# 1AC – Semiotic Piracy

#### 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).

#### The law is not a neutral reflection of the world but instead modulates social identities and relationships. IP protection is a symbolic weapon to shut down subaltern resistance against domination, now taking place at the level of statecraft. The semiotic aspects of medical branding and trademarks disciplines everyday conduct and enables militarism.

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Personas, Brands, and Communities

Legal anthropologists have long recognized that law does not merely reflect social worlds but constitutes, authorizes, and legitimates social identities and relationships (Dent 2013). To the extent that IP promotes forms of recognition, enables streams of royalties, and encourages investments, it fosters practices of individual and collective public subject formation. Cultural anthropologists have been particularly interested in public personas and the branding of collective identities (e.g., Bunten 2008; Foster 2007; Mazzarella 2003). Public personas are created through expressive investments and particular forms of circulation, both of which are shaped by IP protection of the symbolic attributes of the persona that may artificially freeze fields of connotation and stifle subaltern challenges to dominant meanings. Studies of pen names, for example, show how an authorial persona is constructed as a brand to mediate between producers and consumers in mass-market publishing in North America (Taylor 2018). The intersection of different regimes of value for restricting the circulation of iconic imagery also engenders new politics of publicity. Where the commercialization of ritually important Hindu images provoked criticism from diasporic communities, for example, these conversations spurred new aesthetic practices in expressions of shared identity (Ramachandran 2014).

The relationships between signs (e.g., trademarks), the virtual commonalities their circulation enables (and their owners capitalize upon), and the social imaginaries they actualize is a rich area of ethnographic inquiry, particularly in post-socialist contexts (e.g., Vann 2006). Anthropological approaches to trademark and branding involve semiotic explorations of their fields of meaning as well as explications of the material infrastructures of their production and consumption. Ethnographers explore the folk ontologies and ideologies that are latent in the legal and economic discourses that legitimate brands and their circulation (Manning 2010). Subaltern groups in India, for example, were shown to use the repertoire of cultural forms provided by trademarks to express their understanding of and protests against corporate powers, while creating new forms of surplus affective value (e.g., Nakassis 2012, 2013).

Anthropologists have been interested in brand behavior—the creative social engagements that trouble a singular social intelligibility for the IP-protected commodity. Branding takes place on multiple scales and embraces a range of actors beyond corporate producers and individual consumers, and now encompasses issues of statecraft (e.g., Thomas 2013). The phenomenon of nation-branding, for example, is a new means of communicating national identities and interests that engages corporate publicists and constitutes the state as an entrepreneurial subject (Aroncyzk 2013; Cao et al. 2019). Advertising and marketing professionals emphasize the need to maintain the singularity (and restrict the diversity) of national collective connotation, which may limit public discourse, channel political conversation, and become a means to discipline everyday social conduct (e.g., Scher 2014). Anthropologists have explored the further extension of branding to European cities (e.g., Graan 2013) and the convergence of marketing and militarism in Colombian peace-building strategies (e.g., Fattal 2018).

#### 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.

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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).

#### 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

#### Patents and IP protection are vehicles of territorialization and extraction, reinforcing capitalist and colonial domination that enables state expansion. The aff’s counterfeiting creates new values while deterritorializing globalization and the demarcated zones of legality and illegality.

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Territorialization: Sovereignty, Jurisdiction, Securitization, and Markets

If ethnographic work on GIs has tracked the social and political negotiations over authenticity, heritage, and belonging that are activated by place-based IP protections, anthropologists have also explored how other vehicles of IP protection, such as copyright, patent, and benefit- sharing contracts for the use of traditional knowledge and cultural expression, may prompt political conflicts over sovereignty and jurisdiction. The roots of this anthropological inquiry may be traced to early critiques of state sovereignty over biological resources and its implications for Indigenous peoples and small farmers (e.g., Brush 1993). More recently, anthropologists have explored “the politics of scale” in the creation of national patrimony, which depends upon the usurpation of local traditional arts (e.g., Aragon and Leach 2008 exploring this in Indonesia). Anthropological consideration of such processes as new modes of territorialization gained traction in the 2010s.

Bioprospecting, for example, spurs territorialization through the extraction and regulation of plant life. As a long-standing companion to both colonialism and capitalism, it continues to be central to state expansion (Besky and Padwe 2016). Where bioprospecting involves plants and resources territorialized through their globally recognized association with local and native knowledge, as it did in South Africa, struggles over the ownership of patents and the benefits arising from projects to commercialize those resources may provide fertile ground for peoples historically marginalized by the state to assert alternative forms of national belonging (Foster 2017).

Industries built upon copying and counterfeit products create marked zones that contain both new goods and new values. In cases where technologies of reproduction and distribution are more powerful than the state economic structures that may constrain them, as they were in Nigeria, piracy transforms the infrastructures through which globalization—as the flow of informational goods and media imagery—takes place (Larkin 2008). The extension of IP into new jurisdictions effects territorialization by demarcating zones of licit and illicit production and distribution. In some cases, this may give rise to counterfeit economies that enable marginalized peoples to generate livelihoods and enclaves of production and distribution, but it may also provoke new forms of state intervention and surveillance. Ethnographic work in Brazil showed how acts of piracy enabled often marginalized actors to gain some control over strategic spaces, even where formal state powers work to control, surveil, and set the boundaries of licit market activity (Dent 2016, 2020). In South Africa, the threat to public health posed by the counterfeiting of medication was used by the state as a rationale to transform drug safety regimes into more territorialized drug security regimes, linking pharmaceutical corporations and state authorities in ways that exacerbated predatory police interventions and encouraged the territorializations of security industries (Hornberger 2018). Piracy also tends to produce new networks that traverse state boundaries, facilitating traffic in cultural goods, and, where technologies of reproduction and distribution are more powerful than state economic structures, affective connections to new territorial infrastructures of global belonging (Larkin 2008; Reinberg 2015).

#### 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.