplicy, from the Worker's Party (PT), the same as the President of Brazil, started a reform in the 25 de Março. As an excuse for the security of the reform, there are a huge number of Metropolitan Guards (Police of the City) since the reform started. As a result, every day, and even more than once in a day, the guards arrest street sellers, seize their products and even beat them up. There are also resistances by the street sellers who find ways to escape from the guards, and even confront them.

This paper will specially focus on the conflicts of these workers with the State, that is on one hand the protector of the legal capital dominated by big companies and the WTO, and on the other hand has in its own illegal market a non-ideal but providential solution for the increasing unemployment and massification of consumption of goods that are far from the great mass of the working class.

This paper intends to analyse as well the conditions of work of these street sellers in 25 de Março as it is a representative street of São Paulo. To this street come people from all over Brazil to buy products with much cheaper prices, to sell in their places of origin. People from Africa (Mozambique) and from other South American countries also come: they find cheap products, as do others who come illegally to São Paulo from China, Paraguay, Korea, Taiwan. Most of them are pirates. Most of the street sellers get the products from illegal provenance and sell them without a licence (that increases the onus of the products). Another interest of this paper is to understand the conflict between the State and street sellers under the view of the existent corruption in this relation.

The reading and analysis of academic books and texts, and interviews about street peddlers' working





experiences are the bases of this research, as well as the use of photos, newspaper articles and films about the conditions of these workers and the relation with the city.

### **Media Practices and the Figure of the Pirate**

#### **Technology and the Domains of Piracy**

Brian Larkin

*Barnard College, Columbia University, New York*

Examinations of piracy typically define it as a category of intellectual property with the consequence that debate centers on the legal domain: issues of property versus theft, enforcement versus evasion, proprietariness versus openness. In this paper I wish to place piracy within a different history, examining it as part of the domain of infrastructure. One consequence of this is to place emphasis on the technical operations of pirate media and their role in storing, reproducing and distributing data. I examine piracy in this context, relating it to the other technical modes of infrastructure and linking it to the provision of electricity, railroads and telephone lines rather than to, say, concepts of authorship, property and law. The reason I side-step questions of law is in order to foreground how piracy works as a mode of techno-politics, offering critical insight into the relationship between technologies and contemporary state and economic processes.

#### **Beyond Representation? The Figure of the Pirate**

Lawrence Liang

*ALF, Bangalore*

Ravi Sundaram and Jeebesh Bagchi

*Sarai/CSDS, Delhi*

This presentation raises a series of questions on the representational problem of the pirate in the contemporary discourse on law, public good and creativity. Piracy produces a series of anxieties: from states, transnational capital, media industries and even in some liberal proponents of the public domain. 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. It seems to allegorise an impure transgression, tainted by commerce and an inability to produce a discourse on itself.

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. We shall discuss the problem of the pirate through a range of enquires, including

**Brian Larkin** writes on the materiality of media technologies and the relationship between media, urbanisation and globalisation. He is co-editor of *Media Worlds: Anthropology on New Terrain* and editor of the symposium *Media and the Design for Modern Living*. He is assistant professor at Barnard College, Columbia University.

**Lawrence Liang** is a legal researcher with the Alternative Law Forum (ALF), Bangalore. He is currently working in collaboration with Sarai on a project that seeks to interrogate the politics of media and intellectual property laws.

**Ravi Sundaram** is a fellow of the Centre for the Study of Developing Societies, Delhi, and one of the initiators of Sarai. He coordinates the Public and Practices in the History of the Present project at Sarai.

**Jeebesh Bagchi** is a media practitioner, researcher, artist and filmmaker with the Raqs Media Collective, and one of the initiators of Sarai. He has been coordinating the Cybermohalla project (with Ankur, Delhi) and Knowledge/Culture Commons project (with ALF, Bangalore). His work with the Raqs Media Collective has been shown at Documenta 11, Venice, Taipei and Liverpool Biennales, at the Walker Arts Centre, Minneapolis, Generali Gallery, Vienna and other international exhibitions.



