# 1AC – Semiotic Piracy v2

#### Information capitalism has subsumed the realm of medical innovation – status quo IP systems are an ever-expanding biopolitical form of control that uses speed and power to encompass new aspects of life. This season’s resolution asks whether medicine belongs in the public or the private domain, but that fallacious binary reinforces biocolonialism.

Coombe ‘20 [Rosemary J. Coombe; a Canadian anthropologist and lawyer, a Professor in the Department of Anthropology at York University and Tier 1 Canada Research Chair in Law, Communication and Cultural Studies; 08-27-2020; “Ethnographic Explorations of Intellectual Property”; Oxford Research Encyclopedias, Anthropology; https://doi.org/10.1093/acrefore/9780190854584.013.115; Accessed 09-03-2021] AK

Reconfiguring the Public–Private: Technologies and Biopolitics

Dominant Anglo-American systems of IP create “rights” conventionally understood as market- based rights of exchange rather than moral, human, or citizenship rights. To this end, they lend themselves to critical perspectives drawn from traditions of political economy. Nonetheless, the introduction of IP protections into new regions created entitlements and felt obligations that opened up new rights deliberations which drew upon other philosophical models of human dignity, flourishing, and well-being.

Ethnographies of early “bioprospecting” projects in Latin America, for instance, underscored how market-based research and development practices could foster undesirable forms of competition between communities, entrench economic inequalities, direct research unfairly, and require investments in political organization and infrastructure that exceeded local peoples’ capabilities (e.g., Greene 2004; Hayden 2003; Moran et al. 2001). In some cases, activist non-governmental organizations (NGOs) negatively publicized and arguably undermined anthropologists’ efforts to provide community supports in the absence of community capacities (e.g., Berlin and Berlin 2004; Rosenthal 2006). “Best practices” for obtaining consent and providing compensation in this field have since evolved in global policy deliberations shaped by international indigenous rights, norms of community participatory deliberation, and rights-based development practice. While legal and policy demands to recognize local traditional environmental knowledge, expression, and innovation invited new technologies of neoliberal governmentality, they also opened new prospects for collective self- determination (Coombe 2016).

Informational capitalism, characterized by the growing speed and power of digital communications and biotechnological innovations, relies upon the extension of IP rights to encompass new kinds of intangible goods. The extension of patents and plant variety protection to the life sciences prompted moral concern and biopolitical analysis. The legal protection of corporate rights in the human genome, plant genetic resources, and genetically modified organisms provoked widespread social controversy, spurring anthropological inquiries into the nature of property and personhood as well as the social construction of innovation (e.g., Hirsch and Strathern 2004; Maurer and Schwab 2006; Pottage and Mundy 2004; Strang and Busse 2011; Verdery and Humphrey 2004). Exploring the historical identification of plant chemical compounds with medicinal properties in Africa, for example, revealed extensive social patterns of use, innovation, and exchange between rural communities, healers, explorers, scientists, and corporations, undermining the conceit of any singular moment of invention or discovery (e.g., Osseo-Asare 2014). Larger social debates about IP in both South Africa and Costa Rica expressed distinctive social understandings of state territoriality, sovereignty, citizenship, democracy, national belonging, reproduction, and local morality (e.g., Aistara 2012; Foster 2012; Pearson 2012). Elsewhere, research into the relationship between genomic epistemologies and capitalist systems in the life sciences revealed that transformations in technologies and markets raised new apprehensions about power and inequality (Reardon 2005; Stone 2010; Sunder Rajan 2005).

Anthropological research on biotechnology markets shows them to be especially speculative, linked to international financial markets that may prevent pharmaceuticals from being locally produced, and leaving many regions dependent upon foreign monopoly suppliers (Peterson 2014). In medical and biotechnological research, relegating certain resources to “the public” not only denies claims to them, it may unevenly distribute risks, extend obligations, and enable denials of social responsibility (Langwick 2015; Pechlander 2010). For instance, during research for the Human Genome Project, it was determined that the human genome should be kept within the scientific public domain (genetic sequences themselves being patented), but mapping this domain raised ethical issues pertaining to the categorization and treatment of humans as research subjects. Informed consent emerged as an issue when researchers failed to anticipate subjects’ desires to access the products of the research that their genetic resources enabled. An emerging “salvage paradigm” for populations deemed to be “facing extinction” came to dominate genetic collecting practices, stoking racial anxieties and embroiling anthropologists in accusations of biocolonialism and negotiations of new ethical protocols (Cunningham and Scharper 1996).

#### Intellectual property is the next stage in the abstraction of property – a new axis of class conflict as capital is freed from its fixity. A new ruling class controls the vectors of communication, commodifying information and enabling privatization. IP is about maintaining control for owners, not creators.

Wark ‘6 [McKenzie Wark; Professor of Media and Cultural Studies at The New School in New York City, best known works are A Hacker Manifesto and Gamer Theory; 08-18-2006; “INFORMATION WANTS TO BE FREE (BUT IS EVERYWHERE IN CHAINS)”; Cultural Studies Vol. 20, Nos 2–3 March/May 2006, pp. 165–183; DOI: 10.1080/09502380500495668; Accessed 09-16-2021] AK \*Bracketed for gendered language\*

Hacker class v. vectoralist class

My thesis is not that labor has changed, nor that the ruling class has changed, but that there is both a new productive class and a new exploiting class. I think that intellectual property is a third stage in the abstraction of private property. First came the enclosure of the land, and the rise of an agricultural commodity economy; second came the formation of capital and the rise of a manufacturing commodity economy. I think we are now well within the rise of a third stage of the abstraction of property. So-called intellectual property, which presents itself as in continuity with the history of patent, copyright and trademark law, is really nothing of the sort. As Lawrence Lessig (2004) argues, it is a break with tradition. It is the project of turning these formerly negotiated rights into private property rights.

