Recontextualizing Copyright: Piracy, Hollywood, the State, and Globalization

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Abstract: Drawing on theories of the state, networks, and globalization, this article examines issues of transnational copyright governance. Also under examination are the role of the state in its relations with transnational trade and legal regimes, Hollywood's struggle in fighting piracy, and the impact of digital technology on the market.

The rapidly changing environment of copyright regulations highlights the increasing importance, centrality, and complexity of the issues surrounding intellectual property (IP) for economies worldwide. This evolving environment is also an indication of how transnational corporations and industrial states are striving to maintain control over property and markets in the face of technological challenges and changes.

This article focuses on Hollywood's global film practices as they relate to issues of piracy and copyright. Because of its reliance on the operations of distribution networks and windowing strategies for its global dominance—that is, the sequencing of films through different exhibition outlets and the use of price-differentiation approaches—and because of its unique market structure, Hollywood provides an important case study for the examination of issues of copyright, technology, piracy, the state, and globalization. The crucial role the Motion Picture Association of America (MPAA) plays in shaping national and international trade policies and antipiracy efforts further underscores Hollywood's unique involvement in the copyright debate. By selectively reviewing existing IP literature and drawing on theories on the state, networks, globalization, and space, I hope to (1) survey and contextualize the complexity of film copyright and piracy issues; (2) examine issues of technology, power, and space pertaining to copyright and piracy; (3) review and theorize on the dynamics of state and transnational trade and IP regimes; and (4) critique the inadequacy of existing theoretical approaches while arguing for a process- and network-oriented spatial theoretical framework.

An examination of piracy, copyright, and the film industry would not be complete without situating these issues in the larger contexts of power, technology, and the networking logic of globalization. Following John Frow, Saskia Sassen,
and Simon Bromley, I contend that the state is very much an active participant in the processes of globalization in general and of global IP and information technology (IT) policy making and negotiations in particular. Drawing on Scott Lash and John Urry, I also argue that consumers are reflexive “agents of aestheticization,” as opposed to passive recipients, in their consumption of pirated goods and, hence, in their complicity in piracy.2

Background. One of the most significant developments of U.S. copyright regulation was Congress’s enactment of the Digital Millennium Copyright Act (DMCA) in 1998. As its name suggests, the DMCA addresses digital technology-related copyright issues that were not covered by prior legislation. One of the first and most important legal proceedings following passage of the act was the DeCSS case, in which the Motion Picture Association of America accused Eric Corley (a.k.a. Emmanuel Goldstein), editor of 2600: The Hacker Quarterly, of posting the DVD decryption code DeCSS on the Internet.3 The U.S. District Court ruled in favor of the MPAA on August 17, 2000, declaring that posting the code was a violation of the DMCA. This ruling has grave implications regarding questions of access, free speech, and ownership in the “digital millennium.”

On the global level, the World Trade Organization’s agreement on trade-related aspects of intellectual property rights (TRIPS) includes basic trade and international IP principles, protection, enforcement, dispute settlement, and transition arrangements. It also dictates that all state laws of its member countries (including developed countries, developing countries, and transition economies, as well as “least-developed” countries) must conform to the TRIPS agreement by 2006.4

The Uruguay Round of the negotiations over the General Agreement on Tariffs and Trade (GATT), which led to the creation of the World Trade Organization (WTO) and (under the auspices of the WTO) to TRIPS, marked a new era in transnational trade in general and in IP regulation in particular. Not only did the Uruguay Round build IP protection into the fabric of GATT itself but TRIPS also established the highest level of IP protection in an international agreement.5

These transnational and national legal developments are inextricably linked. They epitomize not only the centrality of knowledge and IP in global trade but also reveal complex issues that require critical examination and contextualization, including questions of control, power, and access in a digital age; the intricate relations among technology, content, and distribution; the implications of optical disc and online piracy for Hollywood’s global operations; the significant role the MPAA plays in American as well as global trade policy making; the dynamic relations between the state and transnational regimes; and the changing roles of the state in a global environment. Copyright and piracy therefore provide a critical site where multiple issues play out and where such matters can be examined. As James Boyle argues, the “sanctity of intellectual property” has replaced earlier issues of international importance in playing an iconic role in the making of the developed world’s foreign policies, while “piracy of intellectual property”
will replace nationalization as the main fear of developed countries for the next fifty years.6

According to Lash and Urry, the increasing dominance of copyright industries in global trade is symptomatic of a “new kind of structure,” an “economy of signs and space,” or a “decentered set of economies of signs in space,” where traded and circulated objects are merely signs—postmodern and postindustrial objects emptied of meaning and material content, marked by increased mobility within the information structure.7 The control of intellectual property rights is therefore crucial since what constitutes the global economy of signs is the trading of the rights to control those signs.

In theorizing on the rise of the network society, Manuel Castells advocates “informationalism” and an information technology paradigm. He argues that the current global economy is “informational” rather than simply “information-based,” because “the cultural-institutional attributes of the whole social system must be included in the implementation of the new technological paradigm. According to Castells, this informational economy is based increasingly on the emergence of an industrial culture characterized by a “new social and technical division of labor” and not simply on the use of new sources of energy for manufacturing.” Castells views this new economy as distinct from the traditional industrial economy but not opposed to its logic. Indeed, he sees the new global economy as subsuming the industrial economy and therefore as both capitalist (in terms of production) and informational (as a mode of development).9 In this context, power exists in the space of flows.

