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"Creative Development: Copyright & Emerging Creative Industries"

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Introduction

Western commentators celebrate the transformative potential of digital media in empowering novel forms of amateur creativity—blogs, remixes, mashups, etc. Yet, the effects on commercial creativity in developing countries have been just as profound. Nigeria went from producing an average of three films per year in the 1980s and early 1990s to producing roughly a thousand movies annually in the years since 2000 (Pager 2012). China has seen similarly exponential growth in digital media—music, video, publishing—with home-grown content commercially produced and distributed online. Latin-American telenovelas and Indian movies have exploited digital communications technologies to capture a global following. Commercial content industries have proliferated on a smaller scale elsewhere across the developing world.

Such burgeoning creative content industries hold powerful implications for debates over global intellectual property. The "IP & Development" debate has tended to focus on patent law to the exclusion of other IP rights and privilege the perspective of foreign investors over domestic innovators. When copyright does feature in development debates, it is generally seen as a negative influence, a barrier to access to knowledge rather than an engine of creativity. The content industries emerging in the Global South present a very different context in which to frame debates over global copyright policy. But what exactly is the role that copyright plays in the development of such industries?

Western scholars who acknowledge the existence of creative industries in the developing world have a tendency to project upon them narratives shaped by ideological debates at home. Copyright proponents emphasize how piracy harms such emerging content industries, presenting them as windows into a dystopian future that may materialize in developed markets next. Copyright skeptics unsurprisingly paint an inverse picture: They argue that the ability of these industries to prosper despite high rates of piracy shows that copyright incentives are no longer needed.

Drawing on case studies of emerging content industries in China, India, and Nigeria, this chapter offers a more nuanced account of the interaction between copyright law & development. Copyright law is not a sine qua non for creative development. However, the ability of creative industries to grow beyond a certain level in its absence is limited. The role that copyright plays in fostering creative development is multifaceted and contextually contingent. In this respect, the account here resembles earlier narratives that posit a "crossover point" whereby countries reach a stage of development at which the net benefits of copyright protection outweigh the costs (Yu).[1] However, rather than positing a single inflection point at which copyright protection suddenly takes off, this chapter argues that embrace of formal copyright norms remains partial,

[1] *See also* U-shaped curve of economists tied to national income level.

selective, and contextually contingent.[2] It seeks to expose and illuminate the complex causal factors, institutions, and structural imperatives that govern such developmental dynamics.

The remainder of this chapter proceeds as follows: Part I provides an overview of creative industries in the developing world, surveys three case studies (Nigeria, India, and China) and explores some of the debates that surround them.[3] Part II surveys competing models by which governments subsidize creative production: copyright, state patronage, and hybrid models. Part III looks at how these policies function in the context of emerging creative industries in the developing world. Part IV considers implications of copyright policy on cultural diversity both at the national and global levels. Part V concludes.

I. Emerging Creative Industries in the Global South

A. The Benefits of Home-grown Media

A wealth of scholarship and policy studies testify to the benefits of home-grown creative industries. Such industries—including music, film, television, and publishing—contribute to both economic and cultural development in a variety of ways. As pillars of the knowledge economy, creative industries promise good-paying jobs, above-average economic growth, sustainable development, and positive effects on the balance of trade (UNCTAD 2010). Other indirect benefits include boosts to tourism, potential marketing tie-ins, and a reversal of brain drain (Pager 2010).

The cultural benefits of such home-grown industries are equally compelling. Beyond the intrinsic benefits of cultural innovation in expanding horizons, provoking insight, and enriching cultural heritage, such industries also makes vital contributions to public discourse and democratic governance (Netanel, Baker), foster communal identities, national cohesiveness, and social inclusion (Voon) and nourish personal autonomy and identity formation in ways that facilitate human flourishing (Fisher, Sunder). But this begs the question of what role copyright plays?

At its core, copyright aims to further "progress" in the creative arts, a formulation enshrined in the U.S Constitution and influential elsewhere. On its face, "progress" sounds remarkably consonant, if not synonymous with "development." Yet, just as the preceding paragraphs demonstrate the multiple dimensions on which economic and cultural development

[2] Rather, than a magic switch that suddenly flips on, copyright formalization operates according variable geometries. However, is it interest of country as a whole or just stakeholders at the bleeding edge that make the difference. Which way does causation run? Industry, government, public—local, regional, national—push vs. pull? "Life cycle" theory: the further developed the creative industry, the greater the emphasis placed on copyright. But are such industries thriving because of or in spite of copyright law? In fact, the causal mechanisms between copyright and development are complex and arguably multidimensional. While copyright law can play a positive role in fostering creative development in specific contexts, it does not function as a monolithic force. The embrace of formal copyright mechanisms governs some aspects of industry operations, while remaining largely stymied in other domains. [[[Furthermore, the shape of the substantive law matters less to the success of copyright than the existence of public and private institutional capacities to apply the law.]]]] {{Note also that determining whether copyright fosters development requires a criterion to assess what counts as "valuable" development. Depending how you score, assessments will vary.}}

[3] This chapter will use the terms "content industries," "creative industries," and "cultural industries" largely interchangeably and will focus primarily on industries that engage mass media cultural channels such as music, film, television, and publishing.

can be measured, so too, "progress" from a copyright standpoint is susceptible to competing normative interpretations. As we will see, copyright rationales track many of the same end goals attributed to culture industries. Yet, copyright doctrine may look very different depending on what kind of "progress" we choose as our lodestar. And that, in turn, could lead to a different mix of creative production. Therefore, to assess whether copyright fosters development, we need to know what kind of development/progress we are aiming for.

Some question whether copyright-based business models are the right vehicle to achieve developmental aims at all. Skeptics have cast doubt on the extent to which extrinsic incentives for commercial culture industries are justified in the digital age and argue that copyright blocks more expression than it fosters.[4] As we will see, resolving this question partly turns on how we value works produced under competing modes of cultural production.

From the standpoint of developing countries, copyright faces additional objections: Some worry that the benefits of copyright protection will primarily flow to foreign producers, resulting in a drain on monetary reserves.[5] Others go further, denouncing copyright law as an alien appendage imposed by Western/capitalist imperialists that fails to respect local traditions. Even if our focus is on the ends not the means, such objections cannot be dismissed off-hand because adopting the formal structures of a copyright system inevitably influences the kind of works that get produced. In particular, critics worry that copyright harms cultural diversity, channeling production toward globally homogenized forms of creativity at the expense of more authentic local expression. Again, resolving this issue turns on subjective value judgments. The question is not so much does copyright foster development, but development of what?

However, they are not always clear about what values are being maximized in this balance; vague formulations such as "social welfare" or "efficiency" serve to avoid reckoning with the normative ambiguity embodied in the central question posed above, namely: progress of what? Nor does copyright doctrine itself provide much help in answering this question. Ever since the *Bleistein* decision (1903), copyright law has espoused an ethos of non-discrimination. In contrast to patent law, where the non-obviousness test explicitly probes inventive achievement, copyright doctrine deliberately eschews assessment of artistic merit.[6]

In the absence of other metrics, economists tend to default to market measures of value. Yet, making wealth maximization the goal of copyright is highly problematic given the presence of enormous social externalities that market valuations of creative expression fail to capture (Baker, Kapczynski). At same time, attempts by theorists to specify alternative normative criteria to serve as potential maximands—such as innovation, wealth, democratic discourse, and human flourishing—have their own problems. Measurements are unavoidably subjective and fraught with value judgments. For example, how do we decide which furthers the goal of innovation or democracy more: a blockbuster feature film or an four minute amateur video mash-

[4] Critics raise the standard cyber-libertarian objections to copyright: that it blocks the flow of information, chills speech, and inhibits innovation. Copyright abolitionists go further, arguing that the digital age has rendered copyright systems obsolete, suggesting their perpetuation is driven by rent-seeking more than justified need.
[5] Policy-makers may also see copyright protection as an expensive distraction from other more pressing social needs. Such comparative balancing of social priorities, however, lies outside the scope of this chapter.
[6] This reluctance is most explicit with respect to the originality standard, the context to which *Bleistein* pertained. However, the non-discrimination norm pervades copyright doctrine. *See, e.g.* Campbell v. Acuff-Rose (parody fair use example); XX. Even VARA's "work of recognized stature" standard prompted judicial squirming XX ("one man's meat is another's poison"). [bleistein blurb repeated below under copyright theory – n.34].

up? Are we concerned only with the number of eyeballs impacted, or do we care how deeply the works affect viewers? If the latter, should we measure short-term effects or long-term? Do we only care about consumption, or is participation in production an important value (Skladany xx)? As we will see, different answers to these valuation questions dictate diverging implications for copyright doctrine.

B. Digital Technology Overthrows Cultural Hegemony

Arguments over copyright policy are also embedded in a broader discourse of imperialism. U.S. popular culture exports have dominated global markets for decades. Critics have long railed against such cultural dominance, and governments striven to resist it. Copyright protection has long been seen as the handmaiden of Western MNC hegemony. It serves as a direct economic drain via offshore royalty payments and also a means to reify power imbalances in global media production.

Early critiques of the TRIPS Agreement and other instruments harmonizing global IP law viewed the imposition of minimum standards of intellectual property protection as a "royalty extraction vehicle" designed to enrich rich multinational corporations in the Global North at the expense of poor people in the Global South. This "neocolonial" narrative posited innovation as almost exclusively the product of developed countries, with the developing world relegated to the role of consumer, or, at best, the repository of traditional knowledge, a raw input from which information goods would be fashioned elsewhere (Boyle).

In the realm of creative expression, such neocolonial narratives were reinforced by a similar discourse of cultural imperialism. Dominant messages were seen as emanating from the hegemonic "center" through the vehicle of American/Western popular culture to be passively consumed in the "periphery." Marxist diagnoses ascribing such one-sided cultural flows to structures of capitalist hegemony were later supplemented by empirical findings of media economists which seemed to show that the country with the largest home market—which for most the 20th century meant the U.S. —was destined to dominate global markets (Wildman & Siwek 1988). Either way, the implications were the same: the market was rigged.

Yet, further work by media scholars has shown that market size alone is not only relevant variable. Audiences everywhere prefer locally produced expression, but the strength of this preference varies according to the audience's "cultural distance" from the dominant global supplier. Accordingly, for developing countries with cultural traditions and present day contexts radically different from the West, a substantial "cultural discount" applies to imports of global culture (Lizardo, Fu). In other words, the demand in developing countries for local content is strong. All that was missing was supply.

Digital technologies have changed that. The case studies of Nigeria, India & China that follow illustrate the transformative effects of digital production techniques in catalyzing the emergence of creative industries in the Global South. These burgeoning creative content industries potentially recast the terms of global debate. But are they thriving because of or in spite of copyright law?

C. Nigeria

The origin of Nigeria's video film industry—Nollywood—reflects a confluence of factors specific to the Nigeria context: the macro-economic crisis of the late 1980s, the closing of cinema houses across Southern Nigeria due to urban violence, the collapse of Nigeria

television's soap opera productions (Miller 13-14). Yet, there is also an element of technological determinism to the tale: Earlier efforts to market filmed productions of Yoruba folk theater—perhaps Nollywood's closest cultural antecedent—had foundered on the high costs and logistical hurdles associated with celluloid films (12-13).[7] Nollywood's shift to video media—initially analog VHS tapes then later digital VCD discs—proved a game-changer. Perhaps not coincidentally, Kenneth Nnebue, an electronics dealer who imported VCR equipment and blank videotapes, is credited with discovering the medium's potential.[8] Nnebue bet that his tape stock would sell better filled with content than empty. His 1992 hit film, "Living in Bondage," galvanized attention, and a direct-to-video film industry sprang up almost overnight. Within a decade, Nollywood had grown to become Africa's dominant film producer, churning out hundreds of films each year, watched by millions daily across Africa (16-19).[9] By volume of production, it is widely hailed as the world's second most prolific film industry.[10]

As the world's first fully digital film industry, Nollywood exemplifies the potential for developing countries to leapfrog outdated technologies (Arewa 2015, Pratt 2015). With annual revenues numbering in the hundreds of millions (in US dollars), Nollywood has become the country's largest private employer.[11] It serves as a "model of entrepreneurial achievement" in a country plagued by corruption and rent-seeking (McCall 2002). Nollywood's example has also inspired imitators, with similar video film industries popping in other African countries and among expatriate Nigerian communities.

