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On the Benefits of Piracy¹

Volker Grassmuck

Introduction: Piracy in paradise

In *Das Kapital* Marx addresses an economic chicken-and-egg problem: money is transformed into capital which produces surplus value which is again transformed into capital. However, accumulation of capital presupposes surplus value which presupposes capitalist production which requires capital. ‘The whole movement, therefore,’ he writes,

seems to turn in a vicious circle, out of which we can only get by supposing a primitive accumulation (previous accumulation of Adam Smith) preceding capitalistic accumulation; an accumulation not the result of the capitalistic mode of production, but its starting point. ... This primitive accumulation plays in Political Economy about the same part as original sin in theology. Adam bit the apple, and thereupon sin fell on the human race. Its origin is supposed to be explained when it is told as an anecdote of the past.

(Marx 1887: 500)

For Marx, primitive accumulation – I prefer the term ‘*original* accumulation’ which is closer to Marx’ German ‘*ursprünglich*’ – takes on two distinct forms. In the bourgeois struggle against the old feudal system it

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refers to the separation of the producer from the means of production, the expropriation of farmers from their means of subsistence. In the process that takes its classical form in England, large masses of people were suddenly and forcefully torn from the land and thrown onto the labour market as 'free' proletarians.

The second form started with the colonization of the globe:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signalled the rosy dawn of the era of capitalist production. These idyllic proceedings are the chief momenta of primitive accumulation.

(Marx 1887: 527)

In our supposedly postcolonial times one might assume that these are anecdotes of the past.

Communication systems and parasites (Serres 1981), shipping and naval piracy, copyright and its infringement, capitalism and its looting of the South are systemically, intrinsically linked. They cannot be separated. From a public policy point of view, therefore, eradication of piracy (just as that of drugs) cannot be a meaningful goal; it must rather strive to strike a balance between its benefits and its harms. The public debate on piracy, however, continues to be dominated by the emphasis on its damaging nature, and therefore by arguments in favour of its eradication. Starting from the example of the unauthorized publication of works by foreign authors in nineteenth-century USA, this chapter will argue the case for the benefits of piracy in developing economies. Through the contemporary examples of an emerging video film industry in Nigeria and popular dance music in northern Brazil, it will present the case for the legalization of small-scale physical copyright piracy in developing nations.

Book piracy in nineteenth-century America

After declaring itself independent from the English colonial motherland, the USA was an underdeveloped country on the periphery of the world. During the nineteenth century it transformed itself into a leading industrial power. How did the US do it? asks historian Doron Ben-Atar, and he points to the phrase ‘Yankee ingenuity’. ‘Yankee’ originates from the Flemish word ‘Janke’ for smuggler, pirate. In his ground-breaking study *Trade Secrets* (2004), Ben-Atar shows how the US laid the foundation for its success by systematically resorting to piracy. By the time the US had become the world’s largest technology exporter however, its legacy of piracy had been erased from national memory and the country had become one of the loudest advocates of enforcing intellectual properties laws worldwide (Ben-Atar 2004: 214).

Although Ben-Atar’s piracy study focuses on technology, his insights are equally illuminating in the context of copyright. In the eighteenth-century US, domestic copyright laws were weak and the US did not sign the core international treaty until more than 100 years after its promulgation. In 1783, Congress recommended that the states pass copyright laws granting a 14-year ownership of rights for books written by citizens of the United States. ‘The resolution explicitly denied protection to foreign authors, thus encouraging the unauthorised reprinting of mostly British authors in North America’ (Ben-Atar 2004: 125–6). It was only in 1891 that the US allowed foreign authors to obtain copyright protection if they met certain conditions. Economist Zorina Khan has studied the effects of this policy. Her conclusion is as follows: ‘The results suggest that the United States benefited from copyright piracy and that its intellectual property regime was endogenous to the level of economic development’ (Khan 2007: 2). She continues:

The reading public appears to have gained from the lack of copyright which increased access to foreign works. American authors and the public were able to obtain foreign books at prices that were lower than

in European markets, and this aided the expansion of a mass market and economies of scale in publishing in the United States.

(Ibid.: 28)

In other words, piracy was instrumental in originally establishing the infrastructure on top of which a legitimate media market for both domestic and foreign works subsequently developed.

