

## MEET JOHN DOE'S ORDER: PIRACY, TEMPORALITY AND THE QUESTION OF ASIA

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In the early days of digital technology Jack Valenti, the former president of the Motion Pictures Association of America triumphantly announced that 'The fury of the future is already upon us. The explosion of channel capacity, the hurling to home by direct satellite, the multiplicity of optical fibre, among other magic are the new centurions of the digital age, they are marching along continents and across geographic boundaries breaking down artificial government barriers, the most powerful audio visual armies ever known'. Within a few years however, he would alter his militaristic metaphor and declare the Computer to be the greatest nemesis of the film industry<sup>1</sup>.

Valenti's rather quick turn around seems to be merely symptomatic of the schizoid relationship that cinema has had with technologies of reproduction. Every new technology of reproduction has resulted in euphoric possibilities about the extension of the life of the 'immaterial commodity' and the creation of new markets, while at the same time producing an acute crisis about the ease with which films can be pirated, thereby disrupting the planned march of cinema across the globe. This constant flitting between euphoria and crisis produces delirious effects in the world of law.

In creating for itself a juridical form, cinema always seems to struggle against its own ephemeral form as well as the thingliness of the medium that carries it. Even as more complicated systems of rights management and licensing in copyright law are created to ensure the smooth flow of films across the word, the ordered flow of cinema is constantly frustrated by technologies that enable the reproduction of a 20 million dollar film on a 20 rupee CD.

Just as tobacco, cloth, alcohol and other petty commodities were central to the criminalization of everyday life in the 18<sup>th</sup> century, it seems that the definition of new forms of criminality in the late 20<sup>th</sup> and early 21<sup>st</sup> century

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1. Valenti was being rather consistent in his demonizing of any untamed technology. When VCR's came on the scene, Valenti described them as the Boston Stranglers of film till Video created a new market of home consumers of film.

belongs to quotidian world of film consumption and circulation<sup>2</sup>. From region control of DVD's to the use of sniffer dogs to track pirated discs, piracy attests to the dynamic and opposing relations between the two major trends that define cinema in our time: the technological and the legal. While the former pushes towards the increasing range of possibilities in filmmaking and distribution, the latter pushes towards greater control and regulation of the media object<sup>3</sup>.

In an ongoing case in the Delhi High Court, the eight entertainment majors in the world (Universal, Paramount, 20th Century Fox, Time Warner etc) accounting for close to \$500 billion are pitted against Lamhe Music Store, a quintessential pirate DVD store. In Para 28 of the petition, the entertainment majors allege that:

*Even a single sale or rental of the film by the defendants is capable of causing irreparable injury and damage to the plaintiffs. The single film can act as a plate from which several thousands of other pirate prints can be prepared. If the print reaches the hands of a cable network, even a single telecast on a network is capable of reaching several million homes all over India. The potential for damage is immeasurable and irreparable.*

The plaint is an instance of the deterritorialised form of the global cultural commodity, while the relief sought relies heavily on reterritorialised enforcement at the national level.<sup>4</sup> Piracy seems to occur precisely at the point where deterritorialised forces of capitalism intersect with "the reterritorialised forces of the nation, where the cross bordered flows of information and copyright goods require national laws and enforcement to contain, if not eliminate piracy"<sup>5</sup>.

This curious relationship between law and cinema is not unique to the question of piracy, and cinema has always been the site for the production of a number of legal concepts, which have a career even beyond the specific task of the regulation of cinema.<sup>6</sup> The status of film as a particular form of

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2. See PETER LINEBAUGH, *THE MANY-HEADED HYDRA: SAILORS, SLAVES, COMMONERS, AND THE HIDDEN HISTORY OF THE REVOLUTIONARY ATLANTIC* (Beacon Press 2000).

3. See ANDREW MERTHA, *THE POLITICS OF PIRACY: INTELLECTUAL PROPERTY IN CONTEMPORARY CHINA* (Cornell University Press 2005).

4. For a reading of the Lamhe petition, see Jeebesh Bagchi, *Acceleration and Conflicts: Comments on the Cinematic Object in the 1990's and after*, 5 *JOURNAL OF THE MOVING IMAGE* 41 (December 2006).

