Porous Legalities and Avenues of Participation[1]

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Piracy and the Anxiety of the Contemporary

In recent years, copyright piracy has become a subject of popular discourse, appearing as it does on a day-to-day basis in our newspapers, and on crime programs on TV. These stories of copyright piracy are narrated through the language of statistics and figures and the narrative strategy of excess, designed to induce a 'shock and awe' response at the alarming rate of piracy and illegality that exists, especially in non-Western countries.[2] As with any story that seeks an international audience, the choice of narrative strategy is critical, and for the story to be understood and have appeal it will have to transcend the cultural specificity under which certain stories come to be appreciated. This is especially true when one is attempting one's hand in the genre of horror stories; and in the present case; the horror story of piracy just does not seem to work in terms of achieving its objective of generating a sense of anxiety and fear in countries like India.

One must, however, provide reasons for why these stories don't work in some contexts. For that we will have to travel to distant cities, from New Delhi to Sao Paulo; perhaps even walk through the more unfamiliar bylanes of 'familiar' cities like New York. Research in the field of urban studies has rendered the idea of an 'illegal' city familiar. One reads, for instance, that an average of 40% and in some cases 70% of the population of major cities live in illegal conditions. Furthermore, 70-95% of all new housing is built illegally[3] (Durand-Lasserve and Clerc, 1996). The primary reason for this state of illegality arises from the nature of land tenure forms in cities, where the twin tropes of ownership and title are clearly unable to account for the myriad ways through which people assert a claim on land and to the city more generally. The people who live in this perpetual state of illegality also engage in other networks of illegality, such as stealing electricity, water, bribing their way through Kafkaesque bureaucratic structures to access civic amenities that the legal city takes for granted.[4] A first glance at the official responses to this older illegal city reveals the familiar face of anonymous statistics and 'shock and awe' figures. Thus when we cut back to the piracy story and are told that over 70% of the software used in India is illegal, we encounter this figure not with a sense of anxiety, but of familiarity.

Clearly, any simplistic account of widespread illegality in terms of efficiency, morality, disorder or corruption, etc. would only perform an epistemic violence which does little to

aid our understanding of urban experience, and the ways in which people create avenues of participation and make claims to the city. The contribution of urban studies has been to provide a more nuanced sense of the phenomenon of the illegal city.

In a city like Bangalore, for instance, the urban planning authority (Bangalore Development Authority) provides for approximately 15-20% of housing requirements, while another 12-15% are met by private developers. The rest of the city emerges outside of planned development and is hence outside the law. Most urban citizens have no choice but to build, buy or rent illegal dwellings since they cannot either afford the cheapest legal accommodation, or because there is not enough supply to meet the demands of a growing city, marked by high migration as a result of the new information technology dreams.[5]

A liberal understanding of land tenure forms is limited because its understanding of interest in land relies too heavily on how ownership and legitimate claims are narrated through the title deed and other legal documents. Any attempt to understand the complexities of the ways in which people make a claim to land in the city would have to take into account the multiple forms of networks of relationships that constitute a land tenure claim (the hawker who has a designated place even though he is not entitled to the place in any formal manner, the squatter who pays a rent to the local policeman, the illegal slum that begs, borrows and steals electricity and water from the rest of the productive city, the unauthorised revenue layout that gets regularised or legalised near election time on the basis of their strength as a vote bank).

Writing about the modernist project of planning, James Holstrom comments, "...modernist planning does not admit or develop productively the paradoxes of its imagined futures. Instead it attempts to be a plan without contradictions or conflict. It assumes a rational domination of the future in which its total and totalizing plan dissolves any conflict between the imagined and existing society in the enforced coherence of its order. This assumption is false and arrogant as it fails to include as its constituent element, the conflict, ambiguity and indeterminacy characteristic of actual social life".[6]