This new stage of private property creates a new axis of class conflict. We should remember that there have already been two previous axes of class conflict, not just one. First comes the conflict over the privatization of land. It turns peasants into farmers and feudal lords into what I would call a pastoralist class. Peasants and lords negotiated around local, traditional rights. What the lord expropriated was often in kind. But when farmers confront pastoralists, land has become the private property of the pastoralist class. Farmers are dispossessed of all traditional rights. They pay rent in cash rather than in kind.

The transformation of peasants into farmers and lords into pastoralists is still going on today. Class conflict over the privatization of land is still the dominant class struggle in much of Asia, Africa, and Latin America. But this class conflict finds itself intertwined with another, between capitalists and workers. So if we unpack the somewhat ahistorical category of ‘capitalism’, we find already two axes of class conflict, and four classes, forming alliances and negotiating with each other over the course of three centuries.

If there are two axes of class conflict, two kinds of ruling class, two kinds of labor – why not a third? I think Negri and Kroker are right to insist that something is changing, that the commodity form is mutating. Where I differ is in arguing not that labor has changed, or that there is a new kind of potentially dominating class, but rather that there is a whole new axis of class conflict, which pits a new kind of ruling class against a new kind of productive class.

The new ruling class I call the vectoralist class rather than the virtual class. Unlike Kroker, I don’t want to offer up the concept of the virtual to the enemy. Like Negri, I want to preserve a more strongly optimistic, forward looking critical theory. So: the vectoralist class, so called because they control the vectors along which information circulates. They own the means of realizing the value of information. Information emerges as a concept precisely because it can be quantified, valued and owned.

That the vectoralist class has replaced the capitalist class as the dominant exploiting class can be seen in the form that the leading corporations take. These firms divest themselves of their productive capacity, as this is no longer a source of power. They rely on a competing mass of capitalist contractors for the manufacture of their products. Their power lies principally in monopolizing intellectual property – patents, copyrights and trademarks – and the means of reproducing their value – the vectors of communication. The privatization of information becomes the dominant, rather than a subsidiary, aspect of commodified life. Klein: ‘There is a certain logic to this progression: first, a select group of manufacturers transcend their connection to earthbound products, then, with marketing elevated as the pinnacle of their business, they attempt to alter marketing’s social status as a commercial interruption and replace it with seamless integration’ (Klein 2000, p. 35).

As private property advances from land to capital to information, property itself becomes more abstract. Capital as property frees land from its spatial fixity. Information as property frees capital from its fixity in a particular object. This abstraction of property makes property itself something amenable to accelerated innovation – and conflict. Class conflict fragments, but creeps into any and every relation that becomes a relation of property. The property question, the basis of class, becomes the question asked everywhere, of everything. If ’class’ appears absent to the apologists of our time, it is not because it has become just another in a series of antagonisms and articulations, but on the contrary, because it has become the unacknowledged structuring principle of a third nature that organizes the play of identities as differences.

The hacker class arises out of the transformation of information into property, in the form of intellectual property, including patents, trademarks, copyright, publicity rights, and the moral right of authors. The vectoralist class goes out of its way to court the hacker class ideologically, to insist on the essential complementarity of the ownership of information and the production of new information. This might lead some – such as Kroker – to blur the distinction between the hacker class and the vectoralist class. One can recognize the contours of this ideology in the fetishizing of the entrepreneur and of technology, where the whole question of labor is ignored, or sublimated into a discourse on ‘creativity’, of work as play, play as work. As Kirschenbaum’s case makes clear, hackers and vectoralists are far from sharing a common interest.

There is an essential difference between the hacker class and the vectoralist class. The hacker hacks, producing new knowledge, new culture, new science – but does not own the means of realizing the value of what it creates. The vectoralist class produces nothing new. It’s function is to render everything equivalent, to commodify the new. It owns the means of realizing the value of the new. The hacker ends up selling ~~his or her~~ [their] labor, one way or another, to the vectoralist class. Intellectual property, while it is presented as the defense of the rights of producers of the new, is in actuality about maintaining the rights not of producers but of owners of information.

The hacker class includes anyone who creates new information, in any medium. It includes not only musicians, writers, and film makers, but also chemists, biologists, philosophers – anyone who produces new information – including Marxist or post-Marxist theorists. The products of hackers’ labor may be even more differentiated than the products of workers’ labor or farmers’ labor, but the commodity form renders them equivalent. X words from my book are worth Y tunes from your album are worth Z amount of the royalties on your patent. To the vectoralist class, all these things are merely part of a portfolio of intellectual property that these days often accounts for a substantial part of the ‘assets’ of a company.

#### Consumer consumption now unfolds in a series of sacralization rituals in everyday life, with brands becoming intertwined with the medicine itself while modulating social cybernetics. Biocapitalism has linked together the medical lab, the factory, and now the stock market, reducing life to statistics and calculations, dictated by different registers of value and of meaning.

Yoka ‘17 [Lia Yoka; Associate Professor of History and Theory of Art and Culture at the School of Architecture, Aristotle University of Thessaloniki, assistant editor of the semiotics journal punctum and coordinates the ‘cultural theories’ module at the Interuniversity Postgraduate Programme in Museology, AUTh and University of Western Macedonia; 2017; “Authentic sneakers, branded drugs, patented genes: A semiotic exercise in nominating commodities”; URL: https://d1wqtxts1xzle7.cloudfront.net/61235624/BRAND\_COMMODITY\_SEMIOTICS20191116-44611-18269hq.pdf?1573912822=&response-content-disposition=inline%3B+filename%3DNominating\_commodities\_A\_semiotic\_exerci.pdf&Expires=1630791674&Signature=LuK46hqGoeeb3inxIjLcEPw5wtUAqOtczYnDRKYIx9MnPAJz4d~~HQttT4Qsbe1Qo08LBUtRbj80OuerVIi0ZvPRoR7Q2MmJsVgcRQxOToGc6v~t7alSPaMYJ5FTSi0vZSHWi5uWNQWSAXQPVoWnpa2bkDwXLeVYQvNGsTXWIsi4XU7y2k7bmYvf-jmJ1CwdJPsc9JfOLqXZmK~nF7aU3hV~FibES~IeCPPa9Y26ZA2RXhCO87tjCNvrtiUzbeN8Ohsz5cqAdTweIiYgAptZDUgh5WYttWtH1EDyyrAS9QupoWhE6V3ZDUc5oE9Y~GLnoIucrbKzOT3HgY7Ni2jMCg\_\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA; Accessed 09-04-2021] AK \*Figures omitted\*