# The Contested Commons

## Public Lecture Series



## Day One: Thursday, 6 January 2005, 7 pm

### **Between Anarchy and Oligarchy: The Prospects for Sovereignty and Democracy in a Connected World**

Siva Vaidhyanathan  
*New York University, New York*

Information communication technologies have collapsed distances and lowered the price of connections and transactions around the world. We have only just begun making sense of the changes wrought by the new methods and habits fostered by these technologies. But we have no shortage of grand, totalising visions that aim to capture the changes we are experiencing. In the 1990s we went through a phase dominated by naive visions of globalised monoculture and consensus, with the 'end of history' considered to be the apex of 'cultural evolution'. Since 2001 the world has been viewed by some (Bush and bin Laden, chiefly) as torn among 'civilisations'. Now we hear explicit calls for a new Western imperialism, based on assumptions of universal benevolence. In opposition to such panicked or triumphal calls for a New World Order, Antonio Negri and Michael Hardt have issued a description of a new global anarchistic state of mind ("Empire" and "Multitude") based on the emerging forms of opposition to the mainstream forms of globalised corporate centralisation. This paper finds fault with both Bush and Negri. It argues that efforts to create a world polarised on models of oligarchy and anarchy do not enrich most lives in meaningful ways. Instead, this paper argues for a careful consideration of the democratic potential of the new information ecosystems, and points out specific points of hope and models of optimism that can guide our global future toward a more just state, opening possibilities without sacrificing the granularity of the local, the specific, and the experimental.

## Day Two: Friday, 7 January 2005, 7 pm

### **US Path to Wealth and Power: Intellectual Piracy and the Making of America**

Doron Ben-Atar  
*Fordham University, New York*

During the first decades of America's existence as a nation, private citizens, voluntary associations, and government officials encouraged the smuggling of European inventions and artisans to the New World. These actions openly violated the intellectual property regimes of European nations. At the same time, the young republic was developing policies that set new standards for protecting industrial

**Siva Vaidhyanathan**, a cultural historian and media scholar, is the author of *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity* (New York University Press, 2001) and *The Anarchist in the Library* (Basic Books, 2004). Vaidhyanathan has written for many periodicals, including *The Chronicle of Higher Education*, *The New York Times Magazine*, *MSNBC.COM*, *Salon.com*, *openDemocracy.net*, and *The Nation*. After five years as a professional journalist, Vaidhyanathan earned a PhD in American Studies from the University of Texas at Austin. He has taught at Wesleyan University and the University of Wisconsin at Madison, and is currently an assistant professor of Culture and Communication at New York University.

**Doron Ben-Atar** is professor of history at Fordham University and co-director of "Crossroads of Revolution to Cradle of Reform: Litchfield Connecticut 1751-1833". He has won numerous grants and awards, including most recently from the Dorothy and Lewis B. Cullman Center for Scholars and Writers at the New York public library. He is the author of numerous articles and a guest speaker on radio and television stations in the New York area. Ben-Atar's books include *The Origins of Jeffersonian Commercial Policy and Diplomacy* (Macmillan, 1993), *Federalists Reconsidered* (University Press of Virginia, 1998) and *Trade Secrets: Intellectual Piracy and the Origins of American Industrial Power* (Yale University Press, 2004).



innovations. The American patent law of 1790 restricted patents exclusively to original inventors and established the principle that prior use anywhere in the world was grounds for invalidating a patent.

But the story behind the story is a little more complicated. Leaders of the developing world would be wise to look more closely at how the American system operated in its first 50 years. In theory, the United States pioneered a new standard of intellectual property that set the highest possible requirements for patent protection-worldwide originality and novelty. In practice, the country encouraged widespread intellectual piracy and industrial espionage. Piracy took place with the full knowledge and sometimes even aggressive encouragement of government officials. Congress never protected the intellectual property of European authors and inventors, and Americans did not pay for the reprinting of literary works and unlicensed use of patented inventions.

What fuelled 19<sup>th</sup> century American boom was a dual system of principled commitment to an intellectual property regime combined with absence of commitment to enforce these laws. This ambiguous order generated innovation by promising patent monopolies. At the same time, by declining to crack down on technology pirates, it allowed for rapid dissemination of innovation that made American products better and cheaper.

## Day Three: Saturday, 8 January 2005, 7 pm

### Magna Carta and the Commons

Peter Linebaugh  
*University of Toledo, Ohio*

At best, the Magna Carta has been ignored as a medieval document of little relevance to the modern world. At worst, it has been derided as a false facade of liberal intention by Anglo imperialism. Partly as a result of this neglect, fundamental protections against tyranny and aggression have been eroded, such as habeas corpus, trial by jury, prohibition of torture, and due process of law. These cannot be restored without the root and branch recovery of the entire Charter of Liberty which includes the Charter of the Forest. This lost but extraordinary document holds a constitutional key to the future of humanity insofar as it provides protections for the whole earth's commons, particularly its hydrocarbon energy resources, whether these take the form of wood, coal, or petroleum. The key is turned by the women of the planet in Mexico, Nigeria, India (to name a few places) who have taken the lead in the process of re-commoning what has been privatised and profiteered. Hence, the significance of "widow's estovers" in the Magna Carta as revised after 9/11!