While the older illegal city has been in existence for a while, another layer has been integrated into the experience and narration of this illegal city in the past ten years. The proliferation of non-legal media practices ranging from pirated VCDs, DVDs and MP3s to grey market mobile phones informs the practices and imagination of the illegal city. As Ravi Sundaram says: "Pirate electronic networks are part of a 'bleeding' culture, constantly marking and spreading in urban life. Ambient sound and images are now part of all street/neighbourhood life; a crowded pirate aesthetic pervades video culture and local advertising. This is part of the culture of dispersal, which marks its resilience and is a nightmare to classify. In a world where information bleeding is part of the contemporary (SMS, television text scrolling, newspaper inserts, lamppost stickers, Internet pop ups, event branding), pirate culture uses the ruses of the city, but *immanently*, not transcendentally".[7]

This article attempts to understand this new layer of illegality and the manner in which it integrates into the

Not guilty!
Not me!
Pick on someone else!

older city. The task will be to pose the question of how the older form and the newer form integrate and intertwine to collectively interrogate our liberal assumptions of legality, and highlight the limitations of any study based on a strictly legal understanding of contemporary urban practices. I will do this by examining the cassette revolution that took place in India in the 1980s, and the sphere of illegality in which it emerged. Building on some significant attempts to provide entry points into understanding this aspect of the city, I would also like to posit the idea that porous legalities are often the only modes through which people can access and create avenues of participation in the new economy.

The information era props up a master plan, similar to that of modernist planning. The institutional imagination of the era relies on the WTO as chief architect and planner, and copyright lawyers as the executive managers of this new plan; the only people who retain their jobs from the old city are the executors of the old plan, the police force and the demolition squad. Just as one cannot understand land tenure through the prism of liberal legality alone, any attempt to understand the complex networks of economic and social relations that underlie the phenomenon of piracy will have to engage with the conflict over control of means of technological and cultural production in the contemporary moment of globalisation. The ways in which the illegal media city emerges and co-exists alongside the vibrant, innovative and productive debris of the older city, the schizoid relationship between legality and illegality in postcolonial cities, suggest that the crisis may not lie in these relations, and we may need to turn the gaze of the law from the usual suspects of legality to legality itself, and the relations that underlie its existence.
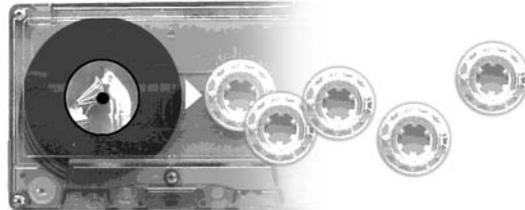
Cassette Culture and the Creation of the New Media City
Before we indicate the different entry points through which we can understand this new illegal city, it would be useful for us to take a trip to the 1980s to understand the developments that preceded the formation of this new city in India. I believe that it is critical for us to understand this period to get a sense of why non-state, non-elite electronic cultures have always had a problematic relationship with law and legality.

Peter Manuel provides us with an excellent history of the emergence of new media in India, tracing the cassette revolution that took place from the mid-'80s. This revolution, he claims, created a new aesthetic of media production and consumption that escapes the totalising imagination of old media in the form of national television, radio and cinema. According to him, new media challenges the one-way, monopolistic, homogenising tendencies of old media, as it tends to be decentralised in ownership, control and consumption patterns and hence offer greater potential for consumer input and interaction.

I shall briefly summarise Manuel's account of the emergence of cassette culture in India.[8]

In 1908, the British-owned GCI (Gramophone Company of India) had established its factory in Calcutta and through exclusive distribution agreements, it came to dominate the market in an absolute manner. This monopoly had profound cultural impact in terms of local genres and languages that it appropriated, ignored or reduced into dialects. The necessity of an all-India market to ensure great profits ensured the emergence of an all-India aesthetic form in film music. The dominance of the Hindi film music and the monopoly of GCI continued till well past the colonial period.