The cultural significance of Nollywood is equally notable. Africa has a deeply ingrained storytelling tradition, but has long lacked a mass media vehicle to harness its creative energies. For first time, African stories told by Africans can be shared by audiences across the continent.[12] That Nigerian films regularly outsell Hollywood imports made with far higher budgets and more sophisticated production values testifies to the hunger of African consumers for a genuinely

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[7] An even earlier literary precursor to the Nollywood folk culture phenomemon were the Onitsha Market pamphleteers. Many of Nigeria's leading writers contributed wildly popular short stories and essays that were cheaply reproduced and sold in a low-cost, high volume business. (Obiechina, 1973). Today, Nigerian publishing is much more conventional; and, in any case, Nigerian best authors typically publish their work through Western publishing houses.

[8] While VCR techologies were widely available in Nigeria by the mid-late 1980s, the cost of such technologies plummeted in the 1990s, and, in particular, massive quantities of blank tapes became available at cut-rate prices as dealers in developed markets shifted to more advanced technologies. Miller (14-15).

[9] Nigerian video film production is as diverse as the country itself. Each of Nigeria's main ethnic groups produce films in their local language. However, Nollywood has come to signify the English-language films produced in Southern Nigeria, which enjoy the widest distribution (Miller 3).

[10] A widely cited 2009 UNESCO report ranked Nollywood second only to Bollywood; however, this claim hinges on a statistical anomaly: Nollywood's film count is based on video film production, whereas other countries count only films released for theatrical distribution and omit direct-to-video films (Bud 2014).

[11] Rice, *supra* note 68 (putting total revenues at $500 million); *Lights, Camera, Africa*, ECONOMIST, Dec. 18, 2010, at 85. The industry also generates indirect benefits such as road construction by film crews in rural villages. John C. McCall, *Nollywood Confidential: The Unlikely Rise of Nigerian Video Film*, 13 TRANSITION, 98, 102 (2004) [hereinafter McCall, *Nollywood Confidential*].

[12] Brian Larkin, *Itineraries of Indian Cinema: African Videos, Bollywood and Global Media*, *in* MULTICULTURALISM, POSTCOLONIALISM AND TRANSNATIONAL MEDIA 170, 180 (Ella Shohat & Robert Stam eds., 2004) [hereinafter Larkin, *Itineraries*]; McCall, *Nollywood Confidential*, *supra* note 71, at 109; Jonathan Haynes, *Introduction* to NIGERIAN.

popular medium of expression. African diasporal communities overseas have proven equally avid consumers for whom watching Nollywood film serves as a cultural connection to Africa.

Nollywood films are made quickly at extremely low costs using rudimentary infrastructure by a decentralized array of producers. A budget of $50,000 and production calendar of four weeks from script to final release are not uncommon. Over 90% of revenues come from sales of physical media routed through four central market hubs and then resold across Nigeria and beyond. Films are sold for roughly $2, and sales average anywhere from 50,000 to 200,000 authorized copies per film, with the occasional blockbuster surpassing one million copies (Miller 2016).

Funding and distribution of Nollywood films is dominated by shadowy guilds of "marketers" who operate through informal networks that originally served to smuggle pirated copies of foreign movies. Nollywood's quasi-illicit origins continue to manifest in the industry's informal business practices. Nollywood today is a billion dollar, global content industry that operates almost entirely through informal mechanisms. Cash predominates over credit. Trust relationships replace contracts. Copyright formalities are ignored. Nollywood's guilds enforce order through informal disciplinary measures, while actively discouraging recourse to formal legal institutions. Accurate records of sales and revenues are impossible to obtain. Nor it is easy to establish who holds the rights to a given title; as a result, fraudulent sales agents abound (Miller 2016).

While Nollywood's reliance on erstwhile pirate networks gave it far greater reach than conventional distribution channels could have achieved, piracy today is the industry's Achilles heel (Paulson). Unauthorized copies of Nollywood films usually appear within a couple weeks and cannibalize sales. Anywhere from 60-80% of revenues may be diverted in this fashion. Pirate sales likely account for an even greater percentage of international revenues.[13].[14] Unauthorized distribution of Nollywood films occur even in developed country markets that have functioning copyright regimes.[15]

Because filmmakers reap only a fraction of the total revenue that their movies generate, the industry suffers from chronic underinvestment. Lack of copyright protection also introduces perverse incentives. Filmmakers are forced to pursue a churn strategy that rushes new videos to market weekly to beat the pirates.[16] Such high-volume, low-revenue production restricts the creative ambition that can be invested in developing any single project. Moreover, without enforceable copyrights in their work, filmmakers cannot offer collateral to obtain financing. Instead, they must rely either on marketers or borrow from informal short-term lenders whose punitive interest rates reinforce the "rush to market" mentality.[17] Slap-dash productions

[13] The World Bank estimates that Nollywood loses $1 billion in revenue annually to piracy. World Bank, *Integrated Safeguards DataSheet Appraisal Stage*, 6 (May 19, 2010), *available at* http://go.worldbank.org/4MDRWWS680 (follow "No. 2" hyperlink to Report No. AC5285).

[14] Elizabeth March, *The Nollywood Phenomenon: We Tell Our Own Stories*, WIPO MAG., June 2007, 8-9.

[15] *See* Stevina Evuleocha, *Nollywood and the Home Video Revolution: Implications for Marketing Videofilm in Africa*, 3 INT'L J. OF EMERGING MARKETS 407, 409 (2008); DeBeers & Oguamanam, *supra* note 12, at 22.

[16] See Pierre Barrot, The Italians of Africa, in **Nollywood: The Video Phenomenon in Nigeria** 12, 15 (Pierre Barrot ed., Lynn Taylor trans., 2008) [hereinafter Italians of Africa] (describing the "draconian schedule for shooting" used because of the industry's rapid turnover of revenue).

featuring formulaic plots, wooden acting, and crude production values are the predictable result.[18]

In recent years, a group of successful filmmakers has sought to launch a "New Nollywood" comprising higher budget, more ambitious films, with glossier production values, and splashy marketing; several such films have also been co-produced internationally (Pratt 2016, Miller 2016). The opening of high-end multiplex cinemas in Nigeria's largest cinemas has allowed New Nollywood films to tap theatrical exhibition revenues. These films also travel the international film festival circuit and are increasingly shown on airline flights, satellite TV, Netflix, and even at London cinemas. An online subscription service, iROKOTV, claims to serve customer in __ countries with its premium catalogue of Nollywood movies.

The reality remains, however, these alternative revenue sources still do not suffice to cover the costs of production. New Nollywood, like old Nollywood, remains dependent on revenues from sales of physical media which the marketers control. Attempts to establish alternative distribution channels in Nigeria have thus far failed. As a result, New Nollywood remains a somewhat marginal presence, and Nigerian film production remains centered on the high-volume, direct-to-video model.

Some have argued internet distribution offers a means to bypass the marketers' stranglehold over the industry (Pratt 2015). However, although internet penetration rates in Nigeria have risen in recent years, low bandwidth speeds, and high data costs limit the domestic potential for video distribution; the online video market remains primarily comprised of diasporal communities (Miller 2016).

The attitude of Nigeria's government has been ambivalent. Initially ashamed and embarrassed by vulgar popular culture contrary to its teleological, instrumental vision of culture as agent of moral perfects. But gradually took pride in Nollywood's accomplishment and also eyed the industry as a juicy tax source. Various government initiatives to formalize the distribution sector and curtain piracy have largely failed, however, (Bud 2014, 2016; Lobato 2012). Nollyfund announced. (Music ignored comparatively?)

By contrast, Nigeria's music industry has made a more successful transition to digital distribution platforms, taking advantage of the lower bandwidth requirements for music. Piracy has devastated sales of physical media, but mobile music offers a promising replacement. Working through telecommunications companies facilitates online payment—an otherwise difficult hurdle in a country where credit cards are rare, albeit at the cost of 70% of revenues. Licensing of ring-back tones alone comprises a $150+ million market.[19] (Rhodest 2014; Gomes 2013). Nigeria's music industry has grown to become Africa's largest and—in contrast to

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[17] See Ebewo, supra note **Error! Bookmark not defined.**, at 52 (explaining that entrepreneurs with no training in film control the quality by dictating a shooting schedule that creates films produced in a "fast-food-style"); see also Paul Salopek, Nigeria Goes Hollywood, **Chi. Trib.**, Nov. 27, 2005, http://articles.chicagotribune.com/2005-11-27/news/0511270301_1_video-stores-south-africa-movie-crew (describing the amateur nature of many Nigerian film productions).

[18] See Jonathan Haynes & Onookome Okome, Evolving Popular Media: Nigerian Video Films, in **Nigerian Video Films** 51, 57 (Jonathan Haynes ed., 2000) (describing how informal casting systems and the use of traveling theater groups in which actors continually portray the same persona lead to "shallow characterizations, predictable turns, and lots of irrelevant business").

[19] Ring-back tones are personalized music clips played to an incoming caller in lieu of a ringing sound.

Nollywood's largely informal business practices—has attracted investment interest and distribution deals through leading Western music industry multinationals. (Sahara Reporters, 2015; Rhodes 2014). However, despite the rebound in revenues from music recordings, concerts and endorsements deals remain the largest source of income for musicians (Rutschman 2015).

D. India

On its face, India's film industry presents a very different context than Nollywood. India has had a long, successful history producing celluloid films, and the industry remains focused on theatrical exhibition, with video sales largely an afterthought.[20] India's annual production of over a thousand films makes it the world's most prolific industry, and over three billion box office admissions each year give it a claim to the world's largest audience (Banerjee 2015). Movies are central to public life in India. Indian films are also avidly consumed not only across South Asia and among its diasporal communities, but also by native populations in much of Asia and Africa, for whom the films' wholesome family values supply an attractive alternative to Hollywood (Rajadhyaksha 2008, Liang & Sundaram, 2011).

Bollywood's global reach may long predate Nollywood's, and its theatrical orientation contrast with Nollywood's direct-to-video model, but on closer inspection, the two industries have much in common as decentralized, low-cost, high volume producers in developing countries. Bollywood properly refers only to the Hindi-speaking film industry based in Mumbai, whose films circulate primarily in North India, just as Nollywood films are primarily a Southern Nigeria product. Both Bollywood and Nollywood represent the global face of their country's respective film industries.[21] B-wd name portmanteau

In many ways, Nollywood's current position resembles India three decades ago. In the 1980s, Bollywood was a largely informal industry revolving around loosely organized, highly decentralized studios that churned out an endless stream of formulaic musical melodramas. Fueled by "dubious money" supplied by gangsters and tax dodging money-launderers, the industry was characterized by shambolic management and murky accounting (Athique, 2008; Moullier, 2007). Little heed was paid to copyright norms. Story-lines were widely recycled, often taken from successful films produced elsewhere. Remakes of Hollywood hits sometimes reproduced dialogues and even camera angles verbatim (Desai, 2005). Sheltered from foreign competition by protectionist barriers and restricted in its ability to export, the industry relied on its captive domestic audience comprised largely of rural masses to consume its output in undiscriminating fashion (Pager, 2010).

Things began to change, however, with the spread of VCR technologies in the 1980s, which suddenly exposed Indian film producers to competition from widely available pirated video-tapes. Geographically sequenced distribution windows that privileged urban centers with first-run screenings of newly released films made rural audiences particularly receptive to such unlicensed alternatives (Liang & Sundaram, 2011).[22] A decade later, the piracy threat opened a

[20] Indian films earned over $2 billion at the box office in 2015, representing 74% of industry revenues. By contrast, Hollywood today makes less than ___ % from box office receipts (Frater, 2016).

[21] Both ethnically/regionally/linguistically balkanized. Hindi films only command 40% of domestic market, and several of India's regional film industries are commercially significant, global exporters as well.

[22] The high cost of celluloid films meant that only a limited number of copies could circulate at a time, leading to a staggered distribution sequence with new films shown first in big cities, then regional towns, only reaching village

new front, as newly-established cable television operators began to broadcast Bollywood movies without a license—many of them freshly pirated films that were still playing at the box office (Telang & Waldfogel, 2014).

Concern over mounting losses to piracy led the industry to mobilize to place copyright enforcement on the policy agenda. National government had long indifferent to Bollywood, except to exploit it as a tax cow. IP law cause also generally suspect because viewed as imperialist imposition and viewed through patent-centric prism.