**Peter Linebaugh** is Professor of History at the University of Toledo in Ohio. He is the author of *The London Hanged*, co-author of *The Many Headed Hydra*, an editor of *Albion's Fatal Tree*, and forthcoming studies of the Irish insurrectionist Edward Despard, as well as Magna Carta.

Schooled in London in the 1940s, tested in Cattaraugus (New York) and Muskogee (Oklahoma) during the 1950s, he finished secondary school at the Karachi Grammar School, before matriculating at Swarthmore College, the liberal, Quaker, college in Pennsylvania. Active there in the civil rights struggle, he then removed to Columbia University in New York until anti-war upheavals of May 1968 when, shaking the dust from his feet, he joined E.P. Thompson at the Centre for the Study of Social History at the University of Warwick. An educator who respects the organizer and the agitator, he has published in *The Nation*, *Viet-Report*, *New Left Review*, *Times Literary Supplement* and *Midnight Notes*. His occasional essays may be read on [www.CounterPunch.org](http://www.CounterPunch.org).



Sarai-CSDS and ALF Collaboration



ALF and Sarai came together on the cross-disciplinary collaborative research project 'Intellectual property and the Knowledge/Culture Commons' in March 2002. Despite our diverse backgrounds, we recognize the central role that intellectual property laws play in the globalised 'knowledge economy', and that in the near future intellectual property will be one of the most significant sites of conflict over the production and control of knowledge and culture.

The emergence of new digital environments and low-cost methods of replication and proliferation have transformed contemporary media experiences. Millions of people now have access to some form of communication technology, resulting in serious social conflicts around property rights over films and music in digital formats. Further, the emerging interface between communications technology and software is being registered at the ground level more than ever before: the entire VCD and mp3 copy industry is software driven. On the one hand, if cheap copy culture has broadened people's access to communication and media forms, the new TRIPS-based international legal regime seeks to restrict and regulate access by stronger laws and increased enforcement, using dramatic raids and high profile court cases.

In this fast-changing scenario, there is not a single social science study on the impact of intellectual property law on the expansion of media access or how this has transformed daily life in India. The discourse on intellectual property law is dominated by consultancy firm reports on piracy, the rhetoric of legal firms committed to an increasingly unsuccessful enforcement regime, and dramatic journalism documenting intellectual property violations. As a result, the entire debate on intellectual property (policy, legislation and newspaper reports) rests on an extremely thin research base. Not surprisingly, this discourse is silent with regard to the complex and unequal social arrangements that shape media and computer cultures and meanings in the localities and streets of urban India, where so much of media is consumed and distributed.

**The ALF-Sarai project combines social science, ethnographic and legal research to explore the following areas:**

>How intellectual property issues have been shaped by social and cultural practices around communications technologies in contemporary India. These include the new urban networks and markets that allow easy distribution and exhibition of a new constellation of media products: video CDs and DVDs, audiotapes and CDs, media software and cable television.

>The nature of the legal regimes emerging around IPL: policy change, law enforcement and piracy debates, dramatic enforcement efforts, emerging jurisprudence in the lower courts, and the lobbying by law firms around IPL.

>Legal innovations to overcome the limits of US-style enforcement, and to creatively address the large informal networks of media distribution in India. These include public domain architectures, open licences and





registries, and a dialogue with open source practices. We seek to read licences, not merely as legal documents but as cultural documents. We will attempt to survey the various innovative licensing mechanisms that have arisen after the GNU/GPL.

## The Public Domain

### Pedagogical Initiatives

The first serious challenge to redefine the idea of a collaborative community came in the form of the free software and open source movements, which saw the development of the operating system GNU/Linux through contributions by thousands of programmers across the world. Taking our inspiration from the open source movement, we examine the following questions:

- >How can we attempt to replicate the open source model in the social sciences and in legal scholarship?
- >What does it mean to create a community of researchers in significant contemporary legal areas?
- >How do we sustain such a community?