5. SHUJEN WANG, *FRAMING PIRACY: GLOBALIZATION AND FILM DISTRIBUTION IN GREATER CHINA* 17 (Rowman & Littlefield 2003).

6. For instance the idea of publicness in a number of legal owes its debts to cases related to the idea of cinema as public culture. In *Deepak v. State of Punjab*, 1992(1) SCC 684 the Supreme

property seems however, to have accelerated the unintended career of cinema not just as a desire producing, but also a law producing machine.

The architecture of global intellectual property laws has been designed keeping the interest of film as property in mind. The TRIPS agreement which harmonized IP laws globally was an agenda firmly driven by Hollywood<sup>7</sup>. In the US the term of copyright was extended specifically to extend the protection afforded to the Disney empire, and in recent times laws related to anti circumvention of technology have been introduced to protect the windowing system of distribution of films. In the Indian context as well, it has been the Eastern Indian Motion Pictures Association which has taken the lead in pushing for copyright reforms.

While there has been considerable amount of work done on the political economy of film, there still seems to be a clear-cut division of labour between those who study film and those who study the political economy of film. But is this division tenable, and what sorts of questions do we abandon when we insist on retaining this bifurcation. When we are examining a legal form such as copyright which seeks to create the basis for the circulation of cultural artifacts, is it possible to study it without an attention to the question of cultural form. How do economic dynamics of production [promote] certain cultural forms over others? How does copyright enable cultural 'texts' to be recognized as commodities and made sense of in a way that is appropriate to their status as commodities? In other words, Copyright law has a discursive as well as a regulatory dimension, and copyright law as discourse is an active force in the construction of the very cultural artifacts that, under capitalism, have become invested with the status of commodity<sup>8</sup>.

The relationship between copyright and film serves as a fertile site through which we can bring questions of political economy and cultural economy together. The recognition of the importance of political economy in cultural studies is clear, but can it ever be done without a consideration of specific cultural forms? In the case of cinema, the distinction between textuality and policy are not only untenable, but also misleading<sup>9</sup>. The semiotics of the images and content analysis are absolutely critical in policy determinations of duplication, while the legal determination of what constitutes infringement or juridical notions of substantial similarity depend closely on textual analysis.

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Court held 'There is no compulsion to construct a cinema theatre, but by undertaking to construct a theatre to exhibit cinematograph films therein, the owner created a right in the cine going public, to have an easy access to the theatre'.

7. See SUSAN K. SELL, PRIVATE POWER, PUBLIC LAW: THE GLOBALIZATION OF INTELLECTUAL PROPERTY RIGHTS (Cambridge University Press 2003).
8. Anne Barton, *The Legal Properties of Film*, 67 MODERN LAW REVIEW 177 (2004).
9. TOBY MILLER ET AL., GLOBAL HOLLYWOOD: 2 (British Film Institute 2004).

We can therefore begin with two ways in which we may speak of the properties of film. On the one hand, you have the formal properties of film which has been the traditional domain of film scholars which looks at the diegetic qualities like narrative, film as a special narrative technology, film as a medium of mobilization of the public etc. On the other hand, you have the question of film as property which takes you into the slippery domain of the law of immaterial property, with its division into reproduction rights, distribution rights, format rights etc. While film scholars have concentrated on the formal properties of film, lawyers have focused squarely on the latter.

One of the challenges that exists is what happens when film as property starts encountering the formal properties of film. It is my argument that formal concerns about the properties of film can widen the way that we think of film as property (and its illegal other, piracy). It does this by asking different questions of piracy such as what kind of film culture does piracy enable? How does the phenomenon of piracy enable us to revisit traditional film studies concerns such as production, reception, circulation and distribution? What kind of public forms of association do these new modes of circulation enable? How do we rethink the career of a cinematic object when it exists now as a bundle of rights? What are the specific implications of piracy for scholars interested in the question of Asian cinema?