However, local governments more amenable, especially in the South. Police anti-piracy raids rolled-out to accompany big releases – result effectively like the guild-created window in Nollywood: short period to recoup investment in box office. State governments harboring local industry hubs took the lead, in some cases pressing anti-gangster legislation into service against commercial pirates (Liang & Sundaram, 2011; Scaria 2014).[23]

Despite initial skepticism toward IP rights, the national government eventually responded to industry lobbying by passing more stringent laws, modernizing the Copyright Act in 1994 and 1999, and stepping up enforcement. A crackdown on cable piracy, in particular, bore fruit, and television became an important revenue source (Telang & Waldfogel 2014). The recent shift to digital distribution has made further inroads against piracy, by allowing nationwide release of blockbuster movies, thus avoiding problematic delays in rural distribution of popular movies that created openings for pirated distribution as the default provider.[24]

Other developments around the turn of the millenium further enhanced the commercial prospects of the film industry. The government's 2001 decision to grant formal industry status to the film industry enabled it for the first time to turn to conventional sources of finance. "Corporatization" became the watchword of the day, as industry leaders worked to attract investors by putting their operations on a more professional footing and taking strides toward horizontal and vertical integration (Moullier, 2007; Ganti 2012).

The development of modern shopping malls, encouraged by tax incentives, also led to investment in high-end, multiplex theaters that catered to urban professionals. By providing a superior theatrical experience, the multiplexes could charge much higher admission fees, yielding far greater revenues (Deloitte 2014). Relaxation of trade restrictions also allowed the industry to develop profitable export markets tapping affluent Indian diasporal communities. The combination of these two more sophisticated audiences led Indian filmmakers to produce more ambitious, high budget productions that pushed the envelope beyond the usual formulas (Pager, 2010). These developments have spurred a renaissance in Indian filmmaking.

The industry has grown to $2.3 billion annual revenues, with double-digit growth in recent years forecast to continue (Frater 2016; Deloitte 2014). Online piracy rates are rising as broadband speed and penetration increases (Liang & Sundaram, 2011). However, the industry's main revenue source—theatrical exhibition—remains largely insulated due to the distinctive nature of Indian movie going culture based on active audience participation. (XXX). As a

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theaters only at the end of the film's release. The film copies were often worn out by this time leading to a impaired viewing experience, and many rural residents were, in any case, impatient to wait.

[23] State enforcement initiatives were often organized along starkly parochial lines, targeting only piracy of *local* films, while otherwise ignoring trade in illicit media (Liang & Sundaram, 2011).

[24] Digital distribution also has allowed single-use copies to be sent to individual theaters, enabling watermarking to to trace the source of pirated copies and thereby break-up camcording rackets (Liang & Sundaram, 2011).

result, pirated wares are not a direct substitute for the theatrical experience. Because the overseas market is less theatrically based, it is more directly affected by piracy (XXX).[25]

E. China

Whereas the story of the Indian and Nigerian content industries is largely one of private actors operating autonomously from the government, China's modern content industries operate in a very different context. While China has undertaken a remarkable program of privatization and liberalization in recent decades, the state retains considerable control over the media. Key distribution channels remain state monopolies, and state censorship continues to impose restraints on expressive content. On its face, the Chinese government remains committed to fostering a "quality culture" that will instill the correct moral values in its citizenry. At the same time, the need to cater to popular demand and fend off the competitive pressure from foreign media has led to a progressive liberalization of censorship standards (Priest, 2015a).

As state subsidies were gradually withdrawn in the 1990s, China's culture industries have had to manage the transition from churning out state propaganda to courting audiences with crowd-pleasing fare. Private investment has flown into a host of new enterprises, and the content industries have enjoyed considerable success in recent years (Montgomery & Priest, 2016). The film industry has benefited from extensive construction of state-of-the-art cinemas in urban centers that have made going to the movies a fashionable leisure activity for China's newly affluent professionals, commanding box office ticket prices as high as $26 (Priest, 2015a). The Chinese box office is now the second largest in the world, and Chinese domestic films have claimed an ample share of the proceeds, in recent years rivaling the take of Hollywood's blockbusters. As explained below, the music industry has had a tougher road, but even it has perked up recently (Song 2016).

Censorship aside, however, the biggest challenge that China's content industries face remains extraordinarily high rates of domestic piracy. Chinese consumers have long relied on informal distribution mechanisms to access popular media that may not have been available through legitimate channels. With almost ubiquitous access to pirated wares on the internet, they have grown accustomed to obtaining all manner of creative media instantly, free of charge. A "culture of unauthorized reuse" pervades even commercial enterprises, with amusement parks, media firms, and even state television making liberal use of unlicensed creative content (Montgomery & Priest, 2016; Liu, 2015).

China's content industries has therefore struggled to devise business models that allow them to appropriate revenue in a climate of pervasive piracy. Unsurprisingly, performance models—theatrical exhibition for films; concerts for music—have provided the main source of income as these delivery models are subject to physical exclusion (admission controls) and offer a marketable experience that is distinguishable from pirated copies consumed at home. While profitable, these models are subject to capacity constraints. China still lacks sufficient screens to meet domestic demand for movies (although it is building many more), and state distributors further limit the number of films chosen for theatrical distribution, favoring big budget blockbusters over less commercially bankable indie fare (Priest, 2014). Similarly, concert promoters have access only to a limited number of venues and face added hurdles imposed by

[25] MUSIC

state censors worried about sanctioning popular gatherings outside the communist party's control; unsurprisingly, promoters too focus narrowly on the mass market, favoring established superstars over fledgling upstarts (Liu, 2015).

Meanwhile, the digital content market has faced even graver challenges. The market for recorded music all-but imploded in the first decade of the millenium, with sales and investment in new music plummeting by as much as 90% (Liu 2015, 2010). Liu (2010) suggests that diminished revenues, in turn, led Chinese musicians to be supplanted in the domestic market by imported music from Hong Kong and Taiwan.

While the Chinese are voracious music consumers, until recently, over 90% of the music consumed in China was unlicensed, meaning those who produced it did not receive any revenue. "The small number of Chinese musicians and music companies that can actually make money via music sales almost all concentrate on two narrow markets: ringback tones sales and overseas sales." (Liu, 2015). Ringback tones provided a uniquely monetizable context—a rare example in which Chinese consumers proved willing to pay for recorded music—because they are centrally controlled by mobile phone operators and thus immune from piracy. Amazingly, Chinese mobile phone companies gross over US $4 billion in ringback tone fees annually—an amount equivalent to the entire gross revenues for recorded music in the United States, the world's largest music market (Priest, 2014). Unfortunately, China's mobile phone market is controlled by a duopoly who retain over 98% of the proceeds, with very little going to the music industry. Even so, "as ringback tones comprise the only real remaining source of income from music," Chinese "music companies devote their attention to producing music that caters specifically" for this market, producing short, catchy melodies suitable for the low quality acoustics of the ringback context (Liu, 2015).

Until recently, copyright law played little or no role in China's content industries. However, this has begun to shift. China has made considerable improvement in its copyright infrastructure in recent decades. Much of its efforts were undertaken in response to treaty obligations and external pressure. Public enforcement campaigns against piracy have often served as a form of kabuki theater performed for foreign consumption, with showy, albeit ultimately ineffective raids to seize and destroy illicit material (Montgomery & Priest, 2016).

Private enforcement of copyright law, however, tells a different story. China has become the most IP-litigious society in the world, and almost 98% of the plaintiffs have been Chinese. Chinese rightsholders have thus expressed an enthusiastic vote of confidence in the benefits of IP law. (Priest, 2014). Chinese policy-makers have also come to recognize that copyright law has a role to play in building the strong creative content industries that they see as a vital underpinning of China's "soft power." As a result, copyright law has increasingly become seen as a matter of domestic concern, rather than an unwanted foreign imposition, the long-heralded "crossover point" for IP development (Yu 2007).

Furthermore, in what some commentators have hailed as "watershed moment for China's cultural and creative industries," the last few years have witnessed a major transformation in China's digital content landscape (Priest & Montgomery, 2016). China's leading online music and video streaming platforms have begun to purge their sites of pirated works.[26] Having long

[26] The reasons for this turn to licensing are unclear. Government edicts, pressure from advertisers, litigation by rightholders, and even the prospect of stockmarket flotations in Western bourses have all been cited as possible explanations; indeed all may have contributed to varying degrees (Priest, 2015-a).

attracted traffic by hosting a vast sea of unlicensed content of variable quality, the websites have shifted strategies and are now focusing on negotiating exclusive licenses for professionally produced content.

Exclusive rights to popular content are seen as a means to strengthen brand identity and retain customers in a strategy of competitive differentiation. As a result, in the online video market, competition for popular content has vastly inflated the price of such licenses, with the per episode costs of leading popular dramas rising from $1500 in 2009 to as much as $290,000 by 2011 (Priest & Montgomery, 2016).

Having purchased exclusive licenses for their sites, the companies next began to sue their rivals to enforce them, typically triggering counterclaims premised on the same basis. This process played first in the video sector, and is now currently underway in the music streaming market, with all of the leading sites vigorously prosecuting claims and counterclaims against one another (Priest & Montgomery, 2016).

Finally, to augment their stock of exclusive content, the video websites have also begun to make billion-dollar investments in producing their own original content (Priest, 2016). The video sites hope to recover their investments in licensing and producing high-value content by transitioning their customers away from a free ad-supported business model into paid subscriptions. Offers of enhanced access to exclusive content serve as an enticement (Priest & Montgomery, 2016). Digital music sites have similarly engaged in promotional strategies such as hosting exclusive digital concerts to reward subscribers (XXX).[27]

II. State Support for Creative Industries

Creative markets are risky; they require high capital investment subject to uncertain returns. However, because creative media yield valuable social externalities, the received wisdom holds that creative industries deserve public subsidies. How should government support artistic production? How much cultural innovation do we need? What kind? At what cost? Who pays? Who decides? Who bears the risks?

A. Copyright

Copyright law gives authors exclusive rights in their expressively creative works. These rights function to confer an implicit subsidy through decentralized, market-based exchanges. Because the benefits of copyright are tied to commercialization, authors and publishers must bear the costs and risks of creative investment in advance of any market returns.

1. Production Incentives

Most copyright scholars justify copyright protection based on some variation of the incentive-access theory (Bracha & Syed, 2014). This theory begins by observing that many creative works are expensive to make, but cheap to copy. Because copyists do not bear the initial costs of creativity, they could drive the price of the work down to the marginal cost of producing copies. If so, the original creator would be unable to recoup her initial costs in creating the work. Absent some means to prevent copying by third parties, the theory holds that creators would have inadequate incentive to produce the works in the first place. By providing

[27] innovative VR – interactive etc.virtual goods, gamify; live streaming concerts.
online appeals because TV boring because (a) SOE; (b) more heavily censored.
specter renewed censorship online; SARFFT threat. SOE forced buy-in, supervision.

creators a legal entitlement to prevent a range of market-impairing copying, copyright restores the incentives to invest in creative production to a socially optimal level.[28]

Recently, copyright skeptics have challenged the utility of copyright incentives, citing evidence that creativity is intrinsically motivated (Cohen, Zimmerman XX).[29] These arguments are engaged more directly below in Part III-__. For now, it is worth noting a few partial responses. First, copyright incentives may augment intrinsic motivations and channel them toward socially useful investments that enhance the value of creative works, but which themselves are less intrinsically rewarding (such as editing).[30] Second, copyright may play a structural role in ensuring creative autonomy.[31] Third, copyright incentives may be aimed primarily at intermediaries such as publishers, rather than authors per se.[32] Finally, copyright does more than incentivize production of creative works; it also encourages dissemination. As noted, the primary value of copyright exclusivity is realized through commercialization: It is up to authors to capture whatever demand exists for their works in the market. Accordingly, the structure of the copyright entitlement itself incentivizes commercial dissemination.[33]

Copyright law protection is not cost-free. Its most immediate costs arise from the higher prices that copyright exclusivity facilitates (thereby enabling creators to recoup their up-front investments). Such costs are primarily borne by end users who must pay prices set above marginal cost. Copyright thus famously functions as "a tax on readers for the purpose of giving a bounty to writers" (Macaulay, 1841). The costs of copyright are a particular source of concern in developing countries. First, their lower income levels mean that many would-be purchasers may be deterred by inflated price levels and thus forced to forgo access to the copyright work.[34] Such restricted access to information goods can result in social externalities that are especially salient in the context of educational or scientific uses (Kapczynski, XX). Developing countries are also invariably net importers of copyrighted material; the resultant outflow of royalty payments to foreign producers can trigger balance of payment concerns (Pager, xx).

Furthermore, copyright exclusivity is more than just a tax; it confers exclusionary rights that creators can use to further restrict access, even where consumers are willing to pay the price. High piracy rates and fear of reimportation often make rightholders reluctant to authorize distribution in developing countries. Copyright exclusivity also poses barriers beyond mere

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[28] Note that copyright incentives govern the level of creative *investment*, which is a different metric than the actual number of works created. As will be argued *infra* in Part __xx, increased copyright protection may result in a *smaller* number of high value works being produced, as compared to the high volume, low investment equilibrium that prevails in the absence of copyright (e.g. Nollywood).