The way in which US publishers of foreign authors dealt with the situation is most instructive, because today's copyright maximalists would have us believe that in the absence of copyright protection no sustainable market could develop. A publisher, even if he or she does not have to pay royalties, needs to make a large fixed investment that he cannot recoup if the sales of the book are low due to competing publishers printing the same book. Unrestricted competition would also lead us to expect prices to be driven down to marginal cost. To avoid such ruinous competition, nineteenth-century US publishers developed several strategies, such as being first on the market with a particular product, and saturating that particular area of the market with its products (Khan 2007: 21). A consequence of such races was poor-quality books which were more likely to contain mistakes and intrusive revisions. Sloppy proof-reading, printing and binding, abridgements and lack of errata seem to have been common; Carey and Lea's edition of Sir Walter Scott's *The Pirate* (orig. 1821), for example, omitted an entire chapter (Khan 2007: 21). In this sense piracy harmed the readers. Khan also notes, however, that this tendency was countered by some publishers building up a reputation for quality. In an increasingly demanding market, quality began to outweigh speed as the most significant selling factor (ibid.: 22).

But speed did remain crucial. In order to be the first to get new titles from England, publishers employed agents to send them to the US. They also started to buy early proofs to gain advantage over competitors. In order to secure early proofs, publishers made significant payments to foreign authors in the form of royalties or lump sums (Khan 2007: 3). For example, the publishing firm Ticknor and Fields

(the precursor of Houghton Mifflin) sent several unsolicited payments over the years to Tennyson taken from the profits made on his poetry reprints. Such payments were recognized by reputable publishers as 'copyrights', even though they were not enforceable by law.

Collusion among competitors was another strategy adopted to reduce risk and establish what Khan calls artificial or synthetic copyrights. In England, publishers of works in the public domain, such as those by Shakespeare and Fielding, had formed strictly regulated cartels in order to share the risk of recouping investments, and in the 1840s publishing houses in the US began to follow this model. A publishing code of 'trade custom' or 'courtesy of the trade' was established, and these 'synthetic copyrights' were transferred and sold among booksellers and publishers through contracts that were honoured even in the absence of legal protection.

This extra-legal system also ensured payments to foreign authors who also directly and indirectly benefited from the original accumulation of media infrastructure through piracy, i.e. the expansion of the market and increase in the literary and academic population in the US. They discovered that they could turn their piracy-aided popularity into astonishing earnings from lectures and readings. Still today, this shift from a product- to a service-based economy may be seen in many areas where copyright law plays no or only a marginal role, such as in free software, free music or, as we shall see, in Nigerian video films and Brazilian Tecnobrega music.

If copyright-free foreign authors and their US publishers were able to establish a beneficial and sustainable media environment for themselves and US readers, what about native US authors? Those most strongly in favour of protecting foreign copyright in the USA argued that undercutting and unfair competition from cheap foreign works harmed the development of domestic literature and deterred US citizens from choosing writing as a career in the first place. Fiction was indeed dominated initially by foreign authors. This changed, however, after the 1830s with the emergence of such authors as James Fenimore Cooper, Henry Wadsworth Longfellow and Nathaniel Hawthorne. If

cheap foreign books indeed had a harmful effect on native authors one would expect to see a marked increase in published US authors only after 1891. Instead, Khan finds a rather gradual decline in foreign author books sold, until by the early twentieth century Americans comprised the majority of best-selling authors in the country.

If there was significant benefit and no identifiable harm, the question arises as to why in 1891 the US implemented foreign copyright protection at all. Ben-Atar sees the striving for legitimacy as a crucial factor. There was widespread international condemnation of the US's refusal to recognize foreign authors' copyrights. The struggle inside the US was driven by US authors of international reputation, by some universities and by European authors like Charles Dickens. On the opposing side were publishers, printers, typographers, bookbinders and paper producers (Khan 2007: 8). In Khan's analysis the decisive factor for the change in law was the gradual evolution of US culture that resulted in internationally competitive literary products and shifted the trade balance. The USA's new cultural capital provided the incentive for the recognition of international copyrights (*ibid.*: 30).