While Castells’s theorizing is not without its totalizing and deterministic technology bias, it sheds light on some of the most important characteristics of the structure of the new global economy. If indeed this economy is informational, postindustrial, and postmodern as Castells and Lash and Urry have argued, then it is crucial to examine how markets and property are organized; how information technologies and the ensuing networking logic have impacted the patterns of production, distribution, and exchange; the role of consumers in such structures; how the state is implicated in this structure; and how and where power is constituted.10

The current literature on intellectual property rights pertaining to media and economic globalization has been valuable in advancing our understanding of IP issues. However, most of these works focus on issues of technology, making them one-dimensional in their approach.11 With a few exceptions, these works also tend to be descriptive and diagnostic, rather than theoretical and critical. Finally, most of these works fail to differentiate among different types of intellectual property rights and, within the domain of copyright, among industries. Such distinctions are crucial, in that the theoretical and practical implications for each industry are vastly different.

**Copyright, Piracy, and the Film Industry.** Intellectual property can be divided into two categories: industrial property (which includes inventions, patents, trademarks, trade secrets, and industrial designs) and copyrights. Copyrights
cover “original works of authorship fixed in any tangible medium of expression, which includes inter alia literary, musical, scientific, dramatic and artistic works, and sound recordings.” Two points are worth noting here. First, copyrights protect only the expression of ideas not the ideas themselves. Copyrights therefore favor publishers and distributors, not authors. Second, with the development of digital technology, “works of authorship” are no longer fixed in any tangible medium of expression. Content is thus separated from a medium, giving rise to opportunities for piracy as well as to the DMCA, which was passed in an effort to curb the piracy problem.

According to the 2002 International Intellectual Property Alliance (IIPA) “Copyright Industries in the U.S. Economy” report, copyright industries continued to be one of the fastest-growing segments of the U.S. economy for the eleventh straight year. There are two classifications of copyright industries: (1) the core copyright industries, which include those that create copyrighted works as their primary product: the motion picture industry; the recording industry; the music publishing industry; the book, journal, and newspaper publishing industry; the computer software industry; as well as legitimate theater, advertising, and the radio, television, and cable broadcasting industries; and (2) the total copyright industries, which encompass the core industries plus portions of other industries that either create, distribute, or depend on copyrighted works, such as retail trade (e.g., sales of video, audio, software, and books), the doll and toy industry, and computer manufacturing.

Based on three economic indicators—value added to gross domestic product (GDP), share of national employment, and revenues generated from foreign sales and exports—the 2002 report details the economic importance of the copyright industries. In 2001, the core copyright industries contributed an estimated $535.1 billion to the U.S. economy, accounting for approximately 5.24 percent of GDP. The total copyright industries contributed an estimated $791.2 billion to the U.S. economy, accounting for approximately 7.75 percent of GDP. In terms of the real annual growth rate, the core copyright industries have been growing at more than twice the growth rate of the economy as a whole; between 1977 and 2001, average growth rates for the core copyright industries were 7 percent, versus 3 percent for the rest of the U.S. economy. The film industry experienced a much greater rate of growth—close to 100 percent in five years, from $21.5 billion in 1985 to $40 billion in 1990. The annual growth rate in the 1990s was comparable to that of the copyright industries’ average (between 6 and 7 percent for the period 1993–1997).

According to the above-mentioned report, the copyright industries’ foreign sales/exports are also more significant than they are in almost any other leading industry sector. For 2001, for instance, the copyright industries’ foreign sales exceeded the foreign sales for the automobile and automobile parts industries combined, as well as foreign sales in the agricultural sector. The film industry’s foreign sales represent roughly 10 percent of the foreign sales of the core copyright industries.

According to the 1998–2002 IIPA “Special 301” Recommendations, total losses to piracy were estimated at $10.4 billion in 1998, $8.54 billion in 1999,
$8.1 billion in 2000, and $8.38 billion in 2001, while total losses in the motion picture industry were $1.42 billion in 1998 (close to 14 percent of the total copyright industries’ losses), $1.32 billion in 1999 (more than 15 percent of the total losses), $1.22 billion in 2000 (15 percent of the total losses), and $1.29 billion in 2001 (15.4 percent of the total losses).

While the copyright industries have indeed suffered huge profit losses due to piracy, the accuracy and validity of the above estimates are questionable. Because illegal sales and distribution are private acts, the data are extrapolated from very limited information. Furthermore, it is problematic to assume that each illegal copy would displace a sale at standard market prices. Finally, the estimates are based on reduction in “gross revenues” rather than on net loss to the industries.16

Like other copyright industries, the film industry faces an appropriability problem. When the costs to develop a product are high and the costs to reproduce that product are low, there is a high investment-to-reproduction ratio.17 In addition, because of the capital intensiveness and the enormously high barriers to entry into the film industry, the seven film studios that dominate production and distribution represent 90 percent of the industry’s total revenue.18 To recoup the high costs, the major studios have to rely on markets overseas.