The development model adopted by the Nehruvian state emphasised state investment in large-scale infrastructure projects like dams, mines and factories, while discouraging luxury consumption through the deployment of high import tariffs. Policies of over-taxation and cumbersome licencing inhibited the consumer electronics and related industries. Manuel reports that by the late 1970s, however, a large number of immigrant workers to the Gulf countries had begun to bring back cassette players into India (Japanese two-in-ones) and the cassette player soon became a symbol of affluence and an object of modern desire. This is also the period that saw the emergence of a nascent market for pirate cassettes of film music, feeding off the growth of cassette players and contributing to the expansion of the grey market where such 'luxury' items could be purchased by the relatively well off.

The liberalisation policy of the state in the late 1970s, designed to stimulate growth, demand, exports and product quality, saw the lowering of many import restrictions. The bourgeoning middle class stimulated the electronic industry. While a few were willing to pay high import duties on foreign electronic goods, most were happier buying them off the grey market.

Certain significant developments in this period helped to create a mature market for consumer electronics industry:

> Reduction of duties enabled Indian manufacturers to import selected components for local manufacture of cassette players.

> New policies encouraged foreign collaborations in the field of consumer electronics including magnetic tape production.

> Tape coating became big in India, and from the period of 1982 to 1985, record dealers switched to cassettes; and by the mid-'80s cassettes came to account for 95% of the market.

The overall sales of cassettes went from Rs. 1.2 million in 1980 to Rs. 12 million in 1986 and Rs. 21 million in 1990. Export of Indian-made records jumped from Rs. 1.65 million in 1983 to Rs 9.75 million in 1987. By the end of the 1980s, Indian consumers were buying around 2.5 million cassette players. This is also the period that saw the swift decline of GCI-HMV as the dominant/sole player in the industry, and the emergence of a handful of large players and over 500 small music-producing companies. In a period of a few years, India had become the world's second largest manufacturers of cassettes, marketing 217 million cassettes. This period also saw the decline of film music as the dominant aesthetic form and its marker dropped from 90% to 40%. A whole new range of forms, from devotional music to songs in local languages, developed; and other kinds of

markets began to emerge.

This period of tremendous growth is, however, marked clearly by its troubled relationship with legality, and with various practices that often straddled both worlds, sometimes making it difficult to distinguish one from the other. During the initial boom, most music companies were a part of the informal but well-networked sector. They often worked with illegally obtained components to ensure cost effectiveness of their product. These included smuggled goods, indigenously manufactured but unlicenced products, components and magnetic tapes.

In this context that we can evaluate the story of a maverick entrepreneur who, with a combination of dynamic business skills, ruthless tactics and an elastic idea of legality, came to shape the music industry. In 1979, Gulshan and Gopal Arora, two brothers who ran a fruit juice shop in Delhi and were also electronic buffs, began a small studio where they recorded Garhwali, Punjabi and Bhojppuri songs. On borrowed money they visited Japan, Hong Kong and Korea to study cassette technology and the industry. They returned to set up a factory to produce magnetic tapes. They also started producing cassettes and silicon paper, and finally built a complete manufacturing plant where they offered duplication services to smaller regional-cassettes producers. By the late '80s, their company T-Series emerged as the market leader. Currently their set up is worth over Rs. 120 million and they have diversified into manufacturing videotapes, television, VCD players, MP3 players, washing machines and detergents.

The elastic legality of Gulshan Kumar's world translated itself in the following manner:

> Using a provision in the fair-use clause of the Indian Copyright Act which allows for version recording, T-Series issued thousands of cover versions of GCI's classic film songs, particularly those which HMV itself found unfeasible for release. Thus, you would have releases such as "Melodious Hits of Kishore Kumar" sung by Kumar Sanu. T-Series also changed the rules of distribution by moving into neighbourhood shops, grocery shops, *paanwalas*, and teashops to literally convert the cassette into a bazaar product.

> T-Series was also involved in straightforward copyright infringement in the form of pirate releases of popular hits relying on the loose enforcement of copyright laws. To date T-Series remains blacklisted by the Indian Music Industry**.**

> T-series illegally obtained film scores even before the release of the film to ensure that their recordings were the first to hit the market

> T-series illegally inserted huge amounts of inferior tape into established brands to discredit well-established names.