Khan concludes that effective intellectual property institutions are dependent on a country's level of economic and social development. Another decisive factor is the state of media technology. Lawrence Lessig draws a line from the original accumulation of media infrastructure through piracy into the twentieth century: 'Every important sector of "big media" today – film, records, radio and cable TV – was born of a kind of piracy' (Lessig 2004: 53). After the phonograph had been invented the record companies took the music from its composers; when radio started the stations in turn took the music recordings; and when cable TV started its operators took television programmes, in all three cases without permission or payment. In all these cases, as Lessig recounts, a legal solution was eventually found: compulsory licences for music recordings and cable TV, and collective management for radio. By this point the USA was no longer a developing nation; nevertheless, each emerging media system benefited from an initial period of piracy that, in the case of cable TV, lasted for almost 30 years.

As Ben-Atar remarked, the United States has now come full circle: from pirate nation to primary exporter of IP with more than half of all global copyright and patent revenues being earned there. It is now the driving force behind compelling developing countries to adopt its own standard of copyright regulations through WIPO, WTO, bilateral trade agreements and unilateral measures under Special 301. Yet, as the case of the early American book market highlights, and as Khan, along with several other scholars, argues, laws and enforcement mechanisms concerning the protection of intellectual property rights are relevant to the needs of already developed countries, 'whereas newly industrialising societies (at least initially) may not benefit from their adoption or may need to tailor patent and copyright polices to fit their own specific circumstances' (Khan 2007: 3). It is against this background that the two contemporary examples of the Nigerian film industry and Brazilian pop music will be considered.

Video film piracy in twentieth-century Nigeria

Nigeria, too, was a British colony from 1901 to 1960. During that time, foreign companies introduced movies, cinemas and television. This, combined with a dynamic native culture of story-telling, travelling theatre, popular literature and television, shaped the emergence of the video film industry of the 1990s. Another crucial ingredient was the reproduction and distribution infrastructure of piracy.

In support of the anti-apartheid struggle in South Africa, the Nigerian government exerted pressure on foreign companies that had relations with the apartheid regime. This coincided with the government's attempt to gain control over its own infrastructure, which led to the Indigenisation Decree of 1972. Among other foreign assets, about 300 cinema houses were nationalized (Aderinokun 2004). In response, the Motion Picture Association of America (MPAA) stopped distributing Hollywood films to Nigeria which,

thanks to piracy, actually increased their availability (Larkin 2004: 294).

The oil crisis of 1973 came to the aid of Nigeria, which was by then the fifth largest oil producer in the world, making the country and some of its consumers wealthy. VHS recorders, introduced in 1976, became a widely desired status symbol. By 1979, the oil boom was over; the economy collapsed, the currency was devalued. Under the regimes that followed, the security situation deteriorated so much that people did not dare go out at night and came to prefer home-based entertainment. As a consequence, cinemas had to close, and the sale and rental of pirated video films filled the gap. When the International Monetary Fund (IMF) came to the rescue it imposed a Structural Adjustment Programme (SAP) that came into effect in 1986 and involved removing subsidies from public services, devaluing the Naira and privatizing public infrastructure, including that of the Television Authority. This policy not only increased the level of poverty throughout the country, but caused the collapse of the country's cultural production: 'SAP introduced a pervasive social dislocation which hasn't been fully accounted for, such that film-making, film exhibition, in fact, the entire system of cultural production – music, live theatre, book publishing and so on – totally collapsed' (Adesokan 2006). It was during that time that the duplication and distribution infrastructure for pirated movies and music was fully established – as a direct result of the IMF policy.

At this point Nigeria established itself as an important node in the networks of the unofficial global economy, allegedly becoming the largest market for pirated goods in Africa (Larkin 2004: 297). By the early 1990s piracy had helped lay the foundation for the original accumulation of Nigeria's media capital and infrastructure. The groundwork was laid for the emergence of a video film industry that was termed Nollywood, and which today is the second largest in the world in terms of annual production, ahead of Hollywood and second only to Bollywood.

Most sources name the consumer electronics retailer Kenneth Nnebue in Onitsha and director Chris Obi-Rapu as the founding

fathers of Nollywood. In 1991, Nnebue produced a Yoruba video for a mere 2,000 Naira (c. €30), earning him a fortune (Künzler 2006: 7; Haynes and Okome in Haynes 2000: 55). A year later, as urban legend has it, he was faced with a large stock of blank video cassettes that he had bought in Taiwan. He figured that he could significantly increase sales if he recorded something onto them. So he reinvested the profits from his first movie and produced another one called *Living in Bondage* (Künzler 2006: 7; Igwe 2006: 4).