Jane Gaines has already shown us how fruitful it can be when a film scholar starts reading copyright cases to discover an uncanny double life that film has always led, as cultural history but equally as cultural property. For her, copyright disputes over cinema show us film studies in inverted form

*In entertainment law, Gaslight (1942) is important not as a canonical film melodrama but as the object of a radio parody; The Maltese Falcon (1941) is the center of a dispute over serial rights; and Warner Brothers' Dark Passage (1947), which later became the television series "The Fugitive," figures in the definitive case on the "indivisibility of copyright." Reading Nimmer's Cases and Materials is an uncanny experience for the historian of American film. It begins exactly where film historians begin: with photographic technology and popular entertainment forms. The first case reprinted in Nimmer deals with issues surrounding the reproduction of a circus poster, the second with copyright in an 1882 photographic portrait. In a way, my approach in this book has been to write a series of essays that construct Nimmer's entertainment law volume as a companion piece to American film history and to contemporary film and television theory.<sup>10</sup>*

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10. See JANE M. GAINES, *CONTESTED CULTURE: THE IMAGE, THE VOICE, AND THE LAW* (University of North Carolina Press 1991).

Perhaps it is time for lawyers and film scholars to start bringing back the question of film into the question of property. I will attempt to look at some of these questions by looking at one particular thematic, namely the question of temporality and the fate of cinema as property.

## **TEMPORALITY AND CRISIS OF THE IMMATERIAL COMMODITY**

Right from the earliest history of legal disputes over cinema, one of the key issues has been the legal ordering of the spatio-temporal dimension of film. *Mutual v. Ohio*<sup>11</sup> which is the first case that challenges the constitutional validity of censorship of films had more to do with the interruption of film circulation than with content regulation. Mutual in fact only produced family films which would never get into any kind of censorship problems, but what the Mutual Company feared was that the censorship laws would mean additional fees and delays. “It is the custom of the motion picture business,” Mutual informed the Supreme Court, “that a subject [film] shall be released or published in all theaters in the United States on the same day.”<sup>12</sup>

Mutual’s interest was in establishing a national market for its movies, and in its original form, the Mutual petition prioritized economic arguments, including the contention that the Ohio law imposed unconstitutional burdens on interstate commerce. In the original complaint, the company’s attorneys presented seven main charges against the censorship statute. The first five of these concerned the law’s invidious effects on property rights. Only the sixth of the firm’s seven serious complaints mentioned the freedom of speech. As the litigation progressed, the free-speech argument began to climb to a position of prominence until it finally eclipsed the economic-based arguments that Mutual had stressed in the early stages of the case. By the time the company’s lawyers prepared their Supreme Court brief, free speech had won top billing, commanding fifty-one of the brief’s sixty-two pages.<sup>13</sup>

Even when discussing free speech, however, Mutual’s interest in open markets was manifest. “The court should consider not simply whether the enforcement of that [Ohio] censorship law will prevent appellants from exercising their right to ‘freely speak, write and publish their sentiments on all subjects,’” Mutual maintained, “but whether it will infringe upon the similar rights of those persons with whom appellants do business, and thereby

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11. *Mutual v. Ohio*, 236 U.S. 230, 35 S.Ct. 387.

12. John Wertheimer, *Mutual Film Reviewed: The Movies, Censorship, and Free Speech in Progressive America*, 37 *AMERICAN JOURNAL OF LEGAL HISTORY* 158, 176 (1993).

13. *Ibid* at 179.

less directly, but no less certainly, impose a burden upon the interstate commerce in which appellants are engaged.”

## WINDOWING AND THE LOGIC OF DISTRIBUTION

At the heart of the crisis of pirated films lies its disruption of the traditional spatial and temporal aspect of film distribution and circulation.

Windowing has been one of the time-tested techniques used by the film industry to extend their markets and to maximize consumption and revenues. Film producers and makers use various strategies to segment the audiences, to differentiate among different outlets of distribution and their times of release, and price discrimination strategies, charging audiences different prices to see the film via different outlets, depending on when and where they see the film. The ability to control a range of new delivery and distribution outlets allows them to spread their risks and maximize their returns. The smooth functioning of the sequence obviously depends in part on the availability of the distribution and transmission technologies appropriate to each phase in the sequence; and it is equally dependent on the existence of administrative machinery for issuing licenses for each type of use and collecting royalties in return for licenses.<sup>14</sup>

Copyright and licensing is the architecture that sustains the windowing system. Indeed every phase in the sequence is underpinned by, and would be inconceivable without, one or other of the exclusive rights comprised in the copyright subsisting in films. The evolutionary dynamic that propelled the expansion of copyright in relation to film is based on the fact that new distribution/exhibition/transmission technologies are continually met by new rights that enable copyright owners to govern the uses to which these technologies are put. The windowing system demonstrates the ultimate control over time and space by capital. Windowing in film distribution has been the one most under attack with new technological innovations.