Hollywood has been an international industry since the 1920s. According to Variety, today roughly 65 percent of all seven majors’ total box-office income comes from international box-office sales.19 The importance of foreign markets has made centralized distribution essential to overseas operations of the major studios.20 Piracy and copyright infringement can be incapacitating. The key to profit making and the solution to the appropriability problem is copyright protection. When exclusivity and monopoly arrangements are established for the creators, the rights holders and the distributors profit. The windowing strategies practiced by Hollywood are possible only with proper copyright protection, since market extension relies on the transfer and ownership of exclusive rights to reproduction, distribution, performance, and display. That less efficient means of distribution in terms of copyright exclusion normally appear at the end of the cycle or release sequence attests to the importance of copyright exclusion and protection.21

Referring to itself as “a little State Department,” the Motion Picture Export Association of America (MPEAA) became the MPAA’s international arm. It was formed in 1945 to “reestablish American films in the world market, and to respond to the rising tide of protectionism resulting in barriers aimed at restricting the importation of American films.” The MPAA began referring to itself as the Motion Picture Association (MPA) in 1994 to “more accurately reflect the global nature of audiovisual entertainment in today’s international marketplace.”22 The MPA prides itself on having expanded its operations to cover not only film and cultural activities but also those in diplomatic, economic, and political arenas. The MPA has historically worked closely with the U.S. Department of Commerce and other trade and foreign policy offices. Will Hays, for example, argued as early as the 1920s that trade no longer followed the flag but “the film.”23 Jack Valenti, MPAA and MPA chairman, has been a leading figure in the copyright industries’ antipiracy efforts.
He worked closely with the U.S. trade representative during the Uruguay Round of GATT negotiations and has made fighting “earthbound and cyberspace” piracy his highest priority for the global operations of the MPA.24

In the new global informational economy of signs, intellectual property has indeed become the real property. Copyright becomes the “main form of capital” since a major source of the copyright industries’ profit comes from the copying and selling of its copyrights.25 This new postindustrial structure has implications for relations of production and distribution, since what is being exploited internationally is no longer exclusively labor but capital in the form of copyright.26

**Hardware, Software, and Floating Content: Power and the Digital Challenge.** Issues of piracy and copyright protection have always been closely connected to technology. The origin of literary property rights, in the sixteenth century, was tied to the development of the printing press.27 But just as the development of technology is instrumental in establishing capitalist market expansion, technology can also seriously undermine and challenge the critical need to command space and control time when used by pirates. Power, in this mode of late-capitalist expansion, thus lies in the capacity to overcome constraints of both time and space.28 That digital technologies have the capability to erase space and reward speed has significant implications for issues of control and power.

It may be premature to declare that “the power of flows” has taken precedence over “the flows of power,”29 since electronic and digital spaces are inevitably embedded in social spaces, but the “tyranny of real time” afforded by digital technologies has overcome the “tyranny of distances.” There are no fixed trajectories in the space of flows.30

Speed becomes a major goal of, and a challenge to, participants in the global informational structure. Speed is also one of the factors determining the success and prevalence of the piracy networks. Viewed in this context, the windowing strategies practiced by Hollywood help manage time and control speed through space so as to minimize the threat posed by new technologies. Despite these efforts, however, technologically savvy pirates and their ever-more-efficient and flexible networks have seriously undermined the studios’ control.

Piracy emerged as a problem for the U.S. film industry in the late 1970s when Sony introduced its consumer-grade VCR. Video piracy became a more serious concern in the early 1980s when Hollywood realized that a market existed for pirated videos wherever there was hardware capacity. In Ronald V. Bettig’s 1996 study of copyright and the political economy of IP, he listed some of the factors contributing to video piracy in Asia and the Middle East: lack of IP laws and weak enforcement of existing laws; minimal participation in bilateral and multilateral international IP agreements; a proliferation of recording technologies; underdeveloped local production industries; and public demand for content resulting from screen quotas, state-controlled broadcasting, or censorship.31 While most of these issues are still relevant today, the development of digital technologies has increased the scale of piracy and intensified the complexity of these issues. In the case of the VCR, the technology affords consumers the means to enjoy time-shift recording
and content sharing and enables pirates to easily duplicate and distribute copies on a mass scale. In the case of digital technologies, the potential for piracy has been radically transformed.

When information is stored digitally, content is liberated from the medium and all that flows (or floats) to the recipient is the information. The costs of reproduction accordingly decrease and the volume and speed increase, while quality remains unchanged with each generation of duplication. Optical disc and online piracy have become major threats to the film, music, and software industries precisely because of the low cost, high speed, and extraordinary quality of the copies and the ease of distribution. Furthermore, as the potential for digital production and online delivery and distribution has increased, the need for intermediaries (e.g., distributors, publishers, etc.) has decreased, creating the possibility of “disintermediation” whereby creators (and pirates) and consumers are able to connect more directly. Digital information and technologies as well as computer networking logic are revolutionizing and radically transforming the economics and character of information production, distribution, and reception/consumption.32

With the progressive devaluation of the medium and the hardware, and the increasing costs and overvaluation of content and software, content is further decontextualized33 and access to, and ownership of, content becomes ever more crucial.34 But when information is stored digitally, access inevitably means copying. Complete control of copying therefore means control of access. Technical protection measures, such as cryptography (e.g., encryption), thus become a logical mechanism whereby the copyright industries can control access to their content. The goal of encryption is to scramble information so that it is not readable or usable until it is unscrambled or decrypted. Here “access” means whether one can “read” the document, whereas “use” focuses on what one does with it.35

It is illuminating, then, that included in the DMCA were two anticircumvention regulations: (1) an access-control provision, which outlaws circumventing technical protection measures used by rights holders to control access, thereby making it illegal to break an encryption (such as the Content Scramble System or CSS licensed to DVD hardware manufacturers by the DVD Copy Control Association) and (2) antidevice provisions, which outlaw devices designed to circumvent technical protection measures.36 The DMCA indirectly encourages the entertainment industries to use encryption to protect their products while criminalizing efforts to break codes and to possess tools designed for that purpose.37 The court decision on the aforementioned MPAA–DeCSS case was based on these provisions. The implication was that in the digital era control over access far outweighs the importance of free speech.38