This second film tells the story of a man in Lagos who is promised great wealth by a magic cult if he sacrifices his wife. After the ritual murder he begins to prosper. But the spirit of his wife haunts him and drives him mad (for a more extensive synopsis see Haynes and Okome in Haynes 2000: 79). This story is not only instructive for the cultural universe of Nigeria with its tension between village and city life, the hope for a magic short cut to wealth and the final exorcism in a Pentecostal church, but is also rich in implications for the industry that this pioneering movie has spawned. Shot in Igbo, *Living in Bondage* sold 20,000 copies within days. It was later released with English subtitles and eventually sold around 750,000 copies.

While it is evident that it is easier to sell value-added, pre-recorded cassettes than blank ones, it is less clear why Nnebue did not simply copy popular foreign movies onto them. What made him switch sides from film pirate to film producer and to inadvertently become the midwife of Nollywood? Was it the urge to foster national culture, or more selfish economic incentives? Was the profit margin on his 1991 movie so phenomenal that he could hope to earn more from creating an original work than from copying that of others?

Charles Igwe is a banker by training and now a film producer. Together with his wife Amaka Igwe he runs the African Film and Television Program Market, provides financial consultations to the movie industry, runs a replication plant and one of the biggest distribution companies in Nigeria. His explanation for the success of *Living in Bondage* is as follows: 'It was a story being told by our people to our people. That was key!' (Igwe 2006: 5).

Igwe implies that an audience hungering for local cultural expressions made the returns on investment in an original Nigerian film larger than that in a master copy of an Indian or American movie. Duplication and marketing costs are the same for both, but while foreign films are still readily available 20 years after the start of Nollywood, their relative market share has dropped due to the massive popularity of Nigerian products. *Living in Bondage* uncovered a huge untapped market demand.

With consolidation comes professionalization. In the early days, few people had formal training. Often the same person would write the script, produce and direct the film, and play one of the roles. Since 2003, job specialization and training has increased (Künzler 2006: 7). Professional associations for film producers, directors, cameramen and distributors like the Kano Cassette Sellers Recording and Co-operative Society Ltd have been established. There are now specialized video magazines, trade fairs and festivals, such as the Abuja International Film Festival and the African Movie Academy Awards (AMAA). International recognition is also increasing. In 2004, Nollywood was featured at international film festivals, such as Berlin and Rotterdam.

All figures relating to Nollywood are unreliable but there are strong indications of an explosive rise in production. UNESCO cinema statistics show that in 2009, 987 feature-length films were produced in Nigeria, compared to 1,200 in India and 694 in the US. According to Igwe the value of the local core market in 2005 was US \$4 billion. He adds that this figure should be multiplied by 20 to take into account the 'supply problem', i.e. piracy (Igwe 2006: 5, 13).

A film industry that has its roots in piracy must itself expect to fall victim to it. It employs many of the same strategies as the book industry in the nineteenth-century US to deal with the challenge. The main strategy is speed in distribution. New films earn their money in the first few days after release. If not enough copies are available to meet the demand, the pirates fill the gap. Hence, Igwe calls piracy 'a supply problem' (Igwe 2006: 13). The response of the industry is to expand duplication capacities and to decentralize distribution so that

new releases are available everywhere across the country. The shift from VHS to optical disks and from CD burners to pressing plants is considered crucial by Igwe to this strategy.

Cartelization requires a trade community that honours non-legal contracts and agreements. This exists to a degree in the Islamic north of Nigeria. Transactions between producers and marketers here are made on a commission basis, leading Larkin to speak of 'a complex balance of credit and trust' (Larkin 2004: 295). It was also here that the first trade associations of filmmakers and of cassette sellers were formed that managed a degree of self-regulation (e.g. by restricting the number of films released per month).

Price discrimination by added value and quality is another important strategy employed. Producers shrink-wrap cassettes and disks to prove they are 'original' copies, thus allowing them to build a reputation among consumers who may then decide whether to go for the cheaper but possibly defective pirate product or the original quality copy. They also include raffle tickets to encourage people to buy the genuine product (Nathan 2002).