[29] These arguments are evaluated in further detail in Part ___ xx.

[30] *See infra*. D. Hunter/Quigley [Money Ruins Everything XX].

[31] *See infra* "autonomy."

[32] *See infra* "private ordering."

[33] Most directly, copyright provides an exclusive right to publicly distribute the work. However, the other rights in the copyright bundle are also oriented around commercial exploitation (Goldstein, xx). In so far as copyright law protects author's reputational interests in preserving the integrity of their work and receiving attribution, copyright may also encourage dissemination by non-commercially motivated authors (Kwall or Frommer ?? xx). Similarly, forthcoming work by Sean O'Connor underscores copyright's historic role in encouraging authors to stake their reputation to a published work (O'Connor, XX). Copyright law also regulates dissemination in other ways unconnected to incentives. For a discussion of copyright's "communication policy" role in the U.S. context, see Wu (2004).

[34] As explored further in Part __, geographic price discrimination offers, at best, an imperfect solution, and one that is itself subject to further policy variables regarding reimportation norms and piracy rates.

access restrictions. Rightholders can prohibit use of their work in a variety of other ways, subject to statutory limitations and exceptions. Such restrictions on access to and use of expressive media, in turn, can deter secondary creators from engaging in forms of follow-on creativity that build upon the copyrighted original. The result are dynamic social costs that include chilled speech and reduced rates of secondary innovation.

These costs can be mitigated through a combination of carefully tailored limitations and exceptions to copyright. Much of contemporary copyright scholarship operates within the parameters of such incentive-access tradeoffs, striving to balance the increased incentives for creative investment that stronger copyright protection provides against the diminished access that such protection engenders through doctrinal tailoring (Bracha & Syed, 2014a). It is worth noting that the Berne Convention Annex offers developing countries an expanded menu of options in this regard.

Effective use of price discrimination can further mitigate the costs of copyright protection (Kapczynski, xx). However, such mitigation strategies entail their own costs and require further tradeoffs. Even in the best scenario, some degree of restricted access remains inevitable (Bracha & Syed, 2014a). Moreover, because developing countries often fail make to effective use of the policy levers available to them, the results, in practice, may fall even further from the ideal (Kaminski, xx).

2. Allocative Efficiency

By encouraging authors and publishers to monetize demand for creative works through commercialization, copyright engenders a set of market feedbacks that, in turn, influence future investments. In this way, copyright markets respond to popular demand and allocate creative investments toward socially desirable production through decentralized exchanges.[35] Indeed, some have sought to extend copyright's allocation function beyond the capture of foreseeable revenues at a baseline level sufficient to incentivize creative production. Such a vision of copyright would extend copyright exclusivity broadly into derivative markets to monetize all productive uses to which creative works are put, thereby allowing the market to properly internalize the full spectrum of societal demand in determining future production (Goldstein, 1994). Such a broad vision of copyright conflicts with countervailing values that favor access to information and breathing space for transformative uses (Netanel, 1996).[36] One can, however, accept the virtue of copyright's allocative efficiency without necessarily privileging it over competing concerns.[37]

3. Autonomy

[35] In theory, the global reciprocity provided by international copyright treaties further reinforces the decentralized nature of copyright markets, allowing them to aggregate niche demand from around the world. As we will see, however, some question the extent to which copyright markets cater to such long-tail consumers. *See infra* xxx.

[36] As we will see, this approach has also been attacked for distorting creative production by emphasizing peripheral markets that have marginal social utility. *See* Part ___.

[37] Also relevant here is the emerging literature of product differentiation which explores the relative distance between competing offerings in the market. This scholarly effort seeks to derive a theory of copyright directed toward optimal differentiation of creative works (Yoo, 2004; Abramowicz, 2004; Ambramowicz, 2011; Bracha & Syed, 2014). The normative implications of product differentiation theories remain as yet unsettled, and it is unclear the extent to which such rationales ultimately diverge from incentive-access theory. That said, the obvious relationship between product differentiation and cultural diversity make these theories worth revisiting in Part V.

The key feature of copyright markets is their ability to operate in relative autonomy from state control. As we saw, copyright's combination of private rights and market revenues function in a decentralized manner to sustain creative investments. Such investments transcend individual works: Copyright markets sustain a class of professional creators who can dedicate their careers to perfecting their art (so long as they continue to attract paying audiences). Moreover, as the following subsection will elaborate, copyright law helps to sustain a broader infrastructure of commercial content industries directly supported by the patronage of popular audiences. By facilitating cultural discourse through decentralized market institutions that operate largely outside state control, copyright arguably serves a political, as well as economic function. Indeed, Neil Netanel has argued that a system for funding autonomous cultural production constitutes an essential prerequisite for modern democracy (1996). Moreover, in subsequent work, Netanel underscored the particular importance of copyright law in sustaining independent media in emerging democracies (xx).

Several facets of the copyright system reinforce its decentralized nature. Procedurally, the copyright system keeps entry barriers deliberately low. Copyright accrues automatically upon fixation, with no formalities required and a minimal threshold of originality. This lack of formalities enables a broad diversity of authors to take advantage of its protection. It also serves to insulate the copyright system from the meddling hand of the state and to ensure that market mechanisms and private ordering control cultural production rather government bureaucrats. To further minimize the potential for the state to preempt market allocations, copyright law has built-in firewalls to preclude content discrimination and other forms of state interference. In particular, a strong ethos of non-discrimination pervades copyright doctrine, stipulating that judges (and by extension the government) should not make esthetic judgments as to the merits of copyrighted works beyond the most minimal of thresholds (Bleistein, 1903).[38] Of course, markets impose their own biases on cultural production. Such concerns are explored further in Part V.[39]

4. Private Ordering

By allowing authors to transfer their copyrights to publishers and distributors, the copyright system has facilitated the growth of sophisticated "culture industries." Such intermediaries greatly increase the efficiency of cultural markets by exploiting economies of scale to develop specialized production, distribution, marketing, and enforcement capabilities. Copyright's commercial incentives encourage publishers to locate and nurture creative talent,

[38] Ever since the *Bleistein* decision (1903), copyright law has espoused an ethos of non-discrimination. In contrast to patent law, where the non-obviousness test explicitly probes inventive achievement, copyright doctrine deliberately eschews assessment of artistic merit for reasons. This reluctance is most explicit with respect to the originality standard, the context to which *Bleistein* pertained. However, the non-discrimination ethos runs throughout copyright case law (Walker & Depoorter, 2015).

[39] Commentators have questioned the extent to which copyright's market-driven mechanisms serve as an adequate proxy for social utility. The commercial value captured by individual consumers may not account for various social externalities; minority niche markets may be poorly served by the "winner-take-all" nature of mass media goods characterized by high fixed costs and low marginal costs; culture industry gatekeepers may block innovative works; and media markets may be subject to further distortions and dysfunctionalities. Others object more broadly to very notion that market mechanisms should govern artistic production. *See* Part V, *infra* XX.

exploit new audiences, develop derivative works, and launch innovative distribution platforms.[40] Intermediaries may also directly support the development and packaging of creative works and furnish an important source of venture capital to front the costs to commercialization. Their size typically allows them to invest in a portfolio of works that functions as a form of risk management: a few commercial "hits" typically must subsidize many "misses" (Anderson XX).[41] Accordingly, some scholars have explained copyright incentives as directed toward publishers, not authors (Barnett, Cohen XX), with a goal of inducing commercialization rather than creativity per se. Other commentators remain skeptical of the role that intermediaries play, viewing them as obsolete "gatekeepers" that the digital age is destined to bypass (Hunter xx).[42]

More broadly, copyright law helps to sustain a diverse creative infrastructure within the ambit of commercial content industries that facilitates a wide range of creative projects both within and outside such industries. Such industries could doubtless function in the absence of copyright, relying on contract law and other general private law norms. However, in reducing the risks associated with capital-intensive creative investments, copyright law has encouraged their development.

Copyright's risk-reduction functions go beyond its protection against copying. Copyright law provides a set of building blocks around which to structure transactions. As an intangible property right, copyright defines a cluster of relational rights and obligations within an overarching conceptual structure whose contours are predetermined by statute. It thus provides a convenient reference-point that simplifies contractual transactions and reduces uncertainty, providing the anchor around which private ordering can be organized (Pager, 2012-xx). The transfer of rights from authors to publishers serves as one example. Securitization of copyright assets as a vehicle for financing creative productions provides another. Such transactions allow publishers to further shift risks onto investors, financiers, or distributors. The divisibility of copyright's propertarian "bundle of sticks" facilitates such private ordering. Indeed, pre-sales of foreign distribution rights allocated by national territory provide a crucial source of financing for independent film production (Dale, Lobato XX). Copyright law also provides default ownership and evidentiary rules that facilitate creative collaborations by ensuring predictability and thereby preempting *ex post* conflicts (Sawicki & xx; Lichtman, 2003). As shown in the preceding case studies, such basic formalities are often lacking in emerging content industries to deleterious effect. Finally, by providing a more robust set of remedies than contract law and transcending bounds of privity, copyright law provides an added measure of security against the risks of defection.

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[40] For an empirically-grounded exploration of distribution costs in the context of scholarly publishing, see Mossoff (xx). Publishers potentially add further value to the extent they can employ effective price discrimination strategies that reduce some of the dead-weight losses associated with exclusive rights. That said, scholars are divided as to the desirability of price discrimination (Fisher price discrim info goods xx; chapter in book xx). Moreover, Kapczynski (2012) sees them as encouraging further inroads into individual privacy.

[41] Because creative industries are typically high-risk enterprises with steep up-front costs, individual creators may lack the means to bear these up-front costs on their own or face potentially ruinous losses should their creative investments fail. By allowing copyright entitlements to be transferred from authors to commercial intermediaries such as publishers, record labels, and film studios, copyright law facilitate risk-shifting. Such intermediaries generally have better access to capital than individual authors and can spread the risk of their investments across a broad portfolio of works. Typically, a handful of "hits" serve to compensate for losses on far more numerous "misses"

[42] *See infra* Part__xx re disintermediation.

5. Prior Commitments & Path Dependencies

Furthermore, regardless of any theoretical advantage that copyright law affords *a priori* over baseline private law norms, adherence to copyright law norms is mandated by international treaty. While countries have discretion as to the extent to which they enforce such norms, deviations from global compliance norms may come at a geopolitical cost. Conversely, there are benefits to operating within the copyright system that derive from preexisting understandings and institutional arrangements. Creative industries are governed globally by a complex system of private ordering arrangements premised on formalized understandings of copyright law. Accordingly, to the extent that individual countries establish a functioning copyright system that is compatible these preexisting arrangements, they enable national rightholders to plug into this global system and thereby to derive a host of network benefits. Advantages range from reciprocal benefit-sharing between collective rights organizations to standardized chain of title protocols for international distribution. Conversely, those who operate outside the global copyright system assume added costs and obstacles.[43] As explored further below, the structural imperative exerted by such preexisting institutions and practices exert a powerful pull toward copyright formalization.

6. Summing Up

The preceding frameworks for theorizing copyright to some degree overlap and are complementary/interdependent. Accordingly, they all can be taken as contributing to the mix of considerations that copyright's incentive-access balance accommodates through doctrinal tailoring. It remains unclear, however, what overarching theoretical framework should govern such balancing. Copyright theorists often employ vague formulations such as "progress," "social welfare," "innovation," or "efficiency" that serve to avoid reckoning with the ambiguity as to copyright's lodestar.[44] In the absence of other metrics, copyright market-centric orientation tends to default to monetary measures of value. Yet, making wealth maximization the goal of copyright is highly problematic given the presence of enormous social externalities that market valuations of creative expression fail to capture (Baker, Kapczynski). At same time, attempts by theorists to specify alternative normative criteria to serve as potential maximands—such as cultural development, democratic discourse, and human flourishing—have their own problems (Bracha & Syed, xx). For present purposes, however, we need not commit to any particular understanding of how copyright's balance should be realized. Rather, our understanding of copyright's various aims and functions provides a basis to compare copyright against other potential paradigms to underwrite creative production.

B. State Patronage & Other Direct or Indirect Subsidies

Copyright is hardly the only mechanism to support creative production. Governments can subsidize artistic production through a variety of means both direct and indirect.

1. Direct Patronage

Historically, the most prevalent means of support for the arts was aristocratic patronage: wealthy patrons bestowed funding or employment upon creators. Today, governments have largely supplanted aristocrats as the primary sponsor of direct patronage mechanisms. The

[43] *See infra* Part__xx re formalization.

[44] Nor does copyright doctrine itself provide much help in answering this question due to its non-discrimination doctrine. *See supra* note xx.