DVDs are manufactured with a code that enables consumers to view the DVD only on DVD players sold in a particular geographic area. Thus, in a given region, viewers are prevented from playing a DVD sold in another region. There are currently eight DVD zones: Zone 1—Canada, U.S., and U.S. territories; 2—Japan, Europe, South Africa, and the Middle East (including Egypt); 3—Southeast Asia and East Asia (including Hong Kong); 4—Australia, New Zealand, Pacific Islands, Central America, Mexico, South America, and the Caribbean; 5—the former Soviet
Union, the Indian subcontinent, and Africa (as well as North Korea and Mongolia); 6—China; 7—reserved and not yet in use; and 8—special international venues (airplanes, cruise ships, etc.).

Electronic networks have made worldwide distribution inexpensive and very fast for both legitimate holders of rights to content and pirates. Global audiences, more and better informed about new releases in the U.S. by instantaneous Web-casting, have become less willing to wait for local theatrical releases, creating an instant market for pirated products.\textsuperscript{39} The speed of digital networking also has consequences for law enforcement (and thus for the state), since global pirate (and other criminal) networks usually have much more efficient and flexible operations than their legitimate counterparts.\textsuperscript{40}

\textbf{The Global Context: Transnational Regimes and the State.} In the world of legitimate (transnational corporations) and illegitimate (global, regional, local pirates) distribution networks and of transnational copyright regulations, what becomes of the state? Has its sovereignty been further eroded with the signing of TRIPS and through accession into the WTO? Has the state become simply “one node in a wider network of private and public, legal and illegal, powers”?\textsuperscript{41}

With the move toward a global information society, the IP regime has been increasingly globalized through the WIPO, the WTO, and TRIPS. More specifically, the establishment of TRIPS under the auspices of the WTO attests to the expansion of global copyright issues into the arena of global trade (as opposed to only international legal regimes).\textsuperscript{42} Also important has been the role U.S. intellectual property industries played in the Uruguay Round of GATT negotiations and later in TRIPS. The interests and requirements of the IP industries were foregrounded in these various negotiations. That there are no international laws per se, only agreements and treaties governing global copyright protection, further complicates the situation.\textsuperscript{43}

Regardless of how far reaching the TRIPS or WIPO agreements are, their success in protecting copyrights still lies in the effectiveness of individual national laws and enforcement; hence, the nation-state still plays a crucial role in transnational copyright governance. Additionally, although trade forums such as the WTO further erode state sovereignty, the state is not completely without leverage in how it negotiates its position vis-à-vis global trade and IP issues. A case in point is China’s trade and IP negotiations with the U.S., as demonstrated in the passage of Permanent Normal Trade Relations (PNTR) with China in 1999–2000 and in the country’s accession into the WTO. China’s tough stand in restricting the import of Hollywood films illustrates some of the possibilities for Third World countries to resist piracy within their borders.

Frow describes the postwar period as one defined by a struggle for dominance between two opposing models of international information and knowledge governance: the development model versus the trade model, with the former represented by the New World Information and Communication Order (NWICO), along with such regimes and organizations as the WIPO and UNESCO, and the latter represented by TRIPS, along with the WTO, the International Monetary Fund (IMF),
and the World Bank. With the defeat of the NWICO in 1985 (when the U.S. withdrew from UNESCO) and the ratification of TRIPS in 1995, the trade approach has clearly become the dominant model for governance of global IP issues.

While Frow’s examination is insightful and illuminating, and while it is true that the development and dominance of global trade regimes in regulating worldwide IP issues has been very significant, Frow’s views raise some key questions. First of all, as much as a large bloc of Third World nations espoused the formation of the NWICO, and as much as the WIPO and UNESCO embody a “development” component in their operations, it would be wishful thinking to believe that these entities were established with a true development orientation in mind. Mark I. Alleyne, for example, points out that from the outset the United Nations was set up to promote a specific international order, not to promote justice or equality as a development model would suggest. Furthermore, the U.N. holds that only nation-states are legitimate full U.N. members. Because of the one-nation, one-vote system, a few powerful states dominate the decision making.

According to Alleyne, an elite group of nations has been able to exercise its power and influence in two major ways: (1) to dominate in matters of technical expertise and therefore to represent majority positions on technology-related committees and (2) to garner financial support from international bureaucratic organizations. The NWICO, founded in 1976, was not a well-defined or coherent reform movement, especially compared with its economic counterpart the New International Economic Order (NIEO), established two years before.

As mentioned earlier in this article, the Uruguay Round of the GATT negotiations drastically changed the structure of global copyright governance. Before the Uruguay Round, international IP rights were governed by “obscure administrators at the World Intellectual Property Organization (WIPO) and its predecessors,” while trade diplomacy was conducted by “high-profile trade and economic ministers at the GATT forum.” Since the Uruguay Round, international IP governance has been regulated mainly through TRIPS.

Instead of defining the changes in international copyright governance solely in terms of competition for dominance between the development and the trade models, it might be more fruitful to treat such a crucial shift as a move toward the convergence and integration of functionalism and linkage-bargain models. According to Michael P. Ryan, the WIPO, being a function-specific U.N. agency, is the “law creation mill,” while the WTO, as a linkage-bargain trade regime, “fixes the breakdowns.” Further, because the making of international IP laws is viewed as both function-specific and linkage-bargain diplomacy, it makes sense for policy makers to use both the WIPO and the WTO forums. The role of the state vis-à-vis the global is far more implicated in such a framework, while the tension (between North and South, the local and the global) is much more pronounced.