As we have seen, foreign authors in nineteenth-century America earned significant amounts from readings and lectures. Similarly, Nigerian film producers shift from product to performance. Larkin mentions that 'videomakers often try to recoup their expenses by arranging screenings at cinema halls all over the north before releasing the video for general sale' (Larkin in Haynes 2000: 230). And, just as in the US example, the Nigerian video film industry increasingly calls on the government to strengthen copyright enforcement. 'We have possession of our markets now and I think the government has now come to realize that there is real value in protecting that body of work and providing a system that allows who creates [*sic*] things to exploit what they have created profitably' (Igwe 2006: 11). Again, the piratic phase of original accumulation seems to be naturally transitional, leading to legal regulations appropriate to the specific media environment.

Music piracy in the world of Tecnobrega, Brazil

As a final example of the beneficial effects of piracy on creative production, we will now take a look at a specific music culture in Belém, the capital of the northern Brazilian state of Pará. Tecnobrega is electronic dance music that, just like Reggae and Hiphop, has emerged from the periphery of society and the traditional market. In the beginning it was given no radio coverage and it still seems unlikely that it will ever have the backing of a major record company. It was therefore forced to find a distribution channel open to this kind of musical innovation: street vendors who otherwise sell pirate music or video CDs.

Tecnobrega is played at *aparelhagens*, sound system parties which take place in the poor outskirts of Belém, the biggest of which attract more than 5,000 people every weekend. 'Aparelhagem' refers to the sound system equipment, the group of musicians and DJs operating it and the party itself. Technology is at the core of the *aparelhagem* phenomenon which dates back to the 1950s. Rubi, a member of the largest *aparelhagem* Tupinamba, who is approaching 60 and is still with the scene, says the parties were always huge with lots of lighting. In the 1980s, TV walls were the main attraction. In the 1990s, the technology escalated; the bass speakers became so powerful that vinyl and even CD players would jump, so the DJs had to switch to laptops. Today a party without lasers, a hydraulic stage, smoke machines and other special effects will not attract an audience. There are about 400 *aparelhagens* of all sizes in Belém. The small ones play in bars or in the streets. Sometimes businessmen invest in the creation of a new sound system (personal communication, November 2005).

Tecnobrega musicians record their music in a studio. The genre mixes a 1980s drum box beat with elements of the cheesy popular music of Pará called Brega and with virtually any other kind of music, past and present, that the musician happens to like. It goes without saying that the rights for these samples are not cleared. In many cases the same person composes and records the music and performs it

during the party. He then gives the master recording to the street vendors, either directly or to intermediaries who compile collections of songs, replicate the disks and then provide the street vendors with their goods. Legitimate and pirate music CDs are both sold at the same price of R\$3.00 (€1.00). No revenues from sales make their way back to the artists. Composers and musicians do not explicitly release their works under a free licence, but wide distribution is welcomed as a form of advertising for the live performances where Tecnobrega artists earn their living. The relation between musicians and vendors is genuinely convivial (for a unique insight into the world of Tecnobrega see Cunha and Godinho 2009).

The party organizers hire the *aparelhagens* who set up their own equipment and play the show. Organizers make their money from the entrance fee, and from selling drinks and merchandise like T-shirts. The bands also sell their own CDs and DVDs at the parties, sometimes of live recordings of the set the audience has just heard, at a premium price. More than 400 new CDs are released in this way every year, writes Ronaldo Lemos (Lemos 2007: 36). Interviews conducted by the Open Business project overseen by Lemos revealed that, while some artists had tried and failed to make it through traditional channels, 88 per cent of artists in the Tecnobrega scene had never had any contact with record companies (ibid.: 40).

Tecnobrega has become a significant economic factor in the poor state of Pará, moving about US\$5 million a month through Belém's economy, according to the study directed by Lemos. The main strategy of dealing with an environment without copyright enforcement in this case is performance over product. This is complemented by price discrimination where the disks sold at the parties by the bands themselves have an added experience value over equivalent products sold by the pirates.

Legalizing small-scale physical copyright piracy

Piracy allows audiences, which are exposed to advertising for global culture products but cannot afford them, to participate in the global information society. The buyers are not ideologically driven; if their options are to see a movie through pirated means or not to see it at all, the decision is easily made. Readers in the nineteenth-century US acquired access to foreign books, twentieth-century viewers in Nigeria to foreign films, and contemporary listeners in Brazil to a wide range of music, and all were eventually able to witness a wealth of native expressions whose emergence was aided by piracy.