Nigerian government's announcement of a $200 million "Special Entertainment Fund" to underwrite the production of Nollywood films represents a recent iteration in this tradition (Abulude, 2016).

State patronage represents a model whose benefits and costs are almost the reciprocal of copyright law. Funding is typically conferred up front, allocated by expert committees who often value artistic merit over commercial appeal. The result is cultural production oriented to appeal to cultural elites rather than popular markets.

In some ways, patronage models are undoubtedly more appealing than copyright: They avoid the access restrictions engendered by exclusive rights, thereby facilitating dissemination and enabling secondary creators to build on existing expression without fear of infringement.[45] Awarding grants directly to creators may allow them to bypass industry gatekeepers (or at least to negotiate more favorable terms). Patronage regimes also typically commit to provide funding in advance of production, which may afford creators greater license to experiment and take risks without the need to worry about recouping their investment in the market. Indeed, the ability of patronage systems to correct for market biases in the copyright system—awarding funding based on artistic merit rather than commercial appeal—may be one of its most salient advantages, as Part V will elaborate.

Patronage regimes suffer from several drawbacks, however, that hamper their effectiveness. Substituting government bureaucracies for market-driven mechanisms is almost always a recipe for inefficiency, as a long line of free market economist have testified, not least because markets are better at uncovering the private information necessary to match supply to demand (Demsetz, 1969). The comparative advantage of copyright markets over top-down processes may be particularly salient in the context of creative works whose value is notoriously difficult to appraise at the time of creation. There is a long history of cultural innovation being rejected by contemporary experts (Pager 2012-b; Cowen, xx) only to win acceptance by subsequent generations. The relatively long duration of copyright terms allows innovative works to benefit from such esthetic revisionism.[46]

Patronage schemes are also vulnerable to other distortions and abuses. As a result, patronage may be better used as a mechanism to supplement copyright-supported markets than supplant them.[47] First, although both copyright and patronage confer subsidies to creators, the nature of the subsidy is far more visible in the patronage context, and it comes directly out of the state treasury. This makes patronage funding vulnerable to budget cuts prompted either by fiscal austerity or artistic philistinism.[48] Second, patronage's theoretical advantages in encouraging dissemination are often not realized in practice. Patronage schemes tend to emphasize funding creative production rather than ensuring that the works reach actual audiences, and creators

[45] It is worth noting that, in practice, patronage awards do not normally preclude copyright exclusivity. Several commentators have proposed that state subsidies be leveraged to curtail copyright, however (Lee xx, Fisher, xx; Baker 2003), and the National Institute of Health has recently taken a small step in this direction (Contreras, xx).

[46] This comparative advantage becomes greater still where patronage funding is committed in advance of production. In such cases, review committees must assess the comparative merits of competing work without seeing them in a fully realized form. By contrast, because copyright markets confer subsidies only after completed works have been brought to market, they encourage multiple authors to "audition" for audiences.

[47] *See infra* XXX.

[48] Drastic cuts in Nigerian media funding in the economic crisis years of the early 1990s offers an example of the former (Miller, 2016). Newt Gringich's savaging of National Endowment for the Arts funding in the 1990s offer an example of the latter (Cowen, 2006). Developing economies may be particular prone to such fiscal upheavals.

whose costs have been covered in advance may be less incentivized to market their work (Pager, 2010). Third, instead of spurring artistic breakthroughs, committing funding up front can encourage self-indulgent *auteurs* to produce esoteric works of questionable social value (Pager 2010).[49]

Furthermore, selecting works based on artistic merit rather than commercial appeal pushes cultural production toward esthetic standards dictates by the cultural elites who typically sit on selection committees. Favoring elite standards over popular tastes can be criticized as undemocratic. In the development context, such tendencies have sometimes meant favoring foreign audiences over domestic ones. Africa's pre-Nollywood celluloid cinema offers one example: African governments funded these so-called "embassy films" in the early postcolonial years "as prestigious cultural trophies to impress European elites," but they were rarely seen by African audiences (Pager, 2012b).[50] Chinese filmmakers in the 1980s followed a similar pattern, producing films designed to win prizes at foreign film festivals, but all-but unintelligible to Chinese audiences (Priest, 2015).

Where patronage regimes rely on expert committees drawn from the cultural establishment, biases toward elite culture may be especially pronounced. At the same time, a preference for works that conform to establishment canons mean that such regimes may reject truly revolutionary work (Cowen, 2006).[51] Delegation to committees can also introduce further selection biases due to agency constraints; problems can include ideological and esthetic biases, private agendas, cronyism, rent-seeking, or outright corruption (Pager 2010). Such problems are likely to be particularly grievous in developing countries with weak rule of law norms and quasi-tribal loyalties based on ethnicity (Nigeria), caste (India), or personal connections (China).

While political oversight can curb such problems to some extent, political pressure can also lead to excessive conservatism in making awards. The firestorm over National Endowment for the Arts funding in the U.S. in the late 1990s illustrates the potential for populist demagoguery to curtail artistic innovation; accountability to democratic watchdogs led to funders to gravitate toward sterile "safe bets" that would not escape censure by self-appointed watchdogs of public morality (Cowen, 2006).[52]

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[49] It is striking, for example, that increasing levels of state subsidies to the French and Italian film industries resulted in films that won a *diminished* share of prestigious film festival prizes compared to prior decades (Pager, 2010). As this example illustrates, governments can award prizes after the fact instead of allocating funding up front. However, evaluating completed works is more resource-intensive than appraising proposals. Accordingly, competitive prizes do not account for a significant share of cultural funding. Prizes are arguably better suited to induce technological innovation where a specific goal can be specified in advance based on objective criteria. By contrast, market-based prizes (reward schemes) are quite common; they are discussed in the following section.

[50] In later years, European cultural funds supported African cinema even more directly, and Europeans played an active role in the production process. Unsurpringly, the films became even more oriented toward European sensibilities, purveying an esthetic fetishization of the exotic (Pager 2010).

[51] Where funds are committed in advance of production, the difficulty in predicting the merits of a proposals can further reinforce a bias toward established artists who have a proven track record.

[52] Democratic regimes face popular outcries whenever state-subsidized creativity is deemed blasphemous, offensive, or immoral. Cutting-edge works are more likely to provoke extreme reactions than trite, derivative ones. Because they speak in a language unintelligible to conventional esthetic codes, their meanings may be misunderstood. *Cf.* Bleistein on Goya (1903). Therefore, funding committees accountable directly or indirectly to popular pressure will steer clear of controversial or advant garde forms of expression and gravitate toward to more conventional, albeit less innovative works.

Even more seriously, governments can use patronage funding to advance their own agendas, rewarding favored speakers and viewpoints. Culture is a powerful tool to influence hearts and minds and mold public opinion. As such, patronage regimes can easily become instruments of censorship, propaganda, or authoritarian control (Pager, 2010).[53] Indeed, the patron's influence can be felt even without the need to take overt steps to impose an agenda. Artists relying on state funding are likely to self-censor or engage in sycophantic projects to curry favor with those holding the purse strings.

Such concerns are especially stark in developing countries where authoritarian rulers have few scruples about wielding power through propaganda. China's communist party has a long history of funding cultural agitprop. While China's decades-long liberalization process has led artistic production to be dictated largely by markets rather than party apparatchiks, in recent years, the government has increased pressure on creative artists to toe the line ideologically and encouraged a revival works exalting the existing regime (Economist, 2016 & 2014).

While China represents an extreme case, its instrumental view of the arts is hardly unique.[54] The idea that popular culture should serve as an agent of moral perfection that instills wholesome virtues in audiences through positive examples is widespread among developing countries (Netanel, Vand. xx?).[55] Of course, all countries enforce basic standards of community decency. However, there is a difference between policing the outer limits of such standards through negative censorship, and affirmatively encouraging "correct" or "moral" values as an explicit or implicit factor weighed in competitive allocations of funding. As patronage regimes offer a natural vehicle for such positive censorship, it is all-too-easy for subjective standards of morality to be used to stifle viewpoints deemed threatening to ruling establishment.[56]

In contrast to the decentralized market for expression supported under a copyright model, a patronage regime may therefore to lead to less vibrant modes of cultural expression covering a narrower range of viewpoints and styles. Moreover, where patronage regimes dominate funding of cultural production, alternative funding mechanisms can be crowded out (Pager 2010; Cowen, 2006).[57] Allowing state domination of cultural production thus raises serious democratic concerns (Netanel, 1996), and private sponsorship can be just as objectionable.[58]

Conversely, market forces expressed through the popular demand of paying audiences can themselves function as a counter to state control. Priest (2015) argues that in the Chinese context, commercial imperatives have, over time, served to soften censorial impulses. Similarly,

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[53] The old saw "He who pays the piper, calls the tune" has a ring of truth here.

[54] Even in countries with established commercial content industries such as Nigeria and India, government officials have continued to evince a belief that artists have a "pedagogical mission" to present a "positive" vision of society that stands in tension with the kind of works that resonate with popular audiences, resulting in an often-ambivalent attitude to the commercial travails of such industries (Rajadhyaksha, 2008; Miller, 2016).

[55] By contrast, the Western liberal ideal of the artist as iconoclast who challenges the status quo arguably remains very much a minority view.

[56] Even liberal democracies such as Canada are not immune to the temptation to engage in such ideological meddling, as the scandal over the Harper regime's allegedly abusive manipulation of "Canadian values" to deny funding to gay programming showed (Pager, 2010).

[57] Dale; CvC. Private funding mechanisms also atrophy where state subsidies undercut their market. *See, e.g.* French patronage regime's effects on availability of private insurance for film production.

[58] *See infra* xx.

Nollywood's contribution to public discourse in Africa has been similarly significant. In contrast to the tight control over state-funded media hitherto exercised by Nigeria and other African states, Nigeria video films have enjoyed an unprecedented license to poke fun at cultural taboos and establishment foibles in the guise of popular entertainment (Pager, 2012b). While both the Nigerian and Indian film industries remain formally subject to pre-release censorship, the commercial appeal of their offerings has helped to insulate them from aggressive enforcement of decency standards (Miller, 2016; Bose, 2006).

2. Collective Licensing, Rewards & Indirect Subsidies

Copyright and direct state patronage are not the only means by which governments can subsidize cultural production. Hybrids models exist combining elements of both models. In many cases, such models seek to preserve the market-based incentives that the copyright system supplies, while reducing its access barriers. For example, compulsory licenses, collective rights management, and market-based reward regimes all reduce the transaction costs of accessing copyright works by, to varying degrees, shifting from a property to a liability rule. These models thus mitigate access costs while still producing revenue streams tied to market consumption.

While space does not permit a detailed discussion of their respective tradeoffs, a common feature is that, in the absence of individually negotiated licensing transactions, such schemes have to devise alternative mechanisms to generate and allocate revenues. This generally means accepting some compromise in the degree to which underlying pricing is dictated by market forces and consumption is measured, either by relying on indirect proxies such as statistical sampling or levies on storage media, or using valuations determined through administrative processes or statutory fiat. Moreover, attempts to render such indirect mechanisms an adequate substitute for market transactions can introduce further complexities whose design, operation and validation require administrative resources and careful oversight.

In this respect, such hybrid regimes forgo some of the virtues of the decentralized markets that copyright sustains and come to more closely resemble top-down patronage models and. Moreover, the complexity of such regimes may result in reduced transparency, making them vulnerable to favoritism, fraud, and other abuses such as antitrust concerns. In any case, the track record of existing collective rights organizations in many developing countries hardly inspires confidence (Shlatter, Schultz, xx, Band xx).

Governments can also employ indirect patronage mechanisms to support cultural production. Tax incentives offer one such approach. For example, using tax credits to induce private investment in creative content allows public subsidies to harness private information (Hemel & Oullette, xx). While such an approach can be effective, it requires careful policing to ensure that the investments are actually aimed at the desired target activities, and that the tax credits are not misused. (Many developing countries also have relatively weak tax bases and erratic collection, which reduces the impact of tax write-offs). Investments in training or infrastructure that facilitates the production of commercial content can also yield powerful payoffs where well-targeted (Pager, 2015), or result in white elephant boondoggles where misplaced. As with the other policies described above, such solutions depend on competent

technocracies, a commodity that is in short supply in much of the developing world (and also vulnerable to rent-seeking/corruption).[59]

Ideally, governments would manipulate all of these different policy levers in a targeted fashion to achieve optimal outcomes. In practice, government is not nearly nimble enough to manage this feat. The impossibility of predicting *ex ante* how cultural markets will develop, with too many variable to compute and and bounded rationality. Thus, the best compromise may a belt and suspenders approach that blends several overlapping support mechanisms and accepts a degree of redundancy in the hopes that different actors will self-select and pursue the options that work best for them.