In Ryan’s view, the GATT forum was much preferred by the U.S. trade diplomats over the one-nation, one-vote WIPO regime for governing global IP rights, mainly because of the GATT’s linkage-bargain forum and its economic power-based decision-making structure. Theoretically, such linkage-bargain and deep-integration diplomacy (i.e., “harmonizing the policies and laws of developing countries
with those of the global community could lead to unprecedented multilateral agreement on IP concerns, which WIPO treaties could not. For example, under such linkage-bargain agreements, developing countries could provide universal minimum IP protection standards and relax foreign direct-investment restrictions (that industrialized countries normally demand) in exchange for much-needed breaks and reductions in tariffs on, for example, apparel and agriculture. The United States would therefore be instrumental in expanding intellectual property rights into what is ostensibly a trade issue.

Under the leadership of the MPAA, the U.S. copyright industries created the IIPA in 1984 to strengthen international copyright protection. The main strategy of the IIPA was to support an agenda for the U.S. trade representative’s Section 301 mandate. The bilateral Section 301 strategy increased enforcement (by adding sanctions) in developing countries.

As Ryan has clearly pointed out, the formation of the IIPA and of its bilateral (e.g., Special 301) and unilateral (e.g., economic sanctions and other retaliatory measures) preferences, through the GATT and the WIPO, were greatly influenced by Hollywood. Based on the IIPA Special 301 Recommendations and under the 1988 Omnibus Act, the U.S. trade representative announced which countries were to be identified under Special 301. In addition to countries already subject to 301 discipline or those that were being monitored under Section 306 of the Trade Act, the U.S. trade representative listed TRIPS copyright cases, “potential priority” foreign countries, “priority” foreign countries, “priority watch list” countries, “watch list” countries, and “special mention” countries according to the severity of the offenses and whether the countries had at least begun to “solve their copyright protection deficiencies, improve enforcement, and dismantle market access barriers.” The unilateral trade retaliations and bilateral Section 301 and Special 301 actions undertaken by the U.S. trade representative have proved to be a useful tool in securing better IP protection overseas and in removing trade barriers.

Global financial and media markets need to be viewed as “social constructs” and “products of regulation” that have been established with “particular speeds, balances of forces, and degrees of openness.” With TRIPS’s linkage-bargain and deep-integration orientation, states now need to bargain not just with other states but with domestic groups, making concessions while redefining the importance of various issues to domestic policy makers. Under TRIPS, then, the key to achieving international agreement is to get “the right mix of issues on the table so that previously unrelated issues can be linked.” Consequently, the emerging global interdependence under the GATT and the WTO appears to have further eroded state sovereignty by demanding a wide-ranging restructuring of trade policy in exchange for trade benefits and advantages from industrialized countries. As Sassen has pointed out, by participating in the implementation of globalization, the role of the state is being transformed. Many governments are reconsidering traditional foreign policy regarding global trade, environmental, and economic issues. By adhering to the WTO agenda, governments are also placing the principle of free trade above all other criteria. Thus, what Sassen terms a “strategic geography” or
a “new geography of power” is related to an “unbundling of national territory,” caused partly by the emergence of the new global economy, the ascendance of legal regimes, and the growing importance of electronic space.

The crucial question then is, Does the institutional order of the capitalist economy and the state necessarily have to be treated in constant-sum terms, “assuming that any increase in power in one sphere implies a diminution in the other”? Why could it not be treated, as Bromley has suggested, as both a constant-sum phenomenon in some respects and as a positive-sum phenomenon in others, since power can be both competitive and collective? Nations derive their power from being members of a system of states, while regional and international organizations do not always represent an erosion of sovereignty as much as a form of multilevel consolidation. In the case of copyright governance and TRIPS, for example, state power is indispensable and instrumental not only in implementing and enforcing international agreements but also in negotiating and maneuvering positions vis-à-vis transnational regimes and regional and domestic influences (both legitimate and illegitimate) while shaping national policies pertaining to the working of information structure.

**Toward a Process- and Network-Oriented Theoretical Framework.** At first glance, the increasingly trade-oriented global governance of copyright and the further subjugation of the state to global trade regimes seem to point to certain inevitable conclusions about the formidable power of transnational capital as represented by copyright industries, the embeddedness of technology and transnational legal and trade regimes under capitalism, and the still firmly entrenched North-South divide. Political economists have pointed to the inherent bias of ownership and control and the ensuing inscription of information, technology, and laws into “the political, economic, and social relations of capitalism.” A deeper look, however, reveals the complexity of the processes involved and the insufficiency of such (politico-economic) frameworks.

Because there is a growing intersection between the national and the global, and the yet-to-be-fully coopted “power of flows” (as opposed to the “flows of power”) that digital technologies can still offer, uncertainties and disorders, and hence opportunities, exist that have yet to be accounted for or realized. As a result of both the regulatory and theoretical fractures, piracy, as well as the very complex “multiple spatiotemporal (dis)orders” in the national and the global, offers interesting and intricate insights into issues of power, control, technology, network, speed, and global and national disparities.