Publishers and producers were able to benefit from the original accumulation of media capital, infrastructure and market realized through piracy. They managed to create a market for creative goods in the absence of enforceable copyright law. The strategies they employed include a race to be first on the market, price discrimination by quality and added value, cartelization and trade rules, and performance over product. Such mechanisms of informal copyright have recently gained considerable interest in the academic debate (Fauchart and von Hippel 2006; Loshin 2007; Kretschmer et al. 2009).

Native authors, too, benefit from the infrastructure and the economy of scale achieved by piracy. The connection between the reception and creation of cultural works is worth further exploration. Lawrence Liang observed that the changing dynamics in pirate markets in China and India have recently led to the availability of films not only from Hollywood but also from other cultures, as well as independent films, art-house, documentary and experimental films. This in turn has inspired thousands of people in China to line up to join art schools. He cites a Chinese curator saying: 'When you can buy Tarkovsky for a dollar, you will obviously produce many more artists.' Liang thus proposes that: 'It is only a matter of time before young people inspired by the new cinema that they see via the grey market fancy taking a shot at becoming the next Jonathan Caouette' (Liang 2006).

I argue that this is at play in all three of our cases. As Charles Igwe argues, the first Nollywood movie was a story 'being told by our people to our people. ... What is most important is that movies aren't just business, they are cultural expression' (Igwe 2006: 5). The observation of the importance of local demand for local forms of cultural expression disproves the idea of a global levelling of differences through the dispersion of hegemonic culture industry products. There is certainly a flow of US American, Indian, European, Japanese and Chinese movies and music that reaches the most remote corners of the planet. But it leaves something to be desired; there is a *genius loci* that cannot be absorbed by globality: a linkage of place, language, ethnicity, religion, stories, songs that is permeable to outside influences but creates a network of interactions out of which new cultural forms are born, forms for which there is no space neither in the multinational culture industry nor in its pirate double, and that are able to bring forth and sustain a local environment for cultural expression.

In the nineteenth-century USA, foreign authors were able to obtain payments from US printers. Foreign film companies are now able to generate profits from Nigeria after multiplexes for the middle class are being built on the basis of the Nollywood film boom. Foreign bands playing in Brazil could, just as their Tecnobrega colleagues do, utilize the street vendor networks for advertising their shows.

For the pirates themselves, of course, piracy is profitable. Pirates are not ideological; they are businesspeople like any other. They take whatever opportunity arises to match demand with supply, following an economic logic. From a public policy perspective, nurturing cultural innovation and diversity is a value in and of itself. Major economic earnings which are almost equal to that of the nation's largest industry – in Nigeria, Nollywood is said to be second to the oil industry, in Belém, Tecnobrega is apparently second to the rubber industry – is another positive factor. Piracy itself and the original creative expression it supports create jobs, and even if the pirates do not pay taxes, by spending their earnings they do contribute to the overall economy.

On the negative side of piracy, the main problems arise from the fact that the activity is illegal and therefore more profitable than if it were not. The claim that piracy attracts organized crime is plausible. People in money laundering, the trades in arms, drugs and human beings become entangled in copyright infringement. This introduces a culture of violence and sets up new forms of serfdom, especially of the street vendors. Illegality also attracts the suppression of piracy by the police. Street vendors are the most exposed and vulnerable link in the system, the ones most affected by police raids. If they receive their goods from organized crime groups on commission, confiscating their goods only serves to drive them further into slavery. They are also the most dispensable for the piracy trade; even if they are imprisoned, there are numerous others to fill their place. The big guys in the big business of piracy, just like in any other business, rarely, if ever, get caught.

Hence, if copyright piracy has such significant advantages for the access to knowledge and creative works as well as for creativity and innovation, and the negative sides arise from its illegality – why not simply legalize it?

A remarkable precedent of drawing a line between activities deemed tolerable by society and those that cause serious harm is the *de facto* legalization of soft drugs in the Netherlands. The pragmatic policy rational behind it is that when a widespread practice cannot be eradicated it should be tolerated and controlled rather than continuing with attempts to suppress it. Where soft and hard drugs have tended to be treated as part of the same problem, the official sanctioning of marijuana in the Netherlands effectively served to separate the two. It has also created legal and taxed jobs in coffee shops and youth centres, and, no less importantly, has established substantial revenue from tourism.