## We have been experimenting with the following forms

### Critical Public Legal Resources (CPLR)

We seek to create a body of critical resources for the legal research community, through the compilation of cases and other readings collated collaboratively. The idea is similar to the way in which the source code for GNU/Linux grew, namely, contributions by academics, students and other users from different disciplines. These materials will be available as traditional resource books as well as online. The first set of these public resources will be on the three core areas of intellectual property, viz. Copyright, Trademarks and Patents. These resources will also include specialised areas for which individuals can take editorial responsibility.

### Media Archive

This will host a large body of ethnographic and other materials from fieldwork relating to film, cable TV, music and software networks. It will include interviews, media materials, court documents and affidavits, background materials for critical cases on IP, and documentation of advocacy groups working in the field of intellectual property.





## Engaging the Public

It is critical for ALF & Sarai that we build a strong community that contributes to the debate on intellectual property and contemporary practices. We maintain an email discussion list [commons-law@sarai.net], that over the past three months has seen an active community developing around the issues of intellectual property and the public domain. The list archive contains interesting debates on culture and IP in India and the world, and is available at <http://mail.sarai.net/mailman/listinfo/commons-law>

## Previous ALF-Sarai Events

### **"The Daily life of Intellectual Property Law"**

December 2002 Workshop, Delhi  
<http://www.sarai.net/events/ipl/ipl.htm>

### **"New Technologies, Social Knowledge and Intellectual Property Law"**

(in collaboration with Hivos, Bangalore)  
November 2003 Workshop, Delhi

### **"Social Practices and Intellectual Property Law"**

July 2004 Workshop, Bangalore



**Sarai-CSDS** is South Asia's first public initiative on urban culture, media and daily life. Established in 2000, Sarai includes both scholars and practitioners who collaborate with the wider community in generating critical research insight and knowledge in the public domain. The past few years have witnessed the explosive growth of a new urban media culture in India, transforming the terms of popular culture as it is lived at the level of everyday life. Sarai is an effort to understand and creatively intervene in this new media space. Sarai is a programme of the Centre for the Study of Developing Societies in Delhi, one of India's best-known research centres, with traditions of dissent and a commitment to public intellectual discourse. [www.sarai.net](http://www.sarai.net)

**Alternative Law Forum (ALF)** is an important reference point for critical legal practice in India. Its activities include *pro bono* litigation, alternative dispute resolution and research. In 2001 ALF organized India's first Alternative Lawyering Conference in Bangalore which witnessed presentations by leading civil liberties, *adivasi* rights, and feminist lawyers among others. ALF is made up of a team of young practitioners, academics and researchers whose greatest challenge is to experiment with various creative forms of engaging the law, both within its own terms as well as interrogating it from an interdisciplinary approach. The IPL project is one among ALF's most significant research projects.

[www.altlawforum.org](http://www.altlawforum.org)

**The Public Service Broadcasting Trust (PSBT)** represents the confluence of energies to shape the contours of public broadcasting in India in a manner that validates the public nature of the media in our society. It is an attempt to foster a shared public culture of broadcasting that is as exciting and cutting edge, as it is socially responsive and representative of democratic values. In seeking to do this, PSBT seeks to situate a new vocabulary and activism at the very heart of broadcasting in India.

[www.psb.org](http://www.psb.org)



## Student Stipends for Research on Inequalities, Conflicts and Intellectual Property

The Sarai Programme of the Centre for Study of Developing Societies, Delhi, and Alternative Law Forum, Bangalore, have selected 16 students from various disciplines (law, history, literature, media, anthropology, sociology, politics, philosophy, economics, programming, etc.) to participate in the student workshop which precedes the conference, and act as public rapporteurs. These students will make public postings about the debates that emerge during the conference. We encourage students to write interdisciplinary essays which display a careful attention to the thematics of the conference, rather than academic essays.

### Credits

#### Conference Editors

Lawrence Liang  
Sudhir Krishnaswamy  
Ravi Sundaram  
Jeebesh Bagchi

#### Conference Coordinator

Prabhu Ram

#### Conference Production

Ashish Mahajan

#### Print Design

Mrityunjay Chatterjee

#### Conference Organisation

Everyone@Sarai

#### Documentation Team

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Mayur Suresh  
Aarti Sethi  
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#### Free Media Lounge

Monica Narula (Coordinator)  
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Vivek Aiyer  
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