According to the Lamhe Music store plaintiff, piracy strikes at the heart of the windowing system, and Chander Lall, the advocate for the entertainment majors writes:

*If the distribution strategy involves theatrical release as the first window, it is vital that the film be available to the public only at the theatres. Once the film has run its course at theatres / cinema halls, the film is generally released through a second window which is*

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14. Shujen Wang and Jonathan Zhu, *Mapping Film Piracy in China*, 20 THEORY, CULTURE, AND SOCIETY 97, (2003).

*normally in the form of home videos. Thereafter the stage is set for releases of the film through its other windows and media. The time gap between each window is of utmost importance. At each stage it is important to protect the film from being distributed on any other media, except on media as selected by the distribution strategy. This is absolutely critical for the success of the film. A property worth Rs. 40 Crores can be enjoyed in the comforts of ones home for a paltry Rs. 300/- per month subscription fee charged by the cable operator. Some producers describe a film as a “block of ice” which is melting in their hands, and unless they can quickly make their money, through a planned release programme, they run the risk of having the block of ice melt away and turn to water, without even covering their costs.<sup>15</sup>*

Digital technology has disrupted the balance of power in the film industry. If power in late capitalist expansions lies in its ability to overcome the constraints of time and space, digital technology presents a major challenge to existing power due to its capacity to erase space and reward speed. While technological innovations is intrinsic in furthering capitalist market expansions, when used subversively it also undermines and challenges copyright industries need to command space and control time.

## **REPRODUCTION AND TEMPORALITY**

Piracy interrupts the spatial security of legitimate distribution, and if digital technology rewards speed and partnership, then the worldwide entertainment pirate networks are often better equipped and connected and far more flexible than its counterparts. It is a little strange to think of a pirated film as a ‘copy’. In the digital era, every commodity is a copy, and even the so-called original is a copy. While it could be argued that the use value of an original and a copy are the same (assuming they are of the same quality), what marks the difference between the two copies is the legal structure underlying the act of reproduction. Legitimate and pirate reproductions operate in two difference circuits of exchange value.

Property regimes determine the legitimacy or authentication of the copy by defining ‘who can make a copy’ or through the licensing of ‘who controls the making of the copy’. Copyright regimes therefore seek to create barriers in reproduction which technologies enable. The act of reproduction outside the sign of the law creates the world of commodities marked by the sign of ‘authentic’, ‘authorised’, ‘legitimate’, ‘fake’, ‘illegal’ or ‘pirated’. Since Commodities move in time, their reproducibility and control of their

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15. Chander Lall, *The Film Industry and Copyright* (Unpublished Paper).

distribution has a crucial temporal dimension.

The proliferation of cheap technologies of reproduction in various social circuits, introduces a major crisis of property. The illegal reproduction of these copies or piracy are enmeshed in the diverse social worlds of livelihood, survival, leisure, desire etc.<sup>16</sup> Excluded social worlds move into this cultural sphere through innovative techno practices that mobilizes and disperses cultural goods at rapid speed and succession. The ways in which they lay claims on cultural participation is not dependent on the 'paternal access' that marked earlier forms of media, but can instead be characterized as a form of defiant access. If Linda Williams is right in her argument that contemporary cinema disciplines the audience into a docile body, movie piracy is nondisciplinary. Spectators of pirated movies do not need to follow the time schedules of theaters or television broadcasts; neither do they need to return the watched films to video rental stores.

These practices of defiant access disrupt legal circuits of reproduction, and create disorder in the traditional revenue loop and value chain of film. Property Rights are therefore mobilized to set in order or control these disruptive circuits along the revenue chain and to smoothen the routes of circulation.<sup>17</sup>

## THE LEGAL RESPONSE

Legal instruments and interventions are critical in the process of disciplining these disruptive circuits. The calculus of value chain of a cultural commodity is differentiated and ordered around different temporal paths. It is interesting to see how various metaphors of time attempt to engrain themselves within a legal framework. In 1984 for instance when Universal Studios attempted to outlaw video technologies, they argued that the VCR enabled people to record movies from TV and watch them at a later time thereby engaging in 'time-shifting'. With piracy interrupting the ordered flow of the cinematic commodity, the Legal instruments that we see at present evolving to contain the various disruptive circuits are primarily Raids and Injunctions.