Brand/patent

Patents are internationally regulated under Article 27.1. of the World Trade Organizations’ TRIPs Agreement. (WIPO 2008) In the US pharmaceutical market, the most advanced pharmaceutical market in the world, there are now two names for all prescription drugs. There is a generic name and a brand name, each denoting convergent identities of common therapeutic objects. The generic name signifies the active chemical agent in the product and thus also connotes the properties of a drug, such as efficacy safety, pharmacokinetics and pharmacodynamics, while the brand connotes advertising budgets, market share, number of prescriptions sold, return on investment.

In other words, generic belongs to the register of science, patented brand on the other hand, belongs to the register of commerce, or research versus marketing, profession versus industry. Jeremy Greene argues that this is a moralised dichotomy and it has played a central part in the medical history of drugs since the early twentieth century (Greene 2014).

Already in the 1960s there were cheaper generic direct equivalents, to branded medicinal products, yet doctors still prescribed the more expensive branded ones. That was of course a matter of monopolistic drug policies (Gabriel 2014). There was a counterargument for it. Pfizer’s Harry Wiener would insist in the 1970s that “there is no such thing as a generic drug”, meaning that every drug was manufactured by someone and therefore all drugs carry the reputation of the firm that branded them first (Greene 2011: 469).

As Greene argues, the similarity between a branded and a generic name has always been a contested issue, since there is a politics of equivalence and similarity (just like the “politics of difference” that is so important in the establishment and contestation of cultural identity) involved in naming a therapeutic product or process (Greene 2011: 502 ff).

In other words, in the ordering systems within the market of pharmaceutical products and the sciences of health, the use of two divergent names or of one common name for a drug, raises both epistemological and ontological issues of identity, similarity and difference.

Our semiotic square linking pharmaceutical products to brands might then look like this:

Fig. 2 Branded and generic pharmaceuticals.

In the above semiotic square: A = branded medicine

B = generic medicine (containing the active ingredient of the branded

one)

B’ = non-generic (with specific other ingredients besides the active)

A’ = non-branded (given without name to the patient)

Some simple relations of contrariety, contradiction and implication become established. However, we see that there is one component that is being left out in the branding business, even less visible in the semiotic square about branded and fake sneakers. That is why in this square, the notion of natural remedy (and thus the implication that all medicinal products derive from some “natural”, “given”, “unprocessed”, “raw” materials) comes with a question mark.

Instead of creating yet another semiotic square for the market of natural remedies and its branded and unbranded varieties (which would make perfect sense, and would inevitably raise the issue of the political economy of raw materials), let us stay with the nominating powers of branding per se.

Sneakers and pharmaceuticals are both multiple billion-dollar markets that depend on definitions of (what constitutes) verisimilitude, similarity and difference. In both cases, an original brand name is carried by the authentic product, and another name is carried by the counterfeit or generic product that copies or is somehow associated with the original product.

This difference in naming might, although not necessarily, involve a quality gap (and a consequent difference between a safe to use product and a health hazard) between “original” and copies.

In a world where consumption, unfolding in a series of sacralisation rituals in everyday life (Belk et al. 1989; Belk 1988) has become “the very arena in which culture is fought over and licked into shape” (Douglas 1979: 37), consuming authentic brands is an extremely important aspect of social status and social identity (Saviolo & Marazza 2013). Teenagers in the First World feel they have greater social power wearing authentic sneakers.

The crucial role of the ideology of branding in the reproduction of commodity relationships is obvious in the case of this vulnerable target group for sports shoe manufacturers. The role of branding pharmaceuticals is definitely also to inspire the consumer with trust in the branded product at the pharmacy counter. For reasons related to the very content of the health market, fear of the possibly harmful effects of the non-branded, generic medicinal product is a big part of the consumers’ trust in branded medicine. But it extends beyond that. Although, just like in the fashion items’ business, commodities have to be renewed constantly, with slight alterations that will justify new brands and patents, brands (and patents) in medicinal products have a slightly different function, since vital decisions of funding, manufacturing, distribution and consumption are made between pharmaceutical corporations and companies on the one hand, and public health institutions, clinics and outlets for medical products largely (but not exclusively) regulated by State policy in each country on the other.

The price of the branded (vs generic) product is a major social problem. The health of millions of people e.g. in Brazil (that passed the disputed Generics Drugs Act in 2009), or in India and African countries, but also of the non-wealthy in wealthy State economies, depend on it. In these discourses what remains a blind spot is the very provenance of the active ingredient, chemical or natural, and the corporate rights to its use and distribution. In the case of natural remedies, for instance, (another, but considerably smaller, multi-billion business), ingredients are not necessarily the outcome of laboratory processing of basic natural materials, but can be the direct product of largely unprocessed, natural, as it were, or found, and not even mined or extracted, materials. Much discussed in the 1990s was the industrial potential of the therapeutic neem tree in India, while a very characteristic case of the State regulation of unprocessed medicinal plants is the State of Bhutan (Wangchuk and Tobgay 2015). At the point where nature and life, whatever the terms mean, become subject to regimes of ownership protection, branding reveals its powerful role in social cybernetics.

