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Intellectual Property, Piracy, and Counterfeiting

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Abstract

This review argues that the elastic space between intellectual property (IP) and unauthorized use (including piracy and counterfeiting) is an increasingly important feature of contemporary textual production and circulation. Within the context of digital textuality, circulatory legitimacy becomes integral to both contextualization and entextualization. The dynamic relationship between IP and piracy/counterfeiting appears as a means of organizing sense-perception and subjectivity, parsing geopolitical space, handling the surfeits and deficits that emerge in contemporary text circulation, distinguishing formality from informality, and deciding levels and forms of acceptable participation in the production and consumption of commodities. This becomes particularly fraught in the face of anxieties about the potential limitlessness of circulation.

INTRODUCTION

Semiotic anthropology views the situated processes that comprise culture as revolving around textual production and circulation (Bauman & Briggs 2003, Brenneis 2008, Geertz 1973, Hanks 1989, Kuipers 1998). In the early twenty-first century, much of this reading-and-writing (but also writing-and-reading, as articulated by Boon 1999) has at its core the dialogue between intellectual property (IP) on one side and unauthorized use on the other (Hart 2005).¹ The fact that most of us pass an increasing amount of our communication through digital devices, leaving traces of ourselves somewhere “out there,” produces anxieties about these back-and-forths, particularly because many users of technology fret over the connections between traces of themselves and their modes of identification (frequently termed identities; Gershon 2010). We are what we post. Or are we?

This question has been asked in slightly different forms for some time. As Herman Melville showed in his meditation on character in *The Confidence Man: His Masquerade*, sales pitches have involved judgments about relationships between identities and goods since at least the 1800s (Halttunen 1982, Melville 1971). We have fretted about forged relics in nineteenth-century Latin America or Medieval Europe (Geary 1978, Gillingham 2010, Turner & Turner 2011). Even further back, we worried about the integrity of our confessors and the objects that ostensibly indexed their capacity to “hear” and absolve [as with Chaucer’s (1979) pardoner; see also Molière’s (2002) *Tartuffe*]. However, what seem to be new in the current context are the temporalities and spatialities of circulation. Simply put, to users of digital technology, circulation seems fast, far, ubiquitous, and frequently focused on a single, portable device. This review therefore offers not only the occasion to analyze a topic that is currently front and center for anthropologists and their interlocutors, but also an opportunity to revise theories of performance to account more fully for questions of authenticity in digital circumstances.

Whether we refer to the moment characterized by these anxieties about authenticity as neoliberal (Gershon 2011, Harvey 2003), imperially ruined (Stoler 2013), late capitalist (Ganti 2014, Povinelli 2013), or techno-celebratory/phobic (Dinello 2005), the path to understanding one of its central do-si-dos is beset with perils (Boon 2000). On one side, proponents of stricter IP policies and policing would have us think that IP must be protected at all costs; proponents of such perspectives include the Recording Industry Association of America (the RIAA; see Giesler & Pohlman 2003), the Motion Picture Association of America (the MPAA; see Lobato 2012), the Business Software Alliance (the BSA; see Coleman 2013), the Pharmaceutical Research and Manufacturers of America (PhRMA; see Crane 2013), and the International Chamber of Commerce (the ICC; see Hunt 2007). Spokespeople for these sorts of institutions often argue that without strong IP protection, movies, music, computer programs, and art (among many other things) will no longer be made and brought to the attention of myriad “publics” (Warner 2002). In more detail, the idea here is that subjects known as authors (sometimes defined collectively, though often not; see Foucault 1977) engage in an act called creating because they can expect their work to be protected from appropriation, for at least a little while.

On the other side of the path, proponents of a more flexible approach to IP would have us think that the contemporary content industry—not unlike a culture industry indicted by critical theorists such as Adorno (1938)—is being overly protectionist and that ideas feel better when

¹For the purposes of this review, “piracy” refers to what is often called media, or sometimes digital, piracy, which is to say the piracy of books, films, music, software, video games, and the like. I have written elsewhere about the way that maritime piracy and digital piracy bear many resemblances to one another and how, in the past, definitions of piracy in one domain (e.g., in the bookseller’s trade) have sought support from analogical comparisons with piracy in another domain (e.g., on the sea).

they move about of their own volition (invoking actor-network theory, as in Latour 2005). The institutions in this quadrant of the field of cultural practice (Dent 2009) are somewhat more diffuse and include hackers and free software proponents (Kelty 2008), as well as NGOs advocating for freer use of IP at home and, in particular, in developing economies (such as Knowledge Ecology International, Doctors Without Borders, and Public Citizen). Representatives of these sorts of groups argue that authors are not so much creators as they are borrowers, constantly copying things from one another (Boyle 2008, Lessig 2004). Under this framework, the ideas themselves take on a certain agency, which this framework's proponents naturalize as being at least somewhat promiscuous (as opposed to protectionist; see Dent 2016, Gell & Hirsch 1999, Larkin 2014). We might even wonder whether piracy is, at some level, at the very root of contemporary authorship (Philip 2005). But whether arguments for a looser IP are based on less acquisitive notions of authorship or the personification of texts, the criticism of strict IP remains much the same; limiting the capacity of ideas to rub up against one another slows down processes dubbed learning and maybe even progress (sometimes conceived of in an evolutionary mode, as in Johnson 2010).