The Raid has been widely recognized to be an inefficient way of tackling the problem of piracy, and is conducted more for its performative role in the press than any real value in preventing the illegal reproduction and circulation of film. The raid can however be strategically used to disrupt the temporal

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16. Jeebesh Bagchi, *Acceleration and Conflicts: Comments on the Cinematic Object in the 1990's and after*, 5 JOURNAL OF THE MOVING IMAGE 41 (December 2006).

17. *Ibid.*

logic of the pirated copy. Very often within a day or two of the release of a new film, a pirated copy, either in the form of a camera version or a leaked copy is available in the pirate markets. Raids when successful delay the release of the film in the pirate markets, and while everyone in the game knows that the film will eventually be available in the market, it is the logic of making the best of the melting block of ice that motivates the continuance of raids.

Injunctions are the primary temporal legal tools which are used to bring back order to the disruptive flows of media commodities. But the problem with piracy is that given its tactile mobility, it becomes almost impossible to identify specific culprits, and a distinct dimension of the contemporary film experience lies in its sense of dispersal. Technologies such as the cheap CD writer and MP3 compression undermine centralized locations for reproduction and distribution. New locations emerge, both for reproduction and, indeed, re-assembly, as CDs are customized for the individual consumer of popular music. Portability and cheapness ensure that equipment can be quickly shifted away from the intrusive eye of the detective agency hired to monitor copyright infringements<sup>18</sup>.

A number of legal innovations in the realm of injunctions have been developed to tackle the problem of anonymity in this domain. The three specific tools that have been used include:

- Ex-parte injunctions (injunctions that are granted even without hearing the other party)
- John Doe Orders (Issued against anonymous offenders; E.g Mirabhai Films got a John Doe Order before the release of Monsoon Wedding)
- Anton Piller Orders (Search and seizure orders) including breaking down doors of shops which are closed

In addition to these you have two other strategies that are gaining prominence:

- Tying the discourse of illegality to urban reform and renewal; Onslaught via sales tax, commercial taxes raids on prominent media markets; National market in Bangalore for instance is closed for many days a month, depending on the major release of the month; Traders in pirate markets have had to start relying on plying their wares in cars which they direct people to whenever there is a raid and the market is shut.
- Using technological measures and criminalizing their circumvention

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18. Ravi Sundaram, *Uncanny Networks, Pirate, Urban and New Globalisation*, 39 ECONOMIC AND POLITICAL WEEKLY 64 (January 3, 2004).

(DRM and Indian Copyright Act); The amendment to the Indian copyright act for instance makes it criminal to possess any equipment intended for the purpose of circumventing a technological protection.

## **THE WAITING ROOM OF CINEMA**

We have thus far seen the temporal nature of film as a commodity, but cinema - that great eraser of time - can never be limited to a one-sided temporal logic. The circulation of the DVD traverses diverse worlds, from that of monetary exchange to barter to gift to ubiquitous reproduction, and acts of circulation always exceed the monetary idea of exchange value. The movement of the DVD from monetary economies to psychic economies has to be seen as a transaction between imaginary capital confronting the world of imagination and desire. The commodity phase of the film is only one phase in its life history as a sensuous object, and this phase does not exhaust its biography as a cultural object. We therefore need to shift our attention to the temporal life of cinema in psychic economies.

The temporal nature of distribution is tied not just to an economic logic, but also to an economy of anticipation. The build up to the latest film, the trailers, the posters, the release of the soundtrack, the first day first show phenomenon all work within an economy of waiting. At the heart of the temporal logic of film is also a culture of aspiration, fulfillment of desire or deferred pleasure. The windowing system of distribution unequally distributes the share of waiting, with the wait getting longer as you move away from the northern hemisphere and move towards different parts of the global south, or from the metropolises to small towns and villages.