Legalizing the small-scale physical reproduction and sales of works without permission from and compensation of their creators would have the same beneficial effects. If anyone who can afford consumer-grade copying equipment were permitted to sell copies, piracy

would become unattractive to organized crime. It would remove power relations and violence intrinsic to the business. It would create respectable jobs, offering a real service to audiences, even if street vendors are unlikely to start doing their accounts and paying taxes overnight. One could imagine people taking out Grameen-style micro-loans to buy two VCRs or a CD burner and start a family replication business.

As Khan and Lessig have indicated, the relation between pirate and non-pirate business models depends on economic, social and technological development. It is therefore to be expected that decriminalized piracy will pass through several stages before consumers themselves begin to buy products that reflect the new values and priorities of their shifting economic circumstances. With a growing middle class the number of people who can afford books, music and movies at a price that allows for the remuneration of artists will rise. This eventual self-selection by consumers is the basis of the price discrimination by quality, reputation and added value found in all three cases discussed.

Furthermore, once original forms of creative expression emerge on the basis of the infrastructure of legalized piracy, their creators will likely start calling for a meaningful level of copyright protection. This was the case in both the US and the Nigerian examples, but so far there is no indication of such demands from the Brazilian Tecnobrega world where money is earned predominantly from performances. If artists feel that they are harmed by one form of piracy or another they have an incentive to call for and recognize an adequate level of copyright of their own will. It is also possible that a stable situation arises where the poor serve the poor by means of legalized piracy, while the middle and upper classes sustain the production of creative works.

It is important to point out that the case for legalizing piracy put forward here does not imply abolishing copyright altogether, and it contains three caveats. The case argued here concerns copyright matter only; it goes without saying that the issues are very different for medicine, car parts and other forms of non-copyright counterfeit products. Second, it refers to physical piracy in the form of books,

analogue tapes and optical disks that can be replicated with readily available technology and that is a relevant means for providing access to knowledge until the internet becomes widely available. With the internet the issues become quite different and call for different solutions which fall beyond the scope of this chapter (cf. Grassmuck 2011). The third caveat is that legalization should be restricted to small-scale piracy.

Where to draw the line between small and not so small scale? For optical disks there is a clear difference between burning and pressing. While the former uses consumer technology the latter requires industrial plants and capital investments that possibly attract organized crime. While there are millions of burners in Nigeria, there are only four mastering facilities and 15 optical disk plants (IIPA 2008). These should be fairly easy to control. In addition, cleanroom technology, stampers and raw materials required for the process could be controlled at source.

Two questions remain. Why should authors or rather the copyright industries from the North be made to pay for this, or, rather, dispense with revenues that are unenforceable anyway? This raises the counter question: Why should their products be treated any differently from local creative works like Tecnobrega music or Nollywood movies? The national treatment principle stipulated in the Berne Convention should mean that Robbie Williams has to compete with Tupinamba in the same national environment on local terms. One could point to the US itself which, until 1891, unilaterally claimed 'development assistance' from European nations by not recognizing foreign copyrights. More generally, one could mention the centuries-long plunder of the South, a debt which the North is now repaying with the best (and unfortunately also the worst) it has to offer. In fact, those who are screaming most loudly are those who likely have the least to lose. As our examples have shown, people in the US most of all wanted to read US authors, people in Nigeria primarily want to watch Nigerian movies, people in Brazil want to listen to music rooted in their own culture.

And finally: could it be done? No and yes. Most countries have bound themselves to international instruments like the Berne Convention and TRIPS that would prevent them from legalizing piracy. The Dutch example again points to a solution. The Netherlands has signed several international drug control treaties. It keeps its anti-drug laws on the books while limiting their enforcement to certain offences. Technically, cannabis is still illegal but in reality the country benefits from its decriminalization. A similar arrangement could be found for decriminalizing small-scale piracy.

Legalizing small-scale piracy would achieve short-term relief for street vendors from the effects of criminalization, a mid-term effect of establishing an infrastructure of media distribution that the market has failed to create in Nigeria, as in many other developing countries, and a long-term effect of nurturing domestic cultural production that can then serve to transform the pirate networks and help developing cultural economies compete in the international arena with the cultural products of the North.

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