Biocapital

In the last ten to fifteen years there have been a number of social science studies focusing on the birth and prevalence of terms such as biocapital and bioeconomy. They talk of “somatic ethics” as the soteriological basis for the space now being created linking “the lab, the factory and the stock market” and building new hierarchies in how life is being valued (Rose 2008: 37). According to Helmreich “[b]iocapital also extends Foucault’s concept of biopolitics, that practice of governance that brought “life and its mechanisms into the realm of explicit calculations” (...). Theorists of biocapitalism posit that such calculations no longer organise only state, national, or colonial governance, but also increasingly format economic enterprises that take as their object the creation, from biotic material and information, of value, markets, wealth, and profit (Helmreich 2008:464).

Different registers of value allocate different meanings to life, vitality and the human body. The language of biotech companies selling gene enhancement technology, or preserving stem cells along with the promise for lifelong customised cures, of the cosmetic industry advertising from surgery to consultation sessions to massage oils, of the insurance industry capitalising on health risk and speculating on survival and life span, of the legal texts and government reports on compensation for victims of disasters, of demographers and public health officials on euthanasia, each offer their own definitions of how much monetary value life has – “statistical life”, as it is called (Rose 2008: 38-40). It has been established by now that issues referring to the manipulation and commodification of molecules, genes, organs and bodies form a separate conceptual space that exceeds the previous paradigms of interventions in agriculture, stock breeding, or even in the regulation of social capital. Besides its great epistemological importance, this realisation of a bio-industry, including the “hope and imagination technologies” that fuel the profits, also points to a new social reality.

The need for a level market, for easing the flow of bio-capital across countries and regulatory regimes has a major impact on local and global social realities. Greece, for instance, will have a more liberal policy than France on privately selling eggs for Assisted Reproduction technologies, quickly turning the country into a center for medical tourism. In turn, immigrant women in Greece will be more willing to find ways to profit from offering their eggs in comparison to Greek citizens, to use only a European example.

#### Thus, I affirm piracy as a method to reduce intellectual property protections for medicines.

#### The aff is a radical form of piracy, a rogue Other that sabotages Western modes of capital while reinforcing subaltern identities. The private-public domain binary is a farce created to exclude subjects from circuits of recognition and exchange. The aff is a semiotic project that implodes the IP system from within, spilling up to create new systems of cultural governmentality.

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Pirates and Their Practices

A number of ethnographic studies illustrate the various means by which IP and the policing of its violation have constituted new figurations of pirate subjects while simultaneously encouraging reflexivity among subject populations about community identity and the norms that reinforce peoples’ senses of communal belonging in these circumstances (e.g., Reinberg 2015; Thomas 2013). The figure of the pirate has re-emerged in the West as a rogue “other” properly subject to industrial demonization, surveillance, and punishment or, alternatively, celebrated as a subaltern challenge to corporate cultural industries. These moral positionings are often gendered and racialized. Acts of piracy that “merely” make copies or reproduce goods are often defamed with tropes of passive imitation and effeminacy contrasted to more muscular “transformative” acts of appropriation (Liang 2011, discussing Larry Lessig; Vats 2020). The omnipresence of informal markets, however, also reveals that different kinds of copies carry distinct values in local moral economies and that a variety of pirate subjectivities may be locally recognized (Dawdy and Bonni 2012).

Antipiracy campaigns attempt to impress upon socially disadvantaged peoples a normalized, universal, and transhistorical human subject that puts targeted communities outside the pale of proper ways of life and legitimate economic activity (Thomas 2016). IP piracy is often essential to accessing cultural goods and engaging in cultural reproduction more generally in the Global South (Liang 2011). Local assessments of necessary, permissible, desirable, and blameworthy acts of IP violation tend instead to reflect a wide range of community norms. Accusations of piracy made by local artists in Mali were shown to have more to do with assertions of citizenship and perceptions of state failure than concerns about lost revenues (Skinner 2012). The pirate may also locally represent a position of protest against the disintegration of state–subject relations in polities that appear to value cultural resources over human ones (Dawdy 2011), and foreign economic interests over citizens’ social needs.

Anthropologists studying the phenomena of piracy have refused to privilege the private property–public domain binary, showing how, why, and to what ends this modern conceptual division is rejected by subjects whose economic circumstances exclude them from IP’s circuits of recognition and exchange (Grassmuck 2014; Poduval 2014). For example, in urban Bamako, piracy has been both the cause of artistic precarity and the rationale for new kinds of cultural governmentality, creating a crisis in political subjectivity where musicians struggle to maintain professional livelihoods amid weak state oversight and a flourishing informal economy in copied music (Skinner 2015). Challenging the purported dangers of piracy to mainstream industries, while exploring the politicized nature of creative counterfeiting practices, anthropologists attend to the abject subjects and public anxieties generated by the policing of illegalized cultural goods (Dent 2016, 2020; Eckstein and Schwartz 2014; Thomas 2016).

Assessments of piracy exceed considerations of subjectivity when they explore political economies, moral economies, and the policing of cultural circulation in the Global South. Anthropologists increasingly ask, not who is a pirate and why, but rather, what does piracy do, shifting inquiry to issues of labor, technology, monopoly, cultural consumption, and political representation. Attending to the productive dynamic between “appropriate” circulation and digital piracy in Brazil, for example, revealed how social groups enact, challenge, and, ultimately may modify IP law by exposing its contradictions and fault lines (Dent 2016).

Although considered illicit by state and international powers, pirate practices in Guatemala were shown to have local legitimacy in communities that rejected police powers exercised on behalf of foreign corporate actors who are clearly unaccountable to the people so governed (Thomas 2016). Antipiracy campaigns, draconian enforcement regimes, and punitive measures amplify antagonisms between emerging classes in informational capitalism, the structuring principles of whose interrelationship are still obscure (Dawdy 2011).

#### Information’s ontological properties allow it to escape bounds of materiality while never being immaterial. Information wants to be free – the aff’s ontological rupture of IP law through piracy is an investment in the virtual to create new realms of info sharing, escaping IP’s regimes of scarcity.