In a moment that bears important resemblances to the appearance of the printing press (Johns 2010) and the circulation of Enlightenment political philosophy (Darnton 2003), we are currently experiencing tremendous joy and pain over where circulation begins and ends, as well as the speed with which it takes place and the sheer number of people involved. These issues are pertinent for current anthropology in quite particular ways. First, the people with whom we work are frequently involved in producing or consuming forms of public culture and, hence, are often acutely aware of their distance from or proximity to sites of authorization. Second, the very act of carrying out ethnography raises questions of authorship, translation, transduction, and appropriation that address themselves directly to understandings of evidence and coherence (as noted, at considerable length, by the likes of Clifford & Marcus 1986).² Third, the texts we produce as anthropologists (but also as the programmers, bloggers, songwriters, novelists, social-media junkies, or film-makers we so often also are) are not exempt from these dynamics just because of our ontological acuity; we, too, must orient ourselves to legitimate use. And finally, our stance on the relationship between IP and piracy/counterfeiting has a direct influence on our capacity to advocate for or against the various class-related "projects" we encounter in our work (Turner 2003).

Whereas anthropology has engaged with neighboring concerns such as imitation (Lempert 2014), mimesis (Taussig 1993), IP itself (Brown 1998; Coombe 1998, 2009; Napier 2002; Seeger 1996), evidence and authority (Kuipers 2013), and property writ large (Hirsch 2010, Verdery & Humphrey 2004), this review focuses on the dialogue between IP and piracy. What are the incumbent terminologies associated with the productive tension between IP and piracy? Why have associated terminologies and their associated genres been so attractive of late? To whom have they been attractive, and for what purposes? This review addresses these questions by organizing the elastic space between piracy and IP into three major conversations: topographies of piracy and counterfeiting (together with other forms of unauthorized use such as brand appropriation and compulsory licensing), mediation, and policing.

I argue that the IP/piracy dialogic is crucial because of the ways its users often incite subjects to conceive of expressive and material experience in terms of both individuation and propertization (Hirsch 2010). This dialogic also promulgates fears and hopes for the sea-like flexibilities of the

²This process has been extended and commented on in Silverstein (1996) and also Helmreich (2007).

digital (Dawdy 2011), in turn facilitating ideologies about the ways that artifacts of various sorts are thought to “go viral,” “blow up,” or “pay it forward” (Postill 2013). The tension between IP and piracy has important implications for the beliefs we have about how, where, when, and to whom a text can circulate. In part for this reason, this IP–piracy dialogic profoundly shapes the media ecologies in which we all operate, shifting the dynamics of who is authorized to speak or to listen and the channels available for both creation and consumption (Berensmeyer 2012). Finally, understanding this dialogue explains why much of the globe experiences IP not as some liberating tool for the production and reception of texts, but rather as a set of complex, shifting, and frequently capricious interdictions on their creation and use.

MINDING THE GAPS

One of the most common ways to approach questions of piracy and counterfeiting revolves around the notion of authenticity. More often than not, IP is thought of as representing the authentic, whereas violations of IP are frequently framed as having been corrupted in some way. Such topics are familiar terrain in anthropology. Examples are almost too numerous to cite, but briefly, Evans-Pritchard (1976) considered the fascinating dialogues that took place over legitimate versus illegitimate forms of witchcraft. In linguistic circles, Goffman (1981) pried apart three speakerly roles in his treatment of radio announcers by suggesting that author (who composed the words), animator (who spoke the words), and principal (who took responsibility for the words) might, or might not, overlap; within such a framework, participant judgments about “authentic” speech could be investigated as compelling combinations of these three roles.

Anthropological engagements with art markets have also considered issues of authenticity in detail, attending, in particular, to the ways that art objects are constructed across contexts that frequently diverge along lines of race, gender, and social class (Price 2002, Steiner 1994). More recent ethnographic studies of authenticity have considered copies of famous oil paintings in China (Wong 2015) or gurus in India (Copeman 2012).

Across these engagements, we can notice a capacity to bring what is often a strongly normative component of discussions of authenticity into the analysis. Anthropology has been at pains to show how the frequently moralistic investment in bestowing true authenticity (as well as exposing inauthenticity) should be understood in terms of the co-orientation of participant roles and beliefs. The circulation of ideas and objects frequently raises questions about proximity to, or distance from, locally conceived understandings of what we might call circulatory legitimacy (Brandstadter 2009, Dent 2012; see also Lindholm 2013)—conceived of as an understanding of how a text, in its movement, signals appropriate attention to a selected aspect of the conditions of its production. In the broader anthropological engagement with authenticity, the circulatory legitimacy upon which authenticity rests can be figured in any number of ways, in terms of personal reputation, group affiliation, religious authority, primitivity, etc. In this discussion of IP, we can see that circulatory legitimacy is not so much about attending to the labor concealed in the commodity (as so famously analyzed by Marx 1977); rather, it is about signaling attention to the corporations that are, by and large, responsible for distributing those texts.