Just as the global economy is exemplified by tensions and conflicts between an enduring architecture (e.g., infrastructure, fixity, capital, transnational regimes, and regional and global dominance) and a variable geometry (e.g., mobility, technologies, flows, informal and criminal economies, or regional and international power dynamics and vulnerability) to theorize the relations among technology, globalization, state, and copyright adequately, we need an integrated approach that addresses process rather than totality, spatiotemporal specificities as opposed to historical or epochal inevitability, and overlapping, intersecting, and ever-changing places, spaces,
and border zones in contrast to fixed and demarcated territories. After all, “globalization” as “a noun of becoming,” to use Frow’s phrase, should be treated as such and as a continual evolvement of “processes” where planning, intervention, changes, and anomalies are taken into account. Consequently, the dynamic and interconnecting relations between the state and the global deserve and require serious examination since they set up certain “contents” and “conditions.” As Sassen has pointed out, the key elements in the formulation of these conditions and contents are “the degree of economic globalization’s embeddedness in the national and the specificity and social thickness of the global.” The global economy is “something that has to be actively implemented, reproduced, serviced, and financed.”

This is not to negate political economy as a worthy area of study or as a useful tool for research. Quite the contrary. Political economy has been an especially powerful approach for assessing and critiquing the workings of the enduring architecture of global capitalism. The goal here is to point out the insufficiency and blind spots inherent in such a framework (e.g., in dealing with variable geometry, such as the fast-changing digital environment and its effects) while looking for complementary approaches and methods of inquiry.

In his study of the political economy of intellectual property, Bettig summarizes three fundamental categories of radical political-economic communications theory: (1) the economic structure of communications industries; (2) the effects of the logic of capital on the production, distribution, and consumption of culture and information; and (3) the contradictions and forms of resistance within capitalist communications systems. In other words, in this political economy, issues of copyright and piracy can only be understood in, and be reduced to, the context of a totalizing capitalistic inscription. These categories are useful in explaining the underlying structure of the global economy; however, they fail to acknowledge the cultural, national, and regional dynamics that have presented us with some of the most interesting cases of local differences and specificities. For instance, how do national and regional laws and enforcement vary? How do some newly industrialized nations maneuver their positions vis-à-vis global trade regimes? How do “late industrializers,” such as Taiwan, Korea, and China, become good learners? How do governments and consumers collude directly or indirectly with domestic as well as regional and global pirates? And how do some hardware electronics industries become actively involved in such practices and operations? Further, although Bettig acknowledges resistance within the capitalist system, in his work such resistance is subsumed in the overall logic of capital and hegemony and is hence treated only as an afterthought.

As Bruno Latour argues, concepts such as local and global are ill suited to describe networks or topologies. The continuous paths that connect the local and the global are what enable the network to function. It is important not to focus exclusively on global production and local distribution as isolated phenomena. Rather, one should look at the specific links and connections that transport and translate between the local and the global. In studying issues of copyright and piracy, it is therefore critical to review the nodes and hubs on the web (e.g., Hollywood as a central distribution network with overseas operations, transnational
regimes, and local enforcements), the directions, movements, and forces that connect these nodes and points (e.g., where piracy networks are located and how they operate in relation to legitimate networks, how legitimate as well as illegitimate informational goods are transported and translated), as well as the ever-changing alignment and configuration of the web itself (e.g., the complex and dynamic relations among state, transnational corporations, pirates, optic-disk production line makers and distributors, and consumers).

In studying issues of copyright and piracy, it would be seriously remiss to insist on there being a fixed underlying structure of global capitalism while ignoring specific middle and local specificities and anomalies that can affect or condition the network. It becomes crucial then to enlist a network- and process-oriented spatial framework to study the issues pertaining to media and economic globalization (such as copyright and piracy). Castells, for example, argues for a "new structure of power" dominated by a "network geometry, in which power relationships are always specific to a given configuration of actors and institutions." 74

Similarly, Arjun Appadurai focuses on "relations of disjuncture," in that he understands that "the paths or vectors taken by [the various flows] have different speeds, axes, points of origin and termination, and varied relationships to institutional structures in different regions, nations, or societies."75 Appadurai uses as an example of such disjuncture the media flows across national boundaries of images of luxury and well-being. Piracy can also be understood in this context. If, for example, the capability to watch a first-run Hollywood film, to wear, buy, or use certain brand-name products shown in movies, or to use the latest computer software has come to represent a certain desirable status, counterfeit products have the potential to become a cheap and easy replacement for the real—and a quick solution to a perceived cultural disjuncture or disparity.

Consumers are actively reorienting and negotiating their local existence in relation to the global, because the local is immersed in the global. As long as they are on the network, they can be reflexive learning subjects. Do I then dare to suggest that the consumers’ complicity in piracy, especially in Third World countries, is in some cases a form of local resistance and self-empowerment?

Conclusion. As copyright industries increasingly become the leading economic sectors in the West, intellectual property rights (or, more precisely, bundles of rights76) are being traded. What ensures the proper functioning of the global information economy, then, is copyright protection. Consequently, piracy becomes a major, if not the major, threat to the copyright industries.

Furthermore, contrary to international real property trade laws institutionalizing government withdrawal from markets, international IP treaties and agreements institutionalize government intervention into markets.77 As the cases show, transnational legal and trade regimes such as the WIPO, WTO, and GATT rely heavily on national laws to conform to the respective treaties and agreements. The dynamic relations between the global and the national hence become extremely intricate. The various unilateral (e.g., sanctions), bilateral (e.g., USTR and Special 301), and multilateral (e.g., WIPO, TRIPS) antipiracy strategies currently practiced.
further attest to the complexity and difficulty of ensuring copyright protection at the “local” level.