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Information wants to be free

The hacker class makes new information; the vectoralist class turns it into private property. Information is a strange thing, as theologically subtle as the commodity was to Marx. It has a peculiar ontological property. Information is never immaterial. Information cannot not be embodied. It has no existence outside of the material. It is not an ideal or a ghost or a spirit. (Although it may give rise to these as mystifications . . . ) And yet, information’s relation to the material is radically contingent. This contingency is only now starting to be fully realized. The coming of the digital is the realization, in every sense of the word, of the arbitrary relation between information and its materiality, of which the arbitrary relation of signifier to signified is but a special case.

Everyday life confirms this. I could make you a copy of this text, and the information in it, or rather the potential for information in it, would then be on a CD in your possession. And yet, it would still be ‘right here’, on my hard drive. Now isn’t that strange? My possession of information does not deprive you of it. Whatever information is, it escapes the bounds of any particular materiality. That is its unique ontological promise, now fully realizable in the digital.

Information has then at least one very strange property. It can escape scarcity. And it is this property that makes it very troubling for that other kind of property – private property – which is all about the maintenance of scarcity. Information is what economists call a ‘non-rivalrous good’ – a term that is clearly an oxymoron. Information poses not only an intellectual challenge but an historical challenge to economic thought. The challenge is not only to think what else it could be, but to practice the production and reproduction of information otherwise.

The new ontological properties that information introduces into the world bring forth, as a reaction, new kinds of property relation in the legal sense – what we now call ‘intellectual property’ – another oxymoron. As I would understand it, intellectual property grows out of, but is distinct from, patents, copyrights and trademarks. Intellectual property is the tendency to turn socially negotiable rights into private property rights. The enormous ramping- up of intellectual property talk results from the contradiction between the newly realized potential of information to escape from scarcity and those with an interest in stuffing it back into the limits that scarcity and the commodity would impose.

The ontological property form of information is as socially produced as its legal property form. The question is how and why these two senses of ‘property’ have come into conflict. The question is why, if ‘information wants to be free’ in the ontological sense, it is ‘everywhere in chains’, in the legal sense (Wark 2004, p. 126). Coming from a certain mode of the Marxist tradition, I can’t help but see the law as superstructural, as reactive, and most particularly as a terrain upon which class interests negotiate. In particular, I am interested in law as a terrain where successive ruling class interests manage the transition from one mode of production to another. This might sound rather ‘vulgar’, but perhaps in this case it is the reality of the situation that is vulgar, not the theory.

Where the capitalist class found it useful for information to remain relatively free, in the interests of the expansion of production and consumption as a whole, the vectoralist class insists in the enforcement of strict private property rights over information. One might gauge the relative strengths of these rival ruling classes by looking at the state of intellectual property law. One might gauge the preponderance of capitalist and vectoralist interest within a given firm by looking at its policies on the technical and legal enforcement of intellectual property law. One might gauge the place in the development process of a particular country by the way it responds to the demands from the overdeveloped world for the enforcement of international agreements on these ‘rights’. In short: by extending the logic of class analysis, one can show how, far from being relegated to the dustbin of history, class is alive and well in our times, even if in forms we have hardly begun to name.

We can account for the obsession with enforcing intellectual property law in class terms; it is in the interests of an emerging ruling class. We can account, then, for the ideologies of information as property also. James Boyle (1996) suggests that there is a tension between the idea of maximizing the ‘efficiency’ of the economy as a whole and producing ‘incentives’ for information creators/owners. To be ‘vulgar’: the shift from the former to the latter is the shift from capitalist to vectoralist thinking about the place of information in the economy, from peripheral to central. But what is striking is that despite legal and ideological coercion, information still wants to be free. Its legal properties clash with its ontological properties. So on the one hand, we see increasingly vigorous attempts to outlaw the free sharing of information; and on the other, we see the persistence of file sharing and piracy. How can we account for this tension?

This is the nexus where one might reinvent a kind of critical theory. A critical theory is one that thinks in terms not only of the actual but also of the virtual. The virtual could be thought of as the grounds of possibility, but the ‘possible’ in the most material sense. Where this critical theory might begin is by saying that perhaps what this tension over information signifies is that we have finally found the point where we can escape from material scarcity, and from all economies of scarcity. Perhaps we have found the one domain in which we could realize a certain ‘utopian’ promise: ‘to each according to their needs; from each according to their abilities’.

#### The private-public domain binary is based in Western commodification to make legible certain cultural contributions while erasing others, naturalizing divisions within social life. We reject the topic’s fetishization of the public domain, which validates colonialism and dispossession, instead hacking the dominant legal and economic orders of IP. There is not just one public domain – piracy opens new realms of social life, new publics as a communicative space for counter-hegemonic expression.

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IP as Commodification: Private Properties and Public Domains

Anthropologists recognize IP as a form of commodification rooted in Western liberal philosophy that creates regimes of scarcity by recognizing some types of material expression as the property of individual, collective, and corporate actors. Using rationales such as the valorization of original individuated expression (copyright), novel innovation (patent), investments in creating fields of commercial meaning (trademark), and the making and merchandising of distinctive personas (celebrity), the law legitimates various entitlements. Such legal recognitions are selective in the kinds of cultural creativity they encompass, routinely finding certain forms of human expressive and innovative work to be legible and legitimate while excluding or taking for granted other similar, socially valuable activities performed by people with less political power. Although anthropologists insisted that there were some similar types of exclusive protection in non-market societies, the global consolidation of such protections was largely understood to be a product of liberal capitalist modernity, ideologically premised upon the naturalization of social categories dividing private and public zones of social life.