While one could easily dismiss these practices as unscrupulous, unethical or clearly illegal, we will need to keep in mind the overall impact that T-Series had on the music industry in India and cassette culture. T-Series created a new cassette-consuming public by focusing on various genres and languages completely ignored by HMV, which had promoted Hindi at the cost of many other languages, those which it deemed unfeasible in economic terms given the scale of their operations. T-Series changed the rules of the game by introducing for the first time the idea of networked production. It would offer its duplication services to a number of the small players (and thus revived smaller traditions of music). Finally, the reduction in the price of cassettes by T-Series created a mass commodity.

Clearly, no straightforward account of legality and business ethics can capture the dynamics and the network of interests that fuelled the cassette revolution. For instance, in an interview with Peter Manuel, one of the employees of T-Series stated, "What the people say about our activities in the early years – it is mostly true. But I tell you that back then, the big *ghazal* singers would come to us and ask us to market pirate versions of their own cassettes, for their own publicity, since HMV wasn't really able to keep up with the demand". Similarly even some major players have in the past dealt with the pirates. Manuel states that when HMV found that it could not meet the demand for one of their biggest hits, *Maine Pyar Kiya*, they are reported to have entered into an agreement with the pirates whereby the pirates would raise their price from Rs. 11 to Rs. 13 and pay HMV half a rupee for every unit that they sold. Other producers are also known to have colluded with pirates in production and marketing so that they could minimise cost, as well as the taxes and royalties payable by hiding the extent of their sales.

The role played by piracy in the creation of a market, in the process of creating a lock-in period and also in the reduction of price and has been seen clearly in the software and film industries.[9] The price of VCDs today has come down to Rs. 99, lower even than what the pirated copy used to be earlier. The Free School Street phenomenon[10] of Calcutta created a sub-cultural consumption of large amounts of 1960s American rock music before these tapes were available in the Indian markets. Without such a niche elite public, it is highly debatable as to whether Magnasound could have emerged in the early '90s as the most important player in the English music industry in India.

I would like to conclude this segment with two ironic anecdotes that can lead us to the contemporary. First, after its rather chequered history with copyright law, T-Series is now one of the most aggressive enforcers of their copyright. The have a battery of professionals, usually retired police officials, who monitor copyright and trademark infringement cases. The second is an extract from the conclusion of Peter Manuel's history of cassette cultures in India. After providing us with a fascinating look at the ad hoc world of innovation based on very porous ideas of legality, Manuel speculates on possible developments in the future of the industry; he says: "In India a pre-recorded CD costs as much as Rs. 250 or twelve times the price of a tape. CD players themselves anywhere between Rs. 5000 upwards, which would constitute a fortune for most Indians. As a result, CDs naturally remain confined to the upper class. For the music producer, the growth of the CD market is seen as a possible weapon against piracy, as the CDs cannot be duplicated (onto other CDs)".[11]

Entering the New City

We can now return to the contemporary urban landscape where the prevailing model of piracy is precisely through the form that was intended to guard against piracy. With the absolute collapse in the cost of CD writers and CDs, every computer owner is a potential producer and redistributor. The logical transition of the older inhabitants of the world of pirated cassette cultures, video library owners, etc. into the world of CDs, almost appears to be a natural progression. I have outlined two central histories that we need to narrate to understand the present moment. The first attempt was to problematise and contextualise

the idea of illegality vis-à-vis claiming a space in the city, and the manner in which these claims challenge the liberal premise of law, citizenship, and access to institutions of democracy. The second move was to provide a brief history to the emergence of cassette cultures, why they emerged in a context of illegality, and the central role this played in the creation of a public. This also narrates a world of innovation and discovery which treats any monopolistic claims, be it legality or economic participation, with a sense of irreverence.