C. Commons-Based Creativity/Alternative Business Models

Some say government subsidies are no longer necessary because the internet has solved our scarcity problem and underwritten a bottomless upwelling of creative expression (Lemley, xx). We can just sit back and reap the digital mana spawned by commons-based production.

There are two forms of this "comedy of the commons" theories: (1) the non-commercial commons; (b) alternative business models premised on "open" distribution.

1. non-commercial commons

The proliferation of creative works by non-commercial amateur creators generates no end of gaudy statistics (e.g. X number of hours of video posted on YouTube every minute) that testify to the content cornucopia that digital networks have unleashed. Yet, while amateur work can be genuinely creative and worthy of admiration, the level of authorship invested in any given work is typically low. Amateurs generally restrict themselves to short-form content involving modest production values, often piggybacking on preexisting works through mash-ups and remixes. The result is an ocean of lol' cats and dancing babies, but very little that can rival commercially-produced content in scope, sophistication, or production values.[60]

The limited creative ambitions of amateur creators reflects some enduring realities of content production that the sheer volume of works being generated sometimes elides. Notwithstanding cliches about how a six year-old with an i-phone can shoot movies of equivalent quality to a 20th century film studio[61], to create anything worthwhile—i.e. anything of more than passing interest to people outside one's immediate family—still requires talent and skills that remain in short supply. Furthermore, while commons enthusiasts argue that intrinsic motivations for creativity are sufficient, making copyright's extrinsic incentives redundant—and possibly downright harmful. This is a far cry from saying that intrinsic motivations alone suffice

[59] Investment in basic capabilities perhaps the soundest bet: Nollywood example of TV funding yielding trained technicians. Korean Wave examples. Brazil Culture Points, digital creativity labs—great for social inclusiveness, unclear economic/cultural payoff. And then there's Michigan's film studio failures as example of what not to do . . .

[60] Peer production can help sustain more ambitious non-commercial projects by integrating the collective contributions from a broad set of decentralized collaborators. However, only a narrow subset of creative projects fit within the template required for such collaborative peer production models to function effectively. Need modular project that can be granularly farmed out to individual contributors whose output can then be efficiently assembled, reviewed, and integrated into a coherent whole (Benker xx). Works for software and Wikipedia, but not much else. Assembling music/film/novels by committee is a recipe for disaster.

[61] This is actually not true except under severely limiting conditions.

to sustain authorship at the highest level.[62] There is a limit to enthusiasm of even the most ardent hobbyist. Beyond a certain level of investment, economic reality rears its ugly head, and creativity is forced to pay its own way (or at least have some prospect of recovering the investment).

2. alternative business models

Commons enthusiasts have a fall-back position, however: They argue for funding creative production by relying on ancillary revenue generated via "open" distribution.

Commons Romantics point to a bevy of "alternative business models" that are supposedly compatible with "open" distribution[63]: distributing CDs as free publicity to sell concert tickets and t-shirts; relying on advertising, sponsorship; aggregating sales across long tail demand curves; deploying online "tip jars" or "freemium" models that entice fans into paying for prestige goods or specialized services; crowdfunding campaigns, etc. Some of these "alternative" models turn out to be not as new as some think: e.g. T-shirts at concerts (Lowery). Others don't scale well. And some come with substantial drawbacks of their own.[64]

Moreover, Commons Romantics tend to rely on a limited set of examples that reflect special cases of self-selected groups, first mover advantages, or one-off successes. Such exceptional cases do not generalize to a viable business model.[65] Those who succeed tend to be artists who have a preexisting fan base. Nor do these models necessarily work for all categories of authors. For example, neither song-writers nor novelists are unlikely to sell many t-shirts. Nor is clear whether these models really could function in the absence of copyright (whose norms may function as unacknowledged background conditions).

Because many developing countries effectively functions as *de facto* copyright commons due to lack of enforcement mechanisms and high rates of piracy, they serve as a laboratory in which alternative business models can be tested and evaluated. The next part looks at the lessons we can glean as to the advantages of copyright vs. commons-based production.

III. Copyright & Development of Creative Industries: Reviewing the Record

A. Peddling Copyright for Development

1. Copyright Evangelists

Entranced by the robust theoretical benefits that intellectual property rights afford, policy-makers at key multilateral institutions such as WIPO advocated strongly for IP protection as a "power tool" for development in the aftermath of the 1995 TRIPS Agreement. While much of this focus was on patents, copyright too received its share of attention. For example, the World Bank embarked on a much publicized initiative to build on the rich musical heritage in

[62] Indeed, even some romantically inclined copyright scholars concede that intrinsic motivation may be insufficient to motivate certain ancillary tasks that enhance the value of creative works, such as editing. *See* Hunter & Quigley, *supra*.

[63] In fact, many of these "open" models depend explicitly or implicitly on backdrop assumptions of copyright law and could not function in a truly post-copyright world. *See, e.g.* Priest & Liu xx. For example, funding content by selling ads may not work if others can freely copy the content and sell their own ads.

[64] For example, advertising-supported content platforms often employ invasive tracking mechanisms that compromise user privacy. *See* Kapcyznski, *supra*, note xx. [See back of draft for complete list of downsides XX].

[65] Mark Schultz, *Money for Music*, RICHMOND L. REV.

West Africa by developing a regional music industry through stronger copyright protection. Commentators hailed this visionary plan as an attempt to build "Nashville in Africa" (Finger, Schultz). The idea was that a dollop of copyright would prove magically transformative. However, the plan fizzled. By themselves, copyright laws proved insufficient without institutions and a rule of law culture to support them.

2. Disillusioned Skeptics

Oversold promises of IP-spawned miracles led to a backlash. Many developing countries came to see copyright law as a Trojan Horse serving to advance the interests of multinational corporations at the expense of indigenous creators.[66] Such suspicions were fanned by NGOs and cyber-libertarian pundits espousing copy skeptic dogma. At times, such advocacy could be just as naïve as the IP boosterism before it and displayed the same careless tendency to extrapolate from developed world conditions without acknowledging contextual differences.[67]

In general, copy skeptics advance three main prongs of argument: First, skeptics argue copyright incentives are largely redundant in a digitally empowered, post-scarcity world where creativity is driven by intrinsic motives (Zimmerman, Tushnet). Any residual benefits that copyright provides are heavily outweighed by the hefty costs in chilled speech and blocked innovation.[68] Such benefits are monopolized by a handful of moguls and superstars, but largely irrelevant to everyone else (Zimmerman, DiCola). For developing countries, the picture is even more dire because most are heavy net importers of creative media, resulting in large outflows of royalty payments to foreign rightholders with potentially destabilizing effects on monetary policy.

Second, to the extent extrinsic funding is required, copyright can be replaced by the more, democratic modes of creative production that the digital age enables. Skeptics point to alternative business models based on ancillary revenues or reputational economies. Propping up dinosaur industries based on artificial copyright monopolies merely delays the inevitable and impedes innovation. The proliferation of vibrant creative industries across the developing world which seemingly thrive in the absence of copyright protection appear to bear this argument out.

Third, skeptics argue that even if they were normative desirable, copyright business models premised on controlling and monetizing individual copies of a work are inherently infeasible, rendered obsolete by digital technologies that made unauthorized copying and distribution virtually costless. Again, the pervasive presence of piracy throughout the developing world, and its seeming invulnerability to copyright enforcement, appears to validate such claims (Karaganis).

B. Assessment

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[66] Trade copyright for bananas – didn't get the bananas! assume copyright must be poison; focus on foreign investment (FDI), not indigenous creativity; A2K, education – media hegemony; U.S. historical Hypocrisy.

[67] For example, *see* Tech Dirt's mocking dismissal of hunger strike by African musicians protesting piracy of their music as a futile effort to combat "filesharing," arguing they should develop "new business models" instead. Never mind that filesharing wasn't the issue the musicians were objecting to, but rather commercial piracy off-line. And never mind that that internet-based business models were largely infeasible in the African context at a time when few consumers were online and bandwidth was severely lacking.

[68] Such skepticism was reflected in the adoption of the WIPO "Development Agenda," which emphasized the need for exceptions and limitations to IP rights; parts of the Agenda straddle the fence, however, between pure IP skepticism and a qualified embrace of IP norms in a "development-oriented" guise.

1. Thriving or Surviving?

Upon closer inspection, however, the true picture is more nuanced. First, intrinsic motivations are beside the point. The limitless horizons of cyberspace create the illusion of post-scarcity, but in the real world artists need to eat, and creative enterprises need to recoup costs (Pager 2015). Such exigencies are felt especially strongly in developing countries where median incomes are much lower than the United States and many struggle to meet basic social needs. Artists may espouse Romantic ideals about creativity, but cannot realistically avoid the need to spend money on practical necessities such as equipment (Liu). Money buys the luxury of time and artistic freedom and enables production investments that result in higher quality output (Liu). Time spent struggling for survival means less time to refine and perfect one's craft (Pager 2015). Amateurs and part-timers may create as a hobby, but they are unlikely to achieve the mastery of full-time professions (Merges, O'Connor).

Second, the claim that emerging content industries are "thriving" in the absence of copyright deserves scrutiny. Nollywood films may be profitable, but creatively they fall far short of their potential. Filmmakers are forced to pursue a churn strategy that rushes new videos to market weekly to beat the pirates (Barrot). Such high-volume, low revenue production restricts the creative ambition that can be invested in developing any single project. Moreover, without enforceable copyrights in their work, filmmakers cannot offer collateral to obtain financing. Instead, they must rely on informal short-term lenders at punitive interest rates—reinforcing the "rush to market" mentality that fosters slap-dash productions (Ebewo).

Eric Priest and Jared Liu present a similarly dire portrait of China's "copyright extremophiles": they can survive the exigent conditions of a copyright desert, but they are far from thriving there. Liu cites evidence showing that investment in the Chinese music industry is down by 90% since Baidu made pirate recordings freely available online and traces the draconian consequence such retrenchment has engendered. Priest notes that 90% of industry revenue derives from an extremely narrow source: cell-phone ring-tones, and that the bulk of the proceeds flow to the telecommunication companies not artists or labels.[69]

Musicians elsewhere may be coping better with the decline of monetizable recordings. Waldfogel paints an upbeat picture of the U.S. music industry, arguing the digital age has redistributed revenues/market share more equitably without affecting quality (*but see* Menell).[70] Egyptian wedding singers rely on built-in cultural demand for their services (Rizk). The remix industries in Brazil, Angola, and South Africa have pioneered new concert revenue streams (Lemos). Relying on computers to synthesize sounds cuts also down on musicians and equipment costs, making this a bare-bones operation. But even so, most producers of tecnobrega are nowhere near quitting their day jobs.

2. Alternative Business Models

Just because creative industries operate in developing countries where copyright norms are weak or non-existent, does not mean that their existence proves the viability of alternative

[69] Some talented players have quit the business altogether (*see* Priest re: Song the music mogul turned duck entrepreneur). Cf. Menell (citing similar anecdote of indie band whose members all left to go professional graduate schools due partly to filesharing). Other resort to state patronage, which comes with ideological strings attached.
[70] This, despite a decline in overall revenues. Query whether (a) this means we too much incentives before, or (b): the music industry is running on fumes, chasing a bygone dream from a vanished era—i.e. too early to tell long term ramifications.

business models. Since its inception, Nollywood has relied on a classic copyright business model for its primary revenue stream: selling copies of its work in the marketplace. In the absence of viable copyright protection, Nollywood producers have developed workarounds based on a combination of lead-time and limited market exclusivity enforced through physical muscle (hired goons who prevent pirates from setting up stalls) rather than legal writ.[71] Chinese musicians earn the vast majority of their royalties from ringtones on mobile phones whose centralized architecture is insulated from piracy (Liu). Such crude attempts to replicate copyright exclusivity by other means should hardly be seen as proof of its irrelevance.[72]

More recently, Nollywood has attempted to move toward Bollywood's model of theatrical exhibition as a revenue stream. And it also collects revenues from satellite and cable transmissions. Chinese filmmakers, too, have done comparatively better than its musicians because there is huge demand for theatrical exhibitions and a quota limiting Hollywood imports (Priest). And internet video revenues streams are just beginning to pay off. But there is nothing "alternative" about a paid public performance model, and these models are hardly compatible with unconstrained flows of "free" content.[73]

In general, the music business—based on remixes or otherwise—would seem the most amenable to a commons-based business model (Rizk).[74] Studio production costs are significantly lower than film. And live concert performances offer experiential value whose spontaneity and emotional resonance cannot be readily duplicated by recordings. Accordingly, musicians can rely on concert revenues to subsidize the costs of recording albums, and distribute the latter as free marketing. Yet, this model comes with significant limitations. It works best for established bands whose fan base is concentrated in major urban areas. Performers with a fan ban dispersed across a wide geographic area may struggle to fill venues. Touring on the road makes for a hard life that is not suitable for everyone (e.g. single moms, shy people). And the revenues available are unlikely to replace the value foregone from recording sales (Schultz).