Rejecting Privatization and Embracing the Public Domain

In the last decade of the 20th century anthropologists and ethnobotanists joined a chorus of scholars across disciplines voicing alarm about the increasing privatization of public goods, concentrations of power, limitations upon creative expression, exacerbation of economic inequality, and other dangers consequent upon the shrinking terrain of publicly available cultural, technological, and genetic goods (e.g., Brown 1998; Brush 1999; Kloppenburg 1988; Moran et al. 2001; Napier 1994; Scharper and Cunningham 2007; Sunder Rajan 2006). Following familiar anthropological critiques of cultural property (Handler 1991), IP protections were seen as decontextualizing, reifying, and objectifying social processes of creation (Brush and Stabinsky 1996). As the implications of extending IP protections became more globally evident, anthropologists studied public domain activism in diverse geopolitical arenas. Most of this work focused on grass-roots and social movement activity, with the capacity of states to forge independent domestic policy receiving less attention (cf. Halliburton 2017; Snodgrass Godoy 2013; Sunder Rajan 2017; Whimp and Busse 2000).

IP-protected works were quickly recognized as forged through the use of socially created resources in social contexts, but few early scholars scrutinized the description of such goods as “public,” which was the dominant means of criticizing cultural commodification. Denunciations of IP as effecting new forms of enclosure (e.g., Boyle 1996, 2008) were commonplace in what later became known as “the romance of the public domain” (Sunder and Chander 2004). Whether insisting upon the importance of maintaining freedom of expression, freedom of academic research, or broad access to plant, human genetic, or cultural resources, liberal political and economic ideals were asserted against unjustified IP monopolies (e.g., Brown 2004). Although some scholars advocated greater equities in flows and compensation between regions (e.g., Brush 1999; Kloppenburg 1988), a singular public domain was often valorized in terms that equated it with a universal and generalized moral economy.1 The commons became the predominant metaphor for social relationships between people, ideas, and new digital technologies (e.g., Scharper and Cunningham 2007) that signified openness, common property regimes, and a lack of intermediaries.

The rhetorical use of anthropological concepts (e.g., cultures, gift economies, commons, and potlatch) in interdisciplinary discussions describing emerging forms of digital sociality also attracted anthropological attention (Boellstorf et al. 2008; Kelty 2004).2 The study of IP was offered as evidence that anthropology was no longer concerned primarily with exotic others (Napier 2002), even as the disciplines’ exotic others became idealized as figures of resistance in Western societies. Considering alternatives to IP in fields of high technology, however, was another way of “siting culture” (Olwig and Hastrup 1997) in more familiar worlds (Coleman 2013; Golub 2004; Kelty 2004). The study of “remix culture” using digital sampling in technologically mediated worlds of arts, music, and dance explored an ethos of “hacking” that resisted dominant legal and economic orders and challenged individuated models of cultural creativity in assertions of alternative creative communities of practice (Mose 2016; Shipley 2009).

From a Singular Commons to Multiple Publics

Critically exploring modern liberal political understandings of Western societies as structured by divisions between public and private spheres of activity, concern, and deliberation (e.g., Habermas 1989), anthropologists undermined the narrow conception of IP as merely an economic domain. Rather, they insisted that IP fundamentally shaped the social life of human communications by commodifying cultural forms. Conceiving of the public as a communicative space along Habermasian lines enabled counter-publics to come into view and revealed IP’s role in restricting counter-hegemonic cultural expression (Coombe 1998). Challenging the modern, liberal concept of a singular public domain, anthropologists explored multiple publics as politically significant zones of cultural production and communicative exchange (e.g., Goodman 2005; Hayden 2003). Ethnographic studies of digital workers and software developers showed how non-proprietary digital goods served as a means of communicative deliberation that created patterns of sociality and innovation challenging IP’s distributions of power (e.g., Coleman 2013; Kelty 2008). In the creation of legal frameworks supporting the creation of open source software, for example, anthropologists revealed how IP was strategically used in new social movements that challenged Western understandings of politics (e.g., Chan 2014).

Poststructuralist understandings of the public domain explored it as a spatial metaphor, dependent upon law while seeming to function independently as somehow outside it (e.g., “before the law” [Flessas 2008]); the concept of the commons established and policed thresholds that shifted historically according to new capacities for proprietary acquisition and thereby served to justify appropriations. For example, as research in Indonesia and India showed, a state could deem local, collectively created knowledge or artistic creations to be part of the public domain—a declaration that transformed goods previously subject to traditional authorities and norms of transmission into national cultural patrimony (Aragon 2012; Aragon and Leach 2008; Halliburton 2017). Public domains could be “scaled” to create new arenas of jurisdiction.

As social movements promoting open and unfettered access to creative productions gained momentum, scholarship showed how valorizations of the public domain mirrored and validated colonial histories of appropriation and dispossession (Bowrey and Anderson 2009; Christen 2015). Transnational ethnographic research suggested that open access advocates working against the extension of IP may be more interested in Western individual expressive freedoms than the cultural rights of communities when trumpeting the public domain (Fish 2014). The Western legal tradition of IP legitimates certain goods as private properties based on individuated authorship and innovation, but often ignores collective genres of novel productivity. Under this framework, the works of many kinds of creative industry—from traditional cultural expression to crop varieties developed by farmers—are considered free for general use. Such elisions are especially consequential because states routinely misrecognize the forms of creativity, territorial inscription, and cultural work of minorities, particularly Indigenous peoples in settler colonies who have been deliberately marginalized by policies of cultural assimilation (Anderson 2009). Anthropologists explored the political consequences of decontextualized distinctions between the public and the private within postcolonial contexts and in decolonizing agendas. They considered the historical conditions under which “the public domain” was forged, the illusions of equality and inclusion it projected, and the means by which modern nation-states thereby assume sovereignty over the products of certain human energies (Aragon 2012; Brush 1999; Christen 2012).