I would now like to examine some of the ways in which a critical dialogue around Intellectual Property (IP) may take place. At the moment there exists a rich body of work in the US that seeks to challenge some of the developments in IP law. These are generally posited within literary theory-inspired critiques of the assumption of authorship, or they argue that copyright endangers the free flow of information within the public domain. Implicit within this critique, however, is an assumption of a vibrant public sphere where constitutionally guaranteed rights such as freedom of speech and expression should dictate IP policy.

The challenge of having an inter-continental dialogue is really to push the limits of thinking through the problem of understanding the publics which lie outside the assumptions of the liberal public sphere; also, to understand the complex spatial logic of globalisation and the unfolding of highly unequal division of labour within the sphere of cultural production (a bootleg Nike T-shirt surely has a very different tale to tell as it circulates as a fake or a copy in Los Angeles compared to its circulation in Thailand, one of the largest hosts of the various sweatshops of the world).

There is literally a world of difference between the cultural politics of content and appropriation. For most scholars in the west, their interest in a more relaxed IP regime stems form their interests in the modes through which people reappropriate the signs of global cultural hegemony such as Hollywood. The impulse behind copying in Asia and other parts of the non-Western world may not arise from such self-conscious acts of resistance, but may instead be understood in terms of ways through which people ordinarily left out of the imagination of modernity, technology and the global economy ways of inserting themselves into these networks.

Thus for instance, the social of the remix in India may have little to do with the romantic assumptions of cultural appropriation and resignification as expressed in Campbell v. Acuff Rose,[12] and more to do with the impact of the structural transformation of industry practices and monopolies as articulated in a Sega v. Accolade.[13] The avenues I suggest

below offer an entry point into understanding the challenges posed by different media practices to an IP regime that insists on the creation of a global regime of ownership and control under which there is an assumed social cohesion and a containment of all social conflict, and where there is no dispute over the forms of property that emerge and expand.
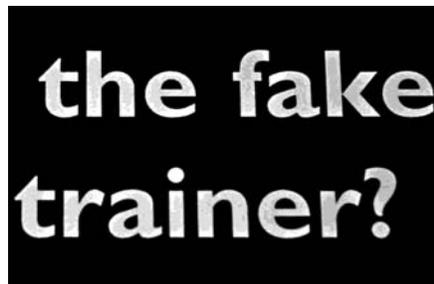
a. The first and most simplistic account of the phenomenon of piracy is that of unequal access between developing countries and developed countries. The argument is that the price differential forces people in developing countries to buy pirated goods since they would not be able to buy original goods. While there is a truth in this proposition, the inherent problem of such an entry point is that it relies on a model of piety (the 'poor third world' figure) and is fundamentally dependent on the 'development', 'catching up with the West' account of global relations. The global contemporary is far more complex and one needs to provide an account of the complex logic of cultural production in the era of globalisation. The pirate in developing countries is not a figure of piety and this account divests him of any agential role as s/he navigates through the mediascapes of globalisation that frame experience.

b. The second entry point emerges from writers like Jeremy Rifkin who would argue that there is a fundamental shift in our understanding of the logic of production, distribution and consumption. Rifkin argues that we live in an age of access, and the culture of the Internet, for instance, is predicated on a culture of networked distribution and circulation. In this new era, there is a transition from the idea of the market in the older senses of the term to the idea of networks. His account of the nature of the networked economy would render futile any account of piety, as his account is not configured on differential access or privilege alone. He sees the culture of the networked economy as fundamentally shaping the way people think about production, distribution and collaboration. The older form of regulation and structuring of economic transactions will then just not work within this framework.

According to Rifkin, "The young people of the new 'protean' generation are far more comfortable conducting business and engaging in social activity in the worlds of electronic commerce and cyberspace, and they adapt easily to the many stimulated worlds that make up the cultural economy. Theirs is a world that is more theatrical than ideological and oriented more to a play ethos, than to a work ethos. For them, access is already a way of life, and while property is important, being connected is even more important. The people of the twenty-first century are likely to see themselves as nodes in embedded networks of shared interests as they are to perceive themselves as autonomous agents in a Darwinian world of competitive survival. For them, personal freedom has less to do with the right of possession and the ability to exclude others and more to do so with the right to be included in webs of mutual relationships. They are the first generation of the Age of Access".[14] In such an account, copyright would emerge as a slightly archaic mode of regulation that is culturally embedded in the technology of paper. This is also a world which transforms the older worlds of legal imaginaries, using the language of exclusive rights to generate a world of access. The GNU/GPL is a classic instance of such a use.