Finally, the increasing emphasis on copyright protection also points to the pivotal role digital technologies play in global trade. The rapidly changing spatiotemporal dynamics and configurations afforded by these new technologies have radically changed the nature of “property” and market, the balance of power, and the relations and means of production, distribution, and reception/consumption. The economic, technological, and conceptual separation of content from the medium thus has implications not only for piracy but also for media theory.78 These configurations and changes accentuate the urgent need for a new methodological framework, as existing theories are insufficient in examining these issues. By taking into account not only the fixed and the enduring but also the processes and the variable, a process- and network-oriented spatial theoretical framework would provide us with a much more adequate, encompassing, and timely tool for examining the complexity of, and the interconnections among, issues of copyright, piracy, the state, and globalization.

Notes

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2. Lash and Urry, Economies of Signs and Space, 15.
4. See the WTO Web site: <www.wto.org/english/thewto_e/whatis_e/agrm6_e.htm>. When TRIPS took effect on January 1, 1995, it provided “transition arrangements” of one, five, or eleven years for its member countries to fall into line: developed countries were given one year to make sure that their IP laws conformed with the TRIPS agreement; developing countries and transition economies were given five years; and “least-developed” countries were given eleven years.

5. James Boyle, Shamans, Software, and Spleens: Law and the Construction of the Information Society (Cambridge: Harvard University Press, 1996). At the urging of the U.S. trade representative, the membership of GATT agreed to include IP protection on the Uruguay Round agenda. And as a result of the Uruguay Round negotiations, the WIPO and GATT joined forces. Such changes have contributed to the further reconfiguration of the state in this new global trade environment.
10. See also Bromley’s critique of Castells in ibid., 14.


13. The IIPA is a “coalition of associations representing U.S. copyright-based industries in bilateral and multilateral efforts to open up foreign markets closed by piracy and other market access barriers.” See <www.iipa.com/html/022398_press_release.html>. IIPA member associations include the MPAA, the American Film Marketing Association (AFMA), the Recording Industry Association of America (RIAA), the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Interactive Digital Software Association (IDSA), and the National Music Publishers’ Association (NMPA).


17. See Ryan, *Knowledge Diplomacy*, and Bettig, *Copyrighting Culture*.

18. See Ryan, *Knowledge Diplomacy*. Roger Smith also analyzes the profit records of the film industry in 2000. He points out the extremely high barriers to entry into the movie business, for example, that it has taken seven years for Steven Spielberg, Jeffrey Katzenberg, and David Geffen to make DreamWorks into the first new major in fifty years (with $2.7 billion of “OPM”—Other People’s Money). Smith, “Pic Profits Defy All the Prophets,” *Variety*, January 1–7, 2001, 1, 48.


20. In the film industry, we see the practice of flexible/decentralized productions (outsourcing productions) working with centralized distribution (i.e., Hollywood majors’ global distribution networks).
21. See Barry R. Litman, *The Motion Picture Mega-Industry* (Boston: Allyn and Bacon, 1998), and Bettig, *Copyrighting Culture*.
27. See Benko, *Protecting Intellectual Property Rights*.
31. Bettig, *Copyrighting Culture*.
32. See, for example, National Research Council, *The Digital Dilemma*.
33. See Boyle, *Shamans, Software, and Spleens*.
34. An example would be how badly MGM was crippled by the sale of the bulk of its library seventeen years ago. See Smith, “Pic Profits Defy All the Prophets,” 1, 48.
36. Ibid.
38. In the MPAA DeCSS case, “free speech” comes in the form of DeCSS dissemination on the Internet. See “Freedom of Speech,” *The Economist*, August 5, 2000, 29, for a discussion of the issue and of the origin of DeCSS. In 1999, a young Norwegian programmer created DeCSS to decrypt CSS. In early 2000, Norwegian police raided the house of the sixteen-year-old Jon Johansen and confiscated his computer equipment. In the belief that information wants to be free and in the tradition of the open-source Internet community, however, DeCSS was still widely distributed. The MPAA DeCSS case would soon change that.
39. Ang Lee’s *Crouching Tiger, Hidden Dragon* (2000) is an interesting case in which the usual sequence, direction, and flow of piracy were reversed. This Hong Kong–Taiwan–China coproduction was released in Asia five months before its U.S. premiere. According to interviews in 1999–2002 with people who had purchased pirated DVDs and VCDs in the U.S. and Asia, pirated video copies of the film were circulating in the U.S. market long before the film’s formal U.S. release in December 2000.
40. In part three of his three-volume work on the network society, Manuel Castells has an extensive discussion on the operations of global criminal networks in the informational structure. Castells, *End of Millennium*, 166–205.
41. See Bromley’s critique of Castells in “The Space of Flows and Timeless Time,” 10.
42. See May, “Capital, Knowledge, and Ownership,” 246–69.
45. Because of the trade orientation and pro-North stand of TRIPS, it is viewed as imposing a definition of IP rights that are directly disadvantageous to developing countries as they
are almost always the net importers of IP rights, while countries in the developed world are the net exporters. The result is more outflow of much-needed foreign exchange in the Third World while further increasing the indebtedness of Third World countries. Furthermore, Third World countries view IP protection as having negative effects on technological development and the acquisition of expertise.