In an era of biodiversity loss in which biotechnological innovation was prioritized for agricultural futures, IP regimes clearly privileged the work of laboratory and field science as innovation, denying the contributions made by farmers and peasants to the world’s plant genetic resources (Brush and Stabinsky 1996; Cleveland and Murray 1997). The historical categorization of crop germ plasm as the common heritage of humankind, despite its distinctive development in culturally and ecologically discrete fields of human endeavor, obscured practices of farmer innovation (Brush 2004). Like the public domain, the common heritage concept denied non-individuated, situated agencies (other than corporate ones), and licensed accumulation by dispossession (Harvey 2003; Kloppenburg 2010). Just as the “tragedy of the commons” (Hardin 1968) was recognized as a central myth justifying private property (Rose 1986), exposing a fictitious “commons” as IP’s other helped shift attention to possessive relations beyond the exclusive market-based rights characteristic of Western models of protection. Anthropological consideration turned to other concepts of attachment (e.g., stewardship [Brosius 1999; Fish 2006; Ogden et al. 2013]) to understand human management of culturally and ecologically significant knowledges, practices, and goods.

As anthropologists began to explore a diversity of publics with distinct moral economies of cultural circulation, they became more concerned with issues of governance and types of publicity. Other structuring dichotomies of the law such as discovery and innovation, imitations and originals, tradition and modernity, and other variants of what Lévi-Strauss (1964) described as “the raw and the cooked” came into view. Showing how IP discourse figured in local social imaginaries, ethnographic research from Latin America, Africa, and the Pacific illustrated that the places perceived of as “outside” IP’s governance were not simply places of license, but sites of cultural memory (Goodman 2002, 2005), moral economies of care (Hartigan 2017; Nazarea et al. 2013), significant spaces of responsibility (e.g., Solomon 2004; Wright 2008), and aspirations for global belonging (Larkin 2008). Whether they were considering the meaning of open source software in animating understandings of democracy and speech in the United States (e.g., Coleman 2013), the protection of plant varieties in Costa Rica (Aistara 2012), the political work of making and marking traditional medicine in Tanzania (Langwick 2015), or the social life of generic drugs in Mexico (Hayden 2007), anthropologists challenged proponents of liberal public goods to attend to significant social relations co-produced through IP regulation.3

#### Methodological pluralism is key to understanding IP – its large scope of social and economic impacts necessitates diverse perspectives to ethnographically track the IP system.

Coombe ‘20 [Rosemary J. Coombe; a Canadian anthropologist and lawyer, a Professor in the Department of Anthropology at York University and Tier 1 Canada Research Chair in Law, Communication and Cultural Studies; 08-27-2020; “Ethnographic Explorations of Intellectual Property”; Oxford Research Encyclopedias, Anthropology; https://doi.org/10.1093/acrefore/9780190854584.013.115; Accessed 09-03-2021] AK

Exploring Intellectual Property through an Ethnographic Lens

Anthropological considerations of intellectual property (IP) have a short history; only since the mid-1990s and the incorporation of IP into international trade regimes has it become a major field of concern. What may have been a topic of narrow interest to legal anthropologists has attracted attention across the discipline because of the range of the law’s social and economic impacts. In market economies, IP protects many intangible cultural goods (e.g., aesthetic works, trademarks, designs, modes of manufacture and composition, genetic resources) from unauthorized reproduction through material means of enforcement. Protected informational or cultural goods are manifest in material and digital forms of fixation (books, films, posters, songs, fertilizers, machines, plants, medicine, software, pesticides) that circulate as publicly accessible (if not freely available) goods. Such goods are so pervasive and socially significant that restricting access to them via IP provokes concerns about the scope of powerful economic interests, the state’s capacity to meet vital human needs and provide critical infrastructures, and the protection of citizens’ democratic entitlements and minority cultural traditions. IP protections are understood to be both economically and socially productive: not only do they yield revenue in the form of royalties for their holders, they legitimate certain actors as creators and delegitimize others, including counterfeiters who may be deemed “terrorists” and “pirates.”

As the scope and range of IP protection expanded, so did its capacity to restrict access to goods as diverse as music, communications technologies, seeds, pharmaceuticals, and academic scholarship. The new forms of capital accumulation and cultural influence generated by these legal changes attracted the attention of diverse subfields of anthropology, prompting scholarship that added feminist, new materialist, and science and technology studies (STS) methodologies to conventional approaches drawn from political economy, social constructionism, and interpretive legal anthropology. From these different theoretical perspectives, anthropologists addressed the IP vehicles of copyright, patent, trademark, design, plant variety protection, and publicity rights alongside emerging protections for traditional knowledges, traditional cultural expressions, and genetic resources. When ethnographically tracking these legal mechanisms, anthropologists explored questions of property and commodification, representation and translation, research and ethics, personhood and subjectivity, and place and territorialization, which are the major themes of this article. Anthropologists regularly engage with interlocutors in law, cultural studies, communications, and media studies; this article references scholars outside of the discipline whose work has been influential for anthropological engagements with IP.

#### Debate is a space for rhizomatic education – it’s the only way to create a flexible educational model equipped to handle new modes of knowledge production. The community is the curriculum – like a rhizome, learning adapts and reconstructs itself to enable collaborative and deterritorialized education. IP systems are fundamentally incompatible – they reflect a static and frozen mode of knowledge. The role of the judge is to make this debate round another entry point into the rhizome.

Cormier ‘8 [Dave Cormier; Learning Specialist - Digital Learning Strategy and Special Projects @ University of Windsor, Masters of Education, Literacies Education - Mount Saint Vincent University; 07-01-2008; “Rhizomatic Education: Community as Curriculum”; Innovate: Journal of Online Education, Volume 4, Issue 5 June/July 2008, Article 2; https://nsuworks.nova.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1045&context=innovate; Accessed 09-04-2021] AK

Changing Knowledge

New communication technologies and the speeds at which they allow the dissemination of information and the conversion of information to knowledge have forced us to reexamine what constitutes knowledge; moreover, it has encouraged us to take a critical look at where it can be found and how it can be validated. The explosion of freely available sources of information has helped drive rapid expansion in the accessibility of the canon and in the range of knowledge available to learners. Online access to thousands of primary documents may be provided via the Internet for less than it costs to provide far fewer examples in a traditional textbook package (Rosenzweig 2003). In addition to this increased accessibility of primary documents, a new breed of user-generated content has emerged on collaborative Web sites and in other online venues. Web sites such as EdTechTalk, The Webcast Academy, and the Open Habitat Project collate the work of a variety of professionals to create snapshots of the knowledge of a particular field as it is seen at a given time (Cormier 2008).