In films like *Main Madhuri Dixit Banna Chahti Hoon* (2003), *Haasil* (2003) or Pankaj Kumar's documentary *Kumar Talkies* (1999), we get a glimpse into this - waiting room world of cinema - as a field of differently distributed sensibilities. The newness of the films, the high quality of their reproduction, and the experience of moviegoing come to stand for temporal and cultural difference, between the north and the south, between the town and the city. In a delightful scene in *Main Madhuri Dixit*, the protagonist goes to watch *Devdas*, but after a few reels the film stops and they have to wait for the arrival of the other reels from the neighboring village. The audience complains that the last time they had to wait for over two hours since the cycle in which the reels were being brought was punctured. The big city, not surprisingly, becomes the place where this fracture can be repaired, where films are shown in their entirety, and where audiences do not have to confront their physical and cultural marginality every time they

attend the cinema<sup>19</sup> and the social life of piracy occurs at the intersection of the economy of anticipation and the culture of aspiration. Cinema history does not merely involve the reinvention of technological formats but also of social selves<sup>20</sup>.

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

From waiting for email messages to open, machines to be repaired, or electricity to be restored, the experience of technology is subject to a constant cycle of breakdown and repair. In most countries the promise of technological prosthesis is thwarted by the common experience of technological collapse. Each repair enforces another waiting period, an often frustrating experience of duration brought about by the technology of speed itself. The temporal experience of slowness comes as a consequence of speed-producing technologies, so that speed and acceleration, deceleration and stasis are relative, continually shifting states. The experience of technological modernity in most countries is premised on waiting for it to trickle down; often through pirate indeginizing<sup>21</sup>.

An interesting instance of this in film technology is the history of VCDs and DVDs. Sony and Phillips jointly introduced the VCD technology in 1993 to record video on compact discs. It was cheap, digital, convenient, and seemed to be setting the standard. At the time of the introduction of the new format, however, the development of the technologically far superior Digital Video Disc (DVD) was already underway. Even from the beginning, Philips was well aware of the pending arrival of the high-density DVD and the threat it would bring to VCD. Phillips decided then not to further develop or produce VCD but rather to wait for DVD. Seeing the new format facing

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19. Brian Larkin, *Degraded Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy*, 16 PUBLIC CULTURE 289 (Spring 2004).

20. Ravi Vasudevan, *Cinema in urban space*, May 2003, Seminar 525, <http://www.india-seminar.com/2003/525.htm>.

21. *Supra* note 19.

a more or less doomed future, Philips and Sony decided to launch VCD in China instead since it was “a technology that was fit for a poor cousin in laggard developing countries instead of cutting edge economies”. The introduction of VCDs into China proved to be the biggest boom to cheap reproduction technologies; ironically the industry believed that CDs could fight the menace of video piracy.<sup>22</sup>

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

VCD technology spread rapidly from East Asia to other parts of Asia, and within a few years of their introduction, VCD replaced VHS as the standard format in most parts of Asia. In India for instance, while the price of the VCR never fell below ten thousand rupees, a VCD player was available for as low as a thousand rupees. VCD culture also spread from Asia into other parts of the world very rapidly. In Nigeria, which is incidentally the largest film industry in the world (producing more than 1200 films a year), most of the films are only available on VCD and DVD. But given its complete absence in the western market, there seems to be something distinctly ‘Asian’ about VCD technology<sup>23</sup>.

## **ASIAN VCDS NOT ASIAN VALUES**

This technological emulation of East Asia by other parts of Asia is evident in the case of the VCD, however this has a deeper history, and it is perhaps here that we may start considering the question of Asia in relation to piracy, technology and cultural flows. Since the East Asian miracle and electronic boom, many countries in East Asia have been the symbol of a certain electronic modernity to be emulated. But this was also a very distinct modernity, which did not necessarily place the west as its point of reference.

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22. SHUJEN WANG, *FRAMING PIRACY: GLOBALIZATION AND FILM DISTRIBUTION IN GREATER CHINA* (Rowman & Littlefield 2003); LAIKWAN PANG, *CULTURAL CONTROL AND GLOBALIZATION IN ASIA: COPYRIGHT, PIRACY, AND CINEMA* (Routledge 2006); Shujen Wang and Jonathan Zhu, *Mapping Film Piracy in China*, 20 *THEORY, CULTURE, AND SOCIETY* 97, (2003).

23. Kelly Hu, *Made in China: the Cultural Logic of OEMs and the Manufacture of Low-cost Technology*, 9 *INTER – ASIA CULTURAL STUDIES* 27 (2008).

Indeed you could even bypass the west by leapfrogging into a distinctly Asian model of technological development.