Hollywood blockbusters strive to replicate a similar premium experience in theatrical exhibitions through a combination of lavish production values, special effects, cgi, 3-D, high quality sound recordings, etc., but the investment levels required to achieve production qualities sufficient to make theatrical viewing significantly more appealing than home viewing keep rising. This may be out of reach of most developing countries, with the possible exception of Bollywood and Nollywood. Moreover, movie theaters in developing countries are typically concentrated in major urban areas, whereas potential audiences can be widely dispersed across the countryside. (Pager 2012).[75]

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[71] These practices are not unique to Nollywood. Spike Lee apparently fell back on such "muscular enforcement" tactics to combat piracy of his films in New York City (Lobato).

[72] Commentators observe, correctly, that unofficial distribution of Nollywood films earned them a devoted following across Africa. But without a viable mechanism to monetize such demand, such reputational gains are of little use.

[73] Cf. Camcording study showing that availability of pirated content significantly undercut box office sales.

[74] Somewhere address Barnett and O'Connor's argument that hidden sources of appropriation exist even within the commons. Also argument that scalability of commons models is highly suspect. Begs the question of comparative value: do we want lots of amateur creativity with low production values but plenty of diverse viewpoints or do we want professional content industries that produce relatively few, highly sophisticated, capital-intensive works. Arguably we want both—and everything in between—do we really have to choose?

[75] In many regions, women lack access to public cinema even in cities due to conservative morals or public safety concerns. Thus, recorded media may be the only way to reach such female audiences.

Monetizing such dispersed eyeballs (and ear drums) is difficult without copyright protection. Sponsorship and advertising can help, but developing countries have comparatively less money to tap, and funders often want to exert creative control or impose other conditions that inhibit artistic autonomy (Liu, Pager 2012b). It is also hard for up-and-coming artists to benefit. Moreover, some online advertising models pose troublesome privacy implications (Kapcyznski, Strandburg).

Private sponsorship abuse[76] DCs with weak consumer economies; few oligarchs exert disproportionate influence (often deployed to curry favor with ruling elites). Corporations are just as controversy averse. They are in the patronage game for PR reasons. Offending significant segments of the public wastes their investment. Foundations might be better, assuming their boards aren't too stodgy. But there are not many foundations active in developing countries, and thus such funding sources are limited.

3. Signal Distortion and Revenue Internationalization

A more general critique of alternative business models and other copyright substitutes is that they tend to rely on a limited segment of the total consumer market as their primary revenue source. This means that producers get distorted signals as to total demand for their products across society at large. For a market to function efficiently and match supply to demand, producers should ideally share, directly or indirectly, in revenues captured across the full spectrum of demand. Copyright's broad bundle of rights (and especially its derivative works right) has been justified under such a "full internalization" logic (Goldberg 1983).[77] By contrast, in markets where copyright does not function well, content producers often reorient their production to cater to a narrow segment of consumption because this is what pays. Thus, reliance on distorted signals leads to distorted production decisions that do not cater to the full spectrum of societal demand. Thus, Nollywood films overemphasize stories set in Lagos and other big cities because that's where producers can control sales in marketplace (Larkin; Haynes). French filmmakers similarly overemphasize Parisian stories because the cultural elites who control patronage allocations are concentrated there (Pager 2010). And Chinese musicians devote inordinate energy to composing marketable ring tones for cellphones (Liu).[78]

4. Who Benefits

Furthermore, the claim that copyright only benefits a narrow few must be evaluated against the alternatives. Most of the skewed distribution of benefits flows from superstar economics and other inherent biases of media markets that have very little to do with copyright (Shur-Ofry). Copyright models may generate higher levels of revenue overall, and the skews might seem more extreme. However, it is important to keep in mind that a portion of the money

[76] Private sponsorship can be equally objectionable. E.g. substantial influence was exercised by European funders of celluloid films from Francophone West Africa. Funders favored stories that conformed to the preexisting biases of the foreign film festival audiences who were the primary audiences for such works. Hence, stereotypical tales about exotic African village life, imbued with shades of Orientalism.

[77] We can debate whether we really want producers to base production decisions based on *all* revenue streams. e.g. merchandise potential may have nothing to do with whether a film is a socially desirable investment qua film. *See* cultural diversity discussion, *infra* Part IV.

[78] Strandburg predicts similar distortions will occur in U.S. content markets funded through online behavioral advertising, invoking an analogous theory of price signal mismatches.

that superstars and large content conglomerates earn trickles down to a host of subsidiary personnel (session musicians, composers, camera-men, editors, etc.), many of whom support their artistic avocations and hone their skills through such high-paying industry jobs while they await their turn in the limelight.

5. Copyright's Canute Moment?

[*Note to Law & Development reader: this subsection is the part on which I plan to focus and elaborate during my Conference presentation***]**.

What about the claim that eliminating piracy is futile—that creators in the digital age just have to learn to live with it? There's undeniably some truth to this claim. And the transition from physical to virtual media may only exacerbate this problem.[79]

However, copyright does not have to be an all-or-nothing proposition. The content industries in the developing world are struggling against commercial enterprises whose unauthorized, for-profit distribution directly supplants legitimate sales in their primary market. This represents the core market failure that copyright law was designed to remedy. Such industrial scale commercial piracy has nothing to do with noncommercial filesharing or internet mash-ups. Moreover, the scope of the rights required to combat such verbatim copying can be framed quite narrowly, leaving ample allowance for remixers, parodists, and other forms of secondary creativity. However, reducing or delaying piracy by even a small amount can make huge differences to an industry's bottom line.

It is worth elaborating on the appropriation risks that copyright guards against. Our usual image of "piracy" and "pirates" conjures up shadowy figures in trench coats peddling misbegotten wares.[80] However, the range of potential appropriators goes beyond such piratical outsiders and includes competitors, collaborators, intermediaries, and other actors within the relevant industry. As we will see, enforcing copyright exclusivity against such insiders may be more feasible than preventing piracy by outsiders and provides its own independent value.

Furthermore, copyright protection can still have value even where pirate distribution is rampant. As noted, copyright prevents against both internal and external forms of appropriation. Even if piracy continues to thrive underground, copyrights can still deliver benefits where they are internally within the media/content industry. Unlike external pirates, established media enterprises such as broadcasters can hardly hide in the shadow, and so there is no reason they should get away with unauthorized exploitations of copyrighted works as remains the norm in many developing countries.

Enforceable copyrights can also promote greater trust and collaboration within content industries. Small creators are particularly vulnerable to predatory corporations in the absence of copyright (Hughes). Lack of copyright protection also introduces perverse incentives in the way that creative industries operate. For example, fear of script piracy has even led some Nollywood directors to withhold scripts from their actors; instead, actors are only given their lines for

[79] Or will it? If even pirates have to compete with free content online, maybe the profits will go away, and artists can eventually make money from streaming content on a handful of licensed platforms that rely on network effects to ensure customer loyalty.

[80] The internet equivalent of such shadowy figures are "rogue websites" which offer unauthorized downloads or streams of copyrighted works.

individual scenes as they are shot (Haynes & Okome).[81] The ability to enforce copyrights against internal appropriators thus provides value to creators and reduces transaction costs.

It is also worth noting the value of adhering to copyright norms grows as industries develop over time and move—or are nudged—toward more formal modes of operations. Expanded commercial ambitions bring with them the pressure to conform to established structures of the global copyright. For example, a filmmaker that seeks a bank loan for an upcoming production will be required to offer the copyright as collateral. Completing such transaction will require the filmmaker to demonstrate generate a host of formal copyright instruments that collectively document ownership of the work to establish the chain of title. Similarly, if the filmmaker seeks an international distributor or film festival exhibitor, they will likely have to document clearance of all the film's copyrightable inputs (music, screenplay, background art, etc.). Potential sponsors of the work (e.g. via product placements) may demand similar assurances, as Nollywood filmmakers discovered when their penchant for using unauthorized music tripped them up (Pager 2012b). Similarly, pressure from foreign advertisers is said by Priest to have played an instrumental role in the move toward licensure undertaken by Chinese web video sites (Priest 2014b). Thus, a certain path dependency pushes creative content industries toward embracing the copyright system even apart from enforcement concerns.[82]

A similar shift toward embracing copyright norms over time may take place with online content hosting business. Early on such sites have an interest in turning a blind eye to unauthorized content as they seek to grow their platform and attract users. However, once they have achieved critical mass, established incumbents may then seek to entrench their position through exclusive content licensing deals that give them a leg up over competitors. China's internet video industry, and, more recently, its music streaming services have followed this path, and are now busy suing each other for copyright infringement.[83] Piracy certainly has not gone away, but at least some powerful incumbents have now taken a stake in upholding the copyright system.

Even consumers can sometimes play an informal role in policing copyright norms, filling a void left by ineffectual state institutions. For example, Chinese and India fan groups monitor distribution of works by their favored artists and can mobilize to exert sanctions against unauthorized distributors. Over time such collective mobilizations arguably help to pave the way for a transition toward an emerging norm of copyright compliance.

6. Taking Stock

Overall, it seems that copyright protection can benefit creative industries by allowing them to diversify their revenue streams and pursue a variety of possible business models. In theory, this should benefit consumers too if it brings them more high quality works that cater to demand niches across society. Importantly, it is worth noting that copyright law does not

[81] Admittedly, trade secret law can counter this threat to some degree. But copyright reach is broader, allowing remedies against third parties who exploit the purloined property, even without showing culpability or knowledge of the misappropriation.

[82] Joint venture – crossover films from India. Chinese film by Zhang Yimou in English starring Matt Damon http://variety.com/2016/film/news/the-great-wall-director-responds-matt-damon-casting-controversy-1201830581/ New Nollywood too. Pull toward formalism.

[83] Google arguably has played a similar game with YouTube and GoogleBooks (pre-settlement collapse); although its licenses are non-exclusive, it arguably enjoys market power via network effects that allow it to achieve more favorable terms than an upstart competitor.

prevent authors from releasing their works under open licenses, if they choose, and pursuing commons-based business models. It merely gives them the option not to (Barnett).

So, what is the catch? Consumers have to put up with reduced access and higher costs, thus some amount of consumer surplus might be forfeited (Karaganis).[84] Yet, if they get higher quality productions to enjoy as a result, arguably the ledger looks more even. Concerns over access to knowledge (e.g. scientific publishing and educational materials) present a more serious worry. The Berne Annex has specific provisions to help developing countries overcome such hurdles, but there are still real costs to be borne here that should give policy-makers pause. Nonetheless, these are largely extrinsic to "cultural development" and thus beyond the present scope of inquiry.

What about claims of blocked innovation and censorship? While commentators debate the extent to which such costs are prevalent/significant in Western copyright systems, no one disputes their existence. These costs reflect the expansive rights that Western systems provide coupled with relatively narrow or uncertain exceptions.[85] Yet, nothing requires developing countries to replicate such copyright maximalism (*see, e.g.* Mann, proposing a suite of exemptions to insulate Jamaican "musickers" from copyright roadblocks).[86]

Arguably, the biggest difference between copyright models and alternatives may be the extent to which content industries develop into more concentrated, integrated structures and acquire more capital-intensive capabilities. This affects the kinds of cultural goods that get produced. And this begs the question again: what kind of cultural development do we want? We're back to the tradeoff between blockbusters and viral web videos. Both have their place. Do we want more of one than the other? These issues are addressed further in the context of cultural diversity, *infra*, in Part IV.

IV. Copyright & Cultural Diversity

[*Note to Law & Development reader: the following part is less relevant. I left it in because it touches on a few themes that will need to be integrated into the preceding discussion. However, for purposes of the Conference, it is fine to skip*].

A. Domestic Diversity

1. Digital Determinism: Long Tail Fail?

[84] Unauthorized distribution can sometimes also add value to the consumption experience, e.g. where fans of a foreign television show distribute it for domestic audience with high-quality sub-titles added through crowd-sourced translations within days or even hours of the original broadcast.