c. Our third entry point is through an examination of the intertwined histories of postcolonial nationalist aspirations of modernity and a particular relationship to the public sphere. Ravi Sundaram, in a series of articles[15] that theorise the phenomenon of piracy and illegal media cultures in the new media city, states that this world of non-legal media in a number of South Asian cities, marked by its rather *ad hoc* innovativeness and its various strategies of survival, is the world of recycled modernity. It exists in the quotidian spaces of the everyday and cannot be understood within the terms of the earlier publics (the

nationalist public and the elite public sphere). Fuelled by aspirations of upward mobility, it is an account of the claims to modernity made by a class of people, otherwise unaccounted for by the meta-narrative of the nationalist project of modernity. These cultures of recycling do not, however, exhibit any of the characteristic valour or romance of counter publics. Beginning with the audiocassette revolution and then of computers and digital entertainment, this world has been based on a dispersed logic of production and consumption, and marked by preponderant illegality. This rearticulated entry point into the modern is also contemporaneous with the emergence of the global moment, and the arrival of the global via media, new forms of labour such as call centres, the software industry, etc., replace the earlier configuration of the national modern with the global modern. As we understand this, it also becomes critically important for us to recognise the shifts in registers of imagination that the global brings upon the national modern configuration.

d. Our fourth entry point into understanding these practices comes from a metaphorically rich account of the role of networks and seepages provided by Raqs Media Collective. Looking at five figures of transgressions in the contemporary context (the migrant, the hacker, the pirate, the alien and the squatter), Raqs argues that these transgressors of law emerge as residue from within the gigantic movement of capital. "Capital transforms older forms of labour and ways of life into those that are either useful for it at present, or those that have no function and so must be made redundant. Thus you have the paradox of a new factory, which instead of creating new jobs often renders the people who live around 'unemployable'; A new dam, that instead of providing irrigation, renders a million displaced, a new highway that destroys common paths, making movement more, not less difficult for the people and the communities it cuts through".[16] The question posed by Raqs is about how one begins to understand what happens to the people who fall off official maps, official plans and official histories.

The argument is that these people travel with the histories of the networks that they were part of, and are able to deploy the insistent, ubiquitous insider knowledge of today's networked world. Raqs then introduces the powerful metaphor of "seepage" and how it may help us to think through these acts of transgressions. "How does this network act, and how does it make itself known in our consciousness? We like to think about this in terms of seepage. By seepage, we mean the action of many currents of fluid material leaching on to a stable structure, entering and spreading through it by way of pores. Until, it becomes a part of the structure, both in terms of its surface, and at the same time continues to act on its core, to gradually disaggregate its solidity. To crumble it over time with moisture. In a wider sense, seepage can be conceived as those acts that ooze through the pores of the outer surfaces of structures into available pores within the structure, and result in a weakening of the structure itself. Initially the process is invisible, and then it slowly starts causing mould and settles into a disfiguration – and this produces an anxiety about the strength and durability of the structure".[17]

They continue: "By itself seepage is not an alternative form; it even needs the structure to become what it is – but it creates new conditions in which structures become fragile and are rendered difficult to sustain. It enables the play of an alternative imagination, and so we begin seeing faces and patterns on the wall that change as the seepage ebbs and flows"

(ibid.). In a networked world, there are many acts of seepage, some of which we have already described. They destabilise the structure, without making any claims. So the encroacher redefines the city, even as she needs the city to survive. The trespasser alters the border by crossing it, rendering it meaningless and yet making it present everywhere – even in the heart of the capital city – so that every citizen becomes a suspect alien and the compact of citizenship that sustains the state is quietly eroded. The pirate renders impossible the difference between the authorised and the unauthorised copy, spreading information and culture, and devaluing intellectual property at the same time. Seepage complicates the norm by inducing invisible structural changes that accumulate over time.