As is well known, the technological miracle was also strongly fuelled by cold war interests and transfers of technologies, but transfers which moved far beyond the official routes imagined for them. The technological history of East Asia from the eighties is also an account of a ‘copy culture’ that saw the emergence of very strong manufacturing capabilities, which borrowed and adapted western technology for the Asian region<sup>24</sup>.

Interestingly, the media landscape that dots many south Asian countries is a landscape chiseled out of another Asia of the mind. This is an imagination of the modern, in which the point of reference is not the enlightenment or the industrial revolution of Europe, but the almost magical transformation of south East Asia. This is an Asian modernity, in which the copying countries of south East Asia serve as the original role models for countries in the rest of Asia. We can illustrate this with one of our favourite maps (and here we use the idea of a map not in the ‘disenchanted’ way of seeing national territory within a techno-rational grid). Our map belongs to the genres of enchanted maps, in which the imaginary overwhelms the real, and opens out fantastical

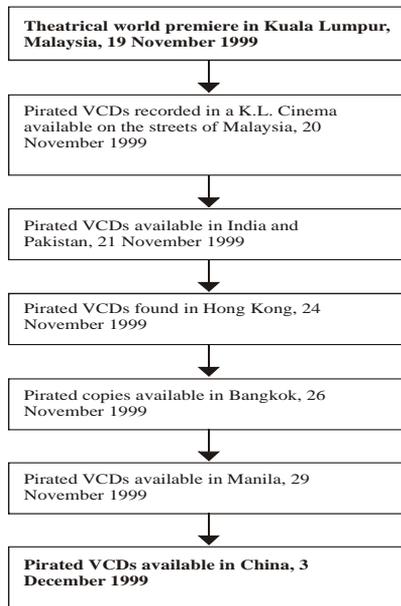


24. *Ibid.*

possibilities of seeing. This is our map of an Asian commons of copy culture.

As you step out of National Market in Bangalore, you are faced with a cartographic puzzle. Diagonally opposite the national market - a haven for pirated goods - is the Bangkok Plaza, and a few meters away you have the Burma Bazaar. Smiling across the Burma Bazaar is the New Hong Kong Bazaar, announcing itself with it's not so new signboard in which the Kong is only a matter of an educated guess. While globalization is supposed to have redrawn boundaries and shifted our ideas of time and space, you are still not quite prepared for this distorted sense of Asia, in which you step out of the national to encounter Bangkok, Burma, Hong Kong, gesturing towards a very different experience of the global and of modernity. All these markets which specialize in non legal media commodities from phones to DVD's and software, are the nightmare of global policing institutions such as World Trade Organization and the World Intellectual Property Organization. They also serve as an appropriate metaphors of the contemporary, in which rules of property collides with unofficial cultural flows.

There are various versions of the unofficial Asian maps, and the International Intellectual Property Alliance has also moved into the business of cartography, with its annual production of the Special 301 Report, which has a consistent interest in Asia.



Source : Compiled from IIPA 2001 Special 301, Malaysia

What is interesting is the picture of Asia that emerges from these cultural flows of technology and cinema. In contrast to the heavy civilization claims of Asian values or the geo political approach that sees Asia as a conglomeration of various strategic national units, the informal cultural and technological flows between Asia poses interesting questions of How Asia means.

In the early days of globalization, travel writer Pico Iyer set out in search of what he despairingly called the Ramboization and Coco Colonization of Asia. This is a trope that has been adopted by a number of critics of globalization, who argue that what has taken place is merely the Americanization of the world, with the hegemonic spread of American businesses and culture across the globe. And yet if one were to careful look at what is being sold in the DVD shops in any of these markets and elsewhere in the country too, you find that apart from your standard Hollywood and Bollywood fare, you also increasingly find a range of films from countries whose films do not have any official circulation in India. Whether it is the Korean cult classic *Old Boy* (aka non incestuous *Zinda* in India), or lesser known films from all parts of the world.