Thus the foundations upon which we are working are changing as well as the speed at which new information must be integrated into those foundations. The traditional method of expert translation of information to knowledge requires time: time for expertise to be brought to bear on new information, time for peer review and validation. In the current climate, however, that delay could make the knowledge itself outdated by the time it is verified (Evans and Hayes 2005; Meile 2005). In a field like educational technology, traditional research methods combined with a standard funding and publication cycle might cause a knowledge delay of several years. In the meantime, learners are left without a canonical source of accepted knowledge, forcing a reliance on new avenues for knowledge creation. For instance, a researcher exploring social software use must rely at least in part on online knowledge repositories because current information on the terminology used in these areas is simply not available in any exhaustive or definitive form in books or peer-reviewed articles (Nichol 2007). Information is coming too fast for our traditional methods of expert verification to adapt.

In fields frequently affected by the gatekeeping practices of the traditional publishing industry, professionals in fields such as the science of spectroscopy are turning to online community learning spaces or collaborative document holders such as wikis. The wiki, or any collaboratively constructed document for that matter, solves a number of issues inherent to the expert-driven model as it has the capacity to be more current than any expert-assessed content package or traditional publication can usually be. Wikis and similar tools offer a participatory medium that can allow for communal negotiation of knowledge.

Collaborative knowledge construction is also being taken up in fields that are more traditionally coded as learning environments. In particular, social learning practices are allowing for a more discursive rhizomatic approach to knowledge discovery. Social learning is the practice of working in groups, not only to explore an established canon but also to negotiate what qualifies as knowledge. According to Brown and Adler (2008), "The most profound impact of the Internet, an impact that has yet to be fully realized, is its ability to support and expand the various aspects of social learning" (18). Several communities on the Internet offer some idea of what can be accomplished in a participatory social learning environment where knowledge is being negotiated (Exhibit 2). Social learning is particularly valuable in fields where the parameters of knowledge are constantly shifting and a canon has not yet been solidified. Educational technology is one such field. Alec Couros's graduate-level course in educational technology offered at the University of Regina provides an ideal example of the role social learning and negotiation can play in learning (Exhibit 3). Students in Couros's class worked from a curriculum created through their own negotiations of knowledge and formed their own personally mapped networks, thereby contributing to the rhizomatic structure in their field of study. This kind of collaborative, rhizomatic learning experience clearly represents an ideal that is difficult to replicate in all environments, but it does highlight the productive possibilities of the rhizome model (Exhibit 4).

These changes have sparked two primary responses among purveyors of traditional educational knowledge. One has been to attack these new sources as flawed as has been the case in the history department at Middlebury College (Jaschik 2007). These critiques of collaborative knowledge verification, premised on assumptions of validity rooted in the traditional strictures of academic publishing, reveal an essential misunderstanding of the place of socially constructed models in the new knowledge landscape that challenges traditional notions of canon just as the influx of content about women and ethnic minorities challenged certain canons of traditional knowledge in the 1990s (Banks 1993). An alternative response to changing knowledge foundations has been to engage in a flurry of discussion about intellectual property rights, debating the merits of various Creative Commons licenses and trying to determine the means by which content creators' intellectual property rights can be protected even as content is distributed freely (Wiley 2007; Downes 2007; Bornfreund 2007).

Both of these responses are inadequate: the first, obviously, because it denies the legitimacy of a rhizomatic knowledge-creation process that is already overtaking traditional models and the second because it relies on the old notion of knowledge as resident in a particular individual and frozen in time, reified by publication. However, if knowledge is to be negotiated socially, then the idea of individual intellectual property must be renegotiated to reflect the process of acquisition and the output constructed by that process. What is needed is a model of knowledge acquisition that accounts for socially constructed, negotiated knowledge. In such a model, the community is not the path to understanding or accessing the curriculum; rather, the community is the curriculum.

The Rhizomatic Model of Education

In the rhizomatic model of learning, curriculum is not driven by predefined inputs from experts; it is constructed and negotiated in real time by the contributions of those engaged in the learning process. This community acts as the curriculum, spontaneously shaping, constructing, and reconstructing itself and the subject of its learning in the same way that the rhizome responds to changing environmental conditions:

The rhizome is an antigenealogy. It is a short-term memory, or antimemory. The rhizome operates by variation, expansion, conquest, capture, offshoots. Unlike the graphic arts, drawing or photography, unlike tracings, the rhizome pertains to a map that must be produced, constructed, a map that is always detachable, connectible, reversible, modifiable, and has multiple entryways and exits and its own lines of flight. (Deleuze and Guattari 1987, 21)

With this model, a community can construct a model of education flexible enough for the way knowledge develops and changes today by producing a map of contextual knowledge. The living curriculum of an active community is a map that is always "detachable, connectible, reversible, modifiable, and has multiple entryways and exits":

If the world of media education is thought of as a rhizome, as a library à la Eco [in The Name of the Rose], then we need to construct our own connections through this space in order to appropriate it. However, instead of that solitary groping made by Brother William, we see as our goal the co-construction of those secret connections as a collaborative effort. (Tella 2000, 41)

In the practical example of Couros's class, students created their own rhizomatically mapped curriculum by combining their blogs with information to which Couros pointed them and linking the combination to the particular knowledge that they discovered through discussions with key people in Couros's professional community. In accessing Couros's professional network, students had the opportunity to enter the community themselves and impact the shape of its curriculum as well as their own learning. The role of the instructor in all of this is to provide an introduction to an existing professional community in which students may participate—to offer not just a window, but an entry point into an existing learning community.