46. See Mark D. Alleyne, *International Power and International Communication* (New York: St. Martin’s, 1995). As cited in Alleyne (22), there are four functionalist outlooks: (1) all states have a harmony of interest that allows them to cooperate for mutual benefit; (2) political and technical matters can and should be separated in international relations; (3) there would be no recourse to war if economic and social welfare were achieved throughout international society; and (4) functional organizations would have a positive spillover influence on areas of international relations not yet covered by functional agencies.

47. Ibid., 30–31.
49. Ibid., 18.
50. Ibid., 141.
51. At the outset, the copyright industries did not advocate a multilateral, GATT-based diplomatic effort for fear that the U.S. might lose its economic sovereignty to a global regime. See Ryan, *Knowledge Diplomacy*, and Alleyne, *International Power and International Communication*.

52. Initially, the Trade and Tariff Act of 1974 enabled the U.S. to take retaliatory action against any country that denied it rights granted by a trade agreement or that unfairly restricted U.S. commerce. The cooperation among the copyright industries and the resulting lobbying leverage IIPA possessed led to the expansion and the change of language in the 1974 Trade Act. The Trade and Tariffs Act of 1984 extended the definition of unfair trade practices to include intellectual property rights violations. The 1984 Trade Act also empowered the U.S. trade representative to undertake annual reviews of problem countries, which could result in an investigation and subsequent trade sanctions. Under the same trade act, the U.S. president would also consider a country’s IP protection record when deciding its eligibility for the generalized system of preferences (GSP), as well as whether a country’s actions were “unjustifiable” or “unreasonable” according to Section 301. See Alleyne, *International Power*, 133. Additionally, the Omnibus Trade and Competitiveness Act of 1988 granted more power to the U.S. to retaliate against foreign trade barriers. It detailed measures through which the U.S. trade representative could investigate, identify, and retaliate against foreign countries that failed to provide adequate IP protection to the overseas operations of U.S. copyright industries. See Bettig, *Copyrighting Culture*; Ryan, *Knowledge Diplomacy*; and Jayakar, “The United States–China Copyright Dispute,” 527–61.

53. It is called the Special 301 trade policy. See Ryan, *Knowledge Diplomacy*, 71.
54. These include those with the “most onerous or egregious” policies that deny U.S. rights holders IP protection or market access. See Jayakar, “The United States–China Copyright Dispute,” 534.
56. Jayakar lists four factors that have contributed to compliance by foreign countries with U.S. pressures: (1) receipt of GSP benefits, (2) the importance of the U.S. as an export...
market and source of investment, (3) local industrial and technological competence and policies, and (4) domestic political equations. Jayakar, “The United States–China Copyright Dispute.”

58. Ryan, Knowledge Diplomacy, 12; emphasis added.
59. Sassen, Losing Control? Sassen has pointed out that even in the U.S. many people who had supported GATT did not like the idea of the WTO because it would result in the nation being bound to an international dispute-resolution tribunal that the U.S. did not entirely control.

63. Ibid.
64. See Graham and Marvin, Telecommunications and the City, 94. This book proffers four approaches to the study of relations between cities and telecommunications. Some of the discussions are applicable to the examination of global copyright issues.
65. Castells concludes that “the power of flows takes precedence over the flows of power” and argues that networking logic has induced “a social determination of a higher level than that of the specific social interests expresses through the networks.” Castells, The Rise of the Network Society, 469.
66. Sassen sees the “informal economy” as resulting from regulatory fractures and spatiotemporal disorders. Piracy, albeit not part of the “informal economy” that Sassen has discussed, can also be examined along similar trajectories of reasoning. Sassen, “Spatialities and Temporalities of the Global,” 221.
67. See, for example, David Harvey, The Condition of Postmodernity (Malden, Mass.: Blackwell, 1990); Castells, The Rise of the Network Society; Sassen, Losing Control?; and Sassen, “Spatialities and Temporalities of the Global.” Note that when Castells discussed “the architecture and geometry of the informational/global economy” (145), he was referring to the regional dominance of European, North American, and Asia Pacific countries and to the dynamic economic processes that exist among them and their respective neighboring nations. I have borrowed this conceptual distinction and rearticulated it more in the framework of Harvey’s theory on the tensions between fixity and mobility.
68. Frow, “Public Domain and the New World Order in Knowledge,” 174; emphasis added.
70. Bettig, Copyrighting Culture, 33.
71. Ryan, Knowledge Diplomacy, 149.
72. Personal interviews conducted with optical-disc production line distributors, owners of optical-disc production plants, and other industry representatives in summer 1999, winter 1999–2000, and summer 2000 in Taiwan, Hong Kong, and China. Some of the findings will be included in a book-length manuscript currently in progress.
73. Latour, We Have Never Been Modern.
74. Castells, End of Millennium, 366; emphasis added.
76. In the post–Fordist environment of flexible production, outsourcing, and vertical disintegration and during the recent waves of conglomerate merger frenzy, what becomes “core” in the culture and information industries is the exchange of finance by a given firm not just for intellectual property rights but for “a bundle of” IP rights. Lash and Urry, Economies of Signs and Space, 135. By “a bundle of” rights, they mean that,
increasingly, a number of firms would share these rights, which often come under the heading of “copyright.” The typical use of IP rights in the information and culture industries is to “copy” and sell intellectual property. Therefore, the main production process in culture and information industries is the “copying of already acquired intellectual property” (135). The protection of copyright becomes indispensable to the information and culture industries.

77. See Ryan, Knowledge Diplomacy, 12.
78. See, for example, Boyle, Shamans, Software, and Spleens.