Beng Huat arguing for the importance of conceptualizing an East Asian popular culture says that:

*In contrast to the very uneven and abstract presence of Confucianism, since the 1980s popular cultural products have criss-crossed the national borders of the East Asian countries and constituted part of the culture of consumption that defines a very large part of everyday life of the population throughout the region. This empirically highly visible cultural traffic allows for the discursive construction of an 'East Asian Popular Culture' as an object of analysis. 'The dense traffic of popular culture across the national/ cultural boundaries in east Asia have far exceeded the analytical boundaries that are determined by any focus on a specific location.'*<sup>25</sup>

There are a number of exciting possibilities being opened out by this new cinephilia<sup>26</sup> where all of a sudden there is a far greater interest in Asian films than in Hollywood or even in European Art house. The immense popularity of film makers like Wong Kar Wai, Tsai Ming Liang and Hou

25. Chua Beng Huat, *Conceptualizing an East Asian Popular Culture*, 5 INTER – ASIA CULTURAL STUDIES 200 (2004)

26. Moinak Biswas, *Film Studies, Film Practice and Asian Cinema: Points in Re-Connection*, paper was prepared for 'Asian Cinema Conference: CSCS, Bangalore, February, 2007.

Hsiao Hsien stems from their visibility in the film festival route but outside of that you have a range of films from Korea, Thailand, Japan and even Cambodia which find their way into the pirate markets. If one were to compile an alternative list of the top ten films in pirate shops in National Market or in Burma bazaar, one would come up with many surprises. In a screenwriter's conference organized by FTII, Anurag Kashyap says that over ninety percent of the films made in India are DVD remakes and that we celebrate DVD remakes. This, to me is an intriguing formulation. He does not say that the films are remakes of Hollywood films or Japanese films, and he chooses instead to create a new category called the DVD film.

Unlike the category of national cinemas of the world, illicit media always spills over national boundaries and has always had a transnational feel to it (whether it is the ubiquitous foreign blue film or the circulation of a wide range of art house or commercial films within the context of video and DVDs). In Jia Jung He's low budget film "Pirated Copy" about the circulation of pirated films in Beijing, a pirate DVD seller tries to sell Bergman, Tarkovsky and Fellini to her customer. The customer says he has never heard of them and enquires whether Tarkovsky is a Russian composer, and asks instead for the Korean film *My Sassy Girl*.

While there has been much hype about the idea of transnational cultural flows, it is unclear what the nature and impacts of these flows have been; and more specifically what are the sites in which these flows take place. How do we take into account these unofficial flows that are taking place? What is perhaps interesting about the flows that piracy enables is that all of a sudden they are not restricted merely to East Asia alone, and east Asia presence in the Indian media markets enable us to think differently about the idea of a trans national cinema.

Meaghan Morris says "In an inter-Asian context, it also allows us to reflect historically on transnational industrial as well as aesthetic imaginings, which do not solely derive from the West and which 'flow', as it were, towards and through Western cinemas as well as around the region itself".

The site of illegal cultural flows in Asia is also being mobilized interestingly by media corporations and owners of intellectual property. Consider for instance the following:

*They run computer manufacturing plants and noodle shops, sell 'designer clothes' and 'bargain basement' CDs. They invest, pay taxes, give to charity, and fly like trapeze artists between one international venue and another. The end game, however, is not to buy a bigger house or send the kids to an Ivy League school -- it's to blow up a*

*building, to hijack a jet, to release a plague, and to kill thousands of innocent civilians*<sup>27</sup>.

Even People like Lawrence Lessig, who would otherwise be considered to be on the left of copyright in the US has to invoke the figure of the Asian pirate to redeem the innocent US downloader;

*All across the world, but especially in Asia, there are businesses that do nothing but take others people's copyrighted content, copy it, and sell it—all without the permission of a copyright owner.... The copy shops in Asia, by contrast, are violating Asian law. Asian law does protect foreign copyrights, and the actions of the copy shops violate that law. So the wrong of piracy that they engage in is not just a moral wrong, but a legal wrong, and not just an internationally legal wrong, but a locally legal wrong as well.*<sup>28</sup>

If the new forms of film circulation in Asia are to be made sense of, then we have to urgently rescue them from knee jerk responses to piracy, as though piracy arises as a specific moral problem of Asia. It may instead be time to start look past piracy towards a better understanding of the properties of film in the age of the mechanical reproduction.

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27. Report of the U.S. Department of Transportation, C.f. Nitin Govil, *War in the age of Mechanical Reproduction* in SARAI READER 2005: CRISIS MEDIA 379, 380 (SARAI 2005).

28. LAWRENCE LESSIG, *FREE CULTURE: HOW BIG MEDIA USES TECHNOLOGY AND THE LAW TO LOCK DOWN CULTURE AND CONTROL CREATIVITY* 63 (Penguin Press 2004).