It is crucial to the concept of seepage that individual acts of insubordination not be uprooted from the original experience. They have to remain embedded in the wider context to make any sense. And this wider context is a networked context, a context in which incessant movement between nodes is critical".[18]

Porous Legalities and Avenues of Participation

What seems to weave the stories of the inhabitants of the older city with the denizens of the new city is the umbilical cord of illegality that defines the ways through which they create for themselves avenues of participation. Building on the seepage metaphor of Raqs, I would like to add another trope which can help us to understand what allows these seepages to take place, viz. the idea of porous legalities.[19] Porous legalities are created through different forms and materials, but primarily through a profound distrust of the usual normative myths of the rule of law, such as rights, equality, access to justice, etc. The lived experience of most people, instead, points to a network of different day-to-day negotiations with power that renders vacuous any neat binary of legal/illegal. The idea of a legal system as being a porous one enables an alternative imagination which takes into account the myriad forms of legality, from state legalities to non-state legalities and from individual acts of illegality to social networks that transgress the law.

Social struggles can then be seen also as struggles for the redistribution of legalities and illegalities produced in social conflicts, and porosity serves as a metaphor to understand the continuous struggle for the appropriation of the means of production of legality and illegality.

The slum dweller with a desperate instinct for survival has little choice but to ignore the law in order to carry on with the rather difficult task of surviving a hostile city, challenging the idea that it is the natural role of law to ensure public good. At other times, you follow the pores created to benefit the elite few who know how to manipulate legal machinery in their favour, and enter these pores to access an otherwise stubborn institution. Here for instance, the idea of corruption and bribery (especially within the police force) acts like a self-fulfilling prophecy which works at different levels for different kinds of claims. The music company paying the police to conduct raids also has to deal with the policeman who will pass the information of the raid to the pirates. A few pores exist as a part of the structure and design of the legal order itself. Thus the loophole in the Copyright Act that allows the production of cover versions becomes the basis for the creation of a new set of media practices, which in turn create a new level of anxiety for regulation.

One could understand these porous legalities as inevitable reproductions of social relations of power, but social struggles, whether they constellate around power, law or knowledge, also have an internal logic of their own where they tend to be performative, as they actively produce (rather than merely reproduce) the forms of power, law or knowledge that best suit their horizons of expectations. The tragedy would be to examine a practice of illegality, especially around the media, within its own horizons of expectations. We need instead to uncover the various constellations of fantasy, mobility, and innovations that mark the realities of these social worlds. Santos, for instance, states: "For different reasons, maps, poems and laws distort social realities, traditions or territories, and all according to certain rules. Maps distort reality in order to establish orientations; poems distort reality to establish originality and laws distort reality to establish exclusivity".[20]

The figures of illegality pose fundamental questions to our neat categories of the liberal public sphere, where citizens interact through constitutionally guaranteed rights, as the exclusive mode of understanding the world of law and legality. The status of these transgressors as the 'not quite' and yet 'not quiet' citizens creating their own avenues of participation in the multiple worlds of media, modernity and globalisation demands that we ask fundamentally different questions of the relationship between law, legality, property (tangible and intangible) and that which we call the public domain.

NOTES

1. This paper was first presented at the SSRC conference, "Intellectual Property, Markets, and Cultural Flows", New York, October 2003, and is a part of an ongoing conversation with colleagues at the Alternative Law Forum and Sarai-CSDS, and in particular Ravi Sundaram, Jeebesh Bagchi and Solly Benjamin.

2. See, Nitin Govil, "War in the Age of Pirate Reproduction", *Sarai Reader 04: Crisis/ Media*, p. 378 (2004).

3. Alain Durand-Lasserve and Lauren Royston. *Holding their Ground* (Earthscan, 2002, London). See also Jeorge Hardoy & David Braithwaite, *Squatter Citizen* (Earthscan, 1989, London). See also for a fascinating account of booksellers on the street, and their negotiation with the law, Mitchell Duneieir, *Sidewalk* (Farrar, Straus and Giroux, 1999, New York).