[85] A more difficult question is the extent to which widespread instantiation of copyright business models "crowd out" space for innovative "open" alternatives. Maybe, in theory. E.g. content streaming might have taken off much sooner and grown further if content producers hadn't been holding back licenses in the fear of cannibalize sales of fixed copies. Also Big Content spends massive $$$ on saturation blitz advertising campaign that crowd out space for audiences to discover the kind of indie niche content that commons model are more likely to offer, but which could appeal on a more level playing field. Social media level the playing field, but only somewhat. Query: to what extent does copyright underwrite industry concentration/shift to blockbuster production? [Need to research further].

[86] Formally, there is the Berne three step test of Art. 9(2) (TRIPS Article 13) to reckon with. But in practice, courts have lots of discretion to apply copyright narrowly if they choose. *See, e.g.* India *Bradford* "remake" case. OTOH, smaller developing countries may feel less free than India to buck pressure from the USTR.

Diversity matters in cultural markets, much more than with technology. Many argue that access to a diverse supply of cultural media is essential from the standpoint of democratic discourse, human flourishing, personal autonomy, multiculturalism, and many other normative frameworks. As the big media and content industries continue to grow more concentrated, concern has mounted over content diversity. Much of this debate focuses on political speech, but cultural diversity concerns have played a role, e.g. in the FCC's erstwhile localism policies. Laissez faire has been the rule in recent decades—until this year, when net neutrality forced the FCC out its torpor.[87]

The big cultural diversity debate in the last decade has been over the effect of digital technologies. Chris Anderson captured a lot of attention with his "longtail economics" theory holding that the near-infinite capacity for online content distribution would lead to a decisive shift toward the supply and consumption of niche content. Lots of people steadily set out to prove him wrong (at least on the consumption side). Anita Elberse's book, Blockbusters, shows that the big commercial players have gone the other way: focusing ever-more myopically on methodically promoting and hyping a narrow range of blockbuster offerings. But in a way, they are both right: The massive clutter of free UGC content and indie offerings has made it necessary for the big players to launch their marquee content with a supersized splash that cuts through the noise and grabs public attention. The diversity of movies exhibited at mainstream cinema halls has steadily declined: 95% of movie screens are monopolized by 5% of movies.[88]

At the same time, the proliferation of TV offerings has led to a golden era of distinctive, high quality dramas catering to variety of audience tastes. And Joel Waldfogel presents empirical evidence that indie music has regained market share from the top 40 label domination while retaining the same perceived overall quality. However,

2. The Role of Copyright

An even bigger debate revolves around the role copyright plays in this diversity story. By encouraging authors to cater to diverse audiences dispersed among the consuming public, in theory, copyright ensures more democratic modes of cultural production.[89] This may well be true compared to the erstwhile aristocratic patronage era. But mass media high capital costs production, loss marginal costs to distribute means huge economies of scope and scale for studios. Pushes toward bigger and bigger budgets. Income correlates with budget. Bigger markets support ever bigger investment in blockbuster production.

There is arguably some connection between piracy and blockbusterization in so far as the push to a "tentpole" strategy, in part, responds to partial loss of control over content distribution. Hollywood can still make money from sponsorship deals, merchandise, spinoffs, and all the other brand-driven benefits that flow from a blockbuster franchise even without selling copies

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[87] media market critique: suspicion of capitalism, commercial culture—Adorno et. al.; market biases (consumer preferences not endegenous; not true self); media market distortions – economies of scale, scope – marketing, herd mentality externalities; Big Media hegemony – markets rigged. distribution stranglehold. competitive clout. blockbuster + global: means afraid to roll the dice. more sequels, more comic books.

[88] Go to a suburban Cineplex, and you'll find 20 screens devoted to five cookie-cutter cartoon action flicks, shown in your choice of 3D, 2D, or IMAX. Go to the mall over, and the movie theater there will likely feature the exact same line-up.

[89] As will seen in Part IV, cultural diversity theorists question how well copyright markets serve the needs of democratic discourse, some argue that copyright's mass market orientation means that important constituencies (e.g. minorities) get overlooked.

(Elberse). Baker argues that there is a serious market failure at play in so far as commodification decisions do not take into account the manifold social externalities associated with expressive media. Moreover, the extremely low ratio of marginal to fixed costs mean that huge scale economies can be reaped from marketing bestsellers. This means the profit maximizing solution for Big Content is not necessarily the best outcome in terms of satisfying consumer preferences: the winning strategy is to aim for the least common denominator that will pack 'em in. At stake is not just displacement of indie alternatives from marketplace. Baker describes a feedback loop between the media goods that consumers encounter in the marketplace and the molding of consumer preferences that determine future consumption choices.[90]

Many commentators link such market failures to copyright law. By conferring excess market power to industry conglomerates, copyright arguably marginalizes more diverse sources of creative expression. Guy Pessach attributes such harms to the expansive derivative works right that copyright provides, leading to what he sees as overinvestment in blockbuster vehicles designed to sell Happy Meals while crowding out more socially valuable indie content. Mark Nadel similarly argues that copyright encourages excessive investment in Big Content's saturation advertising. However, Michal Shur-Ofry counters that copyright is, at most, a marginal player in all this. She sees the scale economies of superstar economics driving outcomes and suggests there is not much we can do about network-induced solidarity preferences that are an integral part of being human. Moreover, she argues that media markets are too complex a system to fine-tune (Shur-Ofry 2012, 2013).

Others tackle the copyright connection from the angle of censorship. Digital technologies make it possible for users to create and share remixes of dominant cultural media. But over-expansive copyrights could quash this outlet of non-commercial expression. Some therefore argue that copyright must be curbed to encourage this promising new source of diverse creativity. Proponents acclaim the socially beneficial functions that remixing and related practices perform, including representing minorities, challenging orthodoxies, and airing alternative perspectives (Sunder). But Joo counters that remixes just reinforce the hegemony of the dominant media. And Fishman argues that copyright provides a useful constraint that forces us to be more original as we "create around" copyrighted roadblocks.

Even if critics are correct in accusing expansive instantiations of copyright law of inhibiting diversity, this does not mean that copyright always will have such effects, nor that trading a measure of diversity in return for the higher quality productions that copyright supported investments could induce would be unwelcome. For emerging film industries such as Nollywood, trapped in a low-rent prison of grade "C" filmmaking, such a tradeoff seems more than tolerable (Schultz 2012)[91]

Moreover, some commentators have also argued that *too little* copyright can have equally pernicious effects on cultural diversity. Guy Pessach argues that copyright plays an important structural role in mediating between authors and intermediaries. In conditions of weak copyright enforcement, he worries about dominant online content hosting platforms, such as YouTube,

[90] Thus, an inverse of Anderson's long-tail theory; is it any more credible?

[91] Nigeria's situation in this regard is hardly unusual among developing countries. *Cf.* Floyd Whaley, *New Ambitions in Philippine Film Business*, THE NEW YORK TIMES, May 7, 2012 (stating "rampant piracy has been a major factor undercutting development of the homegrown movie business" in the Philippines "as in many other developing Asian countries" and going on to draw an explicit link between economic viability and artistic ambition, describing how uncertain business prospects inhibit filmmakers from taking chances on innovative productions).

abusing their market power at author's expense in ways that harm diversity and reduce social welfare (Pessach 2014). Priest and Liu's account of China Mobile's extortionate demands regarding ring tone revenue sharing provides an analogous example in the developing world.

Encouraging creative production to meet market demand does not, however, specify the extent to which individual offerings will overlap within a particular demand segment. Problem of "Me too" products – redundancy means no social utility. Some scholars, however, have attempted to incorporate insights from product differentiation theory to derive a theory of copyright directed toward optimal differentiation of creative works (Yoo, 2004; Abramowicz, 2004, Ambramowicz, 2011, Bracha & Syed, (2014).

In theory, patronage systems also allow for greater precision, directing funding toward forms of cultural production responsive to social needs such as neglected genres, underserved constituencies or avant garde works for which market demand has not yet emerged. In doing so, they may capture positive externalities that copyright's market-driven mechanisms neglect and avoid the overinclusiveness of the copyright regime, which protects works that may not need external incentives.

The tradeoffs between copyright and state patronage go beyond the structural differences in the way they operate. Each regime displays characteristic biases in incentivizing particular forms of cultural production.[92] State patronage is often criticized as undemocratic, funding works deemed elitist, ideologically biased, or otherwise obscure/offensive/undeserving. Copyright orients investment toward commercially viable forms of expression, which ensures popular appeal/validation.[93] At the same time, some argue that the structure of copyright law impairs cultural diversity by entrenching media oligopolies and reinforcing a trend toward blockbuster culture of questionable social value.[94]

B. Global Diversity

1. Overview of Diversity Concerns

Cultural diversity is a much bigger issue internationally because most other countries are on the receiving end of American pop culture hegemony. Many countries have robust protectionist policies in place to prop up their domestic content industries and/or restrict foreign competitors. UNESCO launched a 2005 convention on cultural diversity that most of the world signed. Culture is also a perennial lightning rod in international trade negotiations that has consumed an inordinate amount of global policy attention (Pager 2010). In general, while countries pay lip service to the ideal of cultural diversity as a global public good, what they are really concerned about is preserving their own domestic content industries.

In theory, a bigger global market should mean greater diversity of products on offer. But, as noted, the scale economies of media goods tend to tip toward domination by big-market

[92] Such biases are more overt in the patronage context because of the selective and targeted nature of the subsidies. By contrast, copyright espouses an ethos of non-discrimination that eschews such value judgments. *See Bleistein* and progeny. Yet, refusing to choose constitutes a choice nonetheless.

[93] Some criticize copyright protection for disfavored subject-matter, e.g. porn, but such subject-matter distinction are largely rebuffed by copyright doctrine's overt ethos of non-discrimination. See Bleistein v. Donaldson and progeny.

[94] so, mutually balance out? Commons also good – spawn little fish -- a thousand flowers bloom – while big lumbering behemoths invest in nurturing small number of high value behemoths.
[[copyright license for remix – sure why not? (not clear this is issue for LDCs).]]

producers (Wildman, Waldman). Income correlates with budget. Bigger markets --> bigger budget (economist).

Cultural discounts linked to cultural distance insulate developing countries to some extent from Western cultural imperialism. It's easier for Hollywood to dominate in London than Lagos. Size still matters to a degree (although Hong Kong and South Korea managed to exert an outsized influence) (Pager 2010). Regional superpowers Nollywood and Bollywood now exert their own cultural hegemony over their neighbors. But Bollywood itself no longer caters purely to a domestic audience: In recent years, it has produced a bumper crop of films centered on the experience of expatriates living overseas (the so-called "Manhattan-in-Mumbai" genre) because these wealthy diasporal populations can be tapped for higher-priced tickets. Nollywood too has begun to follow this trend (Santos).

Even the U.S. is now, to some degree, a prisoner of global cultural hegemony. Because Hollywood now aims at the global common denominator, it makes films that cater to foreign markets as much as American. Hence, the shift away from dialogue-intensive romantic comedies, which American audiences appreciate but which are hard to translate, in favor of violent action films built around lavish special effects and easily recognizable cultural icons such as comic book characters. but generic global fare means more should be > openings for distinctive local. glocal =OK?

2. The Role of Copyright

Cultural considerations, however, may cut against these economic concerns. Allowing piracy of foreign media just makes it worst for local artists. (*See* American history). Piracy acts effectively as a zero-price subsidy for foreign media that undercuts market for domestic works.

fickle audiences spoiled for choice by a massive repertoire of pirated content drawn from the world's best films and television have no need to bother with sampling local unknowns. Tastes warped by exposure to esthetic norms forged in alien contexts.

Diversity concerns are also implicated by forms of copying that fall short of verbatim piracy. Bollywood is/was big on remakes of American films—everything from borrowing general plot ideas to complete copycat works that go scene-by-scene, replicating dialogue verbatim and even camera angles. Bollywood producers like this because borrowing market tested stories reduces risk. However, Indian writers and audiences lose out on opportunities to have wholly indigenous stories appear on the silver screen. More generally, adoption of Hollywood's storytelling tropes, production styles, and genre conventions can be discerned in many emerging film industries. Likewise, the music video conventions pioneered by MTV have spread far and wide across the globe.

There is an obvious copyright angle here: Where do we set the line between idea & expression? How much license should we give for transformative "cultural translations" to rework copyrighted originals? Some of this just recaps the debate, *supra*, regarding remixes and constraints on copying. But there is also a bigger normative question from the global standpoint: Namely, to what extent are such "glocalization" practices desirable? Indigenization/hybridization of global culture cuts two ways: it assimilates dominant foreign media & messages, but also helps to recontextualize aspects of global modernity and reconcile them with indigenous traditions and contexts. There is also the age-old opposition of culture vs. commercialism at play, here teetering on the sharp-edge of debates over authenticity.

V. Conclusion

[under construction].