4. Partha Chatterjee. *Politics of the Governed, Popular Politics in Most of the World* (Columbia University Press, 2004, New York).

5. Alternative Law Forum, "Of Master Plans and Illegalities in an Era of Transition" (www.altlawforum.org/Publications).

6. See James Holsten and Arjun Appadurai. "Cities and Citizenship" In *Public Culture*, Vol. 8, No. 2, Winter 1996.

7. Ravi Sundaram. "Uncanny Networks: Pirate and Urban in the New Globalisation in India". In *Economic and Political Weekly*, January 2004.

8. Peter Manuel. *Cassette Culture: Popular Music and Technology in North India* (Oxford University Press, 2001, New Delhi). For a similar account of the video market in Nigeria, see Brian Larkin, "Degrading Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy". In *Public Culture* 16 (3), Fall 2004

9. See Carlos Osorio, "A Contribution to the Understanding of the Illegal copying of Software", Working Paper, MIT Program on Internet and Telecoms Convergence. See also Shujen Wang, *Framing Piracy:*

Globalization and Film Distribution in Greater China (Rowman & Littlefield, 2003, Boulder).

10. Free School Street is a place in Calcutta which was a Mecca for all 1960s nostalgia rock junkies, supplying bootleg tapes, rare recordings and rare books not available in India. In recent times most of the music stores have disappeared, while the rare books stores stock Lonely Planet guides.

11. See, Prasad, Bhagwati (2003a) "*Piracy: Judte Rishte, Phaylta Bazaar". PPHP Laghupatrika,* Sarai, Delhi, "*Sangeet Udyog ka Chota Khiladi*", *PPHP Laghupatrika,* Sarai, Delhi. See also, PPHP CD.

12. 510 US 569 (1994). Campbell v. Acuff Rose dealt with the reappropriation of Roy Orbison's "Pretty Woman" by 2LiveCrew. The band was sued for copyright infringement but the Supreme Court held that parody was a part of the fair use defence. Sega v. Accolade deals with a case in which the Supreme Court said that even if a use entailed a commercial element, as long as it added to the larger 'public good' of competition and demonopolisation, then could be considered as a fair use.

13. 61 USLW 2254.

14. Jeremy Rifkin. *The Age of Access: The New Culture of Hypercapitalism, Where All of Life Is a Paid-For Experience* (Penguin, 2001, New York).

15. See generally, Ravi Sundaram, "Recycling Modernity: Pirate Electronic cultures in India", *Sarai Reader 01: The Public Domain;* Ravi Sundaram, "Beyond the Nationalist Panopticon: the Experience of Cyberpublics in India", available at http://amsterdam.nettime.org/Lists-Archives/nettime-l-9611/msg00018.html

16. Raqs Media Collective, "X Notes on Practice: Stubborn Structures and Insistent Seepage in a Networked World" (Forthcoming, *Immaterial Labour: Work, Research & Art,* (eds.) Marina Vishmidt and Melanie Gilligan (Black Dog Publishing, 2005, London/New York). Also available at www.raqsmediacollective.net/texts1.html

17. Ibid.

18. Ibid.

19. For multiple accounts of porosity, see Bonaventura de Sousa Santos, *Towards a New Common Sense* (Routledge, 1995, New York); Solly Benjamin, "Neighborhood as Factory" (Ph.d dissertation submitted to MIT). Walter Benjamin says, "Porosity is the inexhaustible law of the life of this city, reappearing everywhere…building and action interpenetrate in the courtyards, arcades and stairways…to become a theatre of new, unforeseen constellations. The stamp of the definitive is avoided". From "Naples", in *One-Way Street and Other Writings* (Verso Editions, 1985, London).

20. Bonaventura de Sousa Santos, *Towards a New Common Sense* (Routledge, 1995, New York).