The notion of intertextuality provides a useful way to parse out the various actors, institutions, and practices in any situation involving IP and its violations and, in so doing, to clarify what might be meant by circulatory legitimacy (Briggs & Bauman 1992). As an illustration of intertextuality at work in the context of unauthorized use, consider the process of writing and promulgating a popular song in a contemporary musical genre such as pop, rock, indie, hip-hop, or country, as that process is often discussed in how-to manuals written for songwriters of various stripes

(Frederick 2008). To begin, a song might start with a writer's idea, jotted onto paper or hummed into some sort of recording device (like a cellular phone, or perhaps voice mail). The result could be called T1 (where T means "text"), and it might consist of a piece of a melody, a few lines of a chorus, a few couplets, or even just a title. T2 could be a draft of this initial idea worked out more fully, with some instrumentation, a chorus and a bridge, some basic selection of musical samples, or even complete lyrics. T3 might be a version of T2 that is worked out in a professional recording studio and aimed at broader circulation. T4 would be a mastered version of this studio version, with sound and vocal levels prepared for the sort of uniformity often called for in radio (on the Internet or AM/FM). T5 would be a version of the song pressed onto CDs or vinyl LP records or sent out to Apple's iTunes Store or equivalent streaming services such as Spotify or Rhapsody. And finally, T5p would be pirated versions of the song, passed between college students on a USB drive, sent to BitTorrent, or downloaded from blogs or anywhere else that record companies and performers' rights organizations (e.g., American Society of Composers, Authors and Publishers; Broadcast Music, Inc.) most often associated with collecting revenue are not reimbursed.

The above example has been simplified; there are many ways of writing and circulating a song. But the reason I want to apply intertextuality quite specifically is so that we can attend to the notion of what is happening between these texts and what the gaps between them might tell us about notions of creativity, expressivity, and circulation. Employing this intertextual model leads us to ask some questions that are productive for establishing an even broader framework for thinking about IP and piracy/counterfeiting—one that further stipulates circulatory legitimacy. For example, between T1 and T2, one of the things we might consider is an artist's belief about what constitutes inspiration. Does she personalize it or project it outward onto some sort of muse, or both? Between T2 and T3, we might analyze the collaborative networks that are so often engaged to bring a popular song to its publics. Which people must be enlisted to set the song in motion, and what can we say about the relationship between their roles? Between T3 and T4, we might consider how anticipations of what the public wants shape ideologies of sonic uniformity and difference. What do mastering engineers believe is involved in making a song radio-ready? Between T4 and T5, we might consider the changing ways that the institutional forms that govern popular music production have viewed circulation. These days, the record companies earn more revenue from streaming, advertising, and television than they do from the production of durable physical units (such as CDs or vinyl records). And between T5 and T5p, we can see how what is at stake in the circulation of a song is the way in which the revenue associated with it may or may not be channeled; piracy here becomes understandable as a kind of interruption in a set of expectations about circulation. These are just a few of the questions that an intertextual model helps us to raise with respect to specifying authenticity more precisely.

Analysis of the piracy-IP dialogue provides us with a historically attentive theory of performance that concerns itself simultaneously with materiality and authorization. Where Bauman & Briggs (2003) proposed tracking contextualization (present-tense moorings) versus entextualization (past-and-future projections), this example suggests that participants currently circulating texts of a wide variety of types are attending to additional dynamics within their "limits of awareness" (Silverstein 1981)—some of which partake of contextualization/entextualization, and some of which do not. In addition to contextualization and entextualization (conceivable also as haecceity and quiddity, as evidenced in the phenomenology of Husserl and the ethnomethodology of Garfinkel 1991), we can also note a kind of toggling back and forth between monovocality and mutuality (whether the text is voiced by one, or by many, as in Bakhtin 1981); durability and ephemerality (whether the text is intended to live on in some accrued form or whether it is meant to disappear, as in Ricoeur 2004); and finally, and significantly for our purposes, circulatory

legitimacy and illegitimacy (where the text is perceived to attend to the authorizing structures of its circulation or not). To sum up, performativity requires attention to

1. haecceity–quiddity,³
2. monovocality–mutuality,
3. durability–ephemerality, and
4. circulatory legitimacy–illegitimacy.

We will notice these polarities within the various horizons of awareness that we turn to now.

TOPOLOGIES OF UNAUTHORIZED USE

To what extent is IP a coherent body of practices in the first place? To what extent are violations of IP uniform? To rephrase the question in more detail, is piracy profoundly different from counterfeiting, or do they partake of the same thing? Pursuant to our model of intertextuality, we can notice that different sorts of projects emerge from the answers to such questions. Legal scholars, economists, and marketing specialists will sometimes bend your ear on the important differences between piracy and counterfeiting (Ang et al. 2001, Cheung & Prendergast 2006). At the simplest level, the difference is often spoken of as residing in the appearance of legitimacy, such that counterfeiters try to make the product or service look like an original, whether to fool consumers into buying it or to allow that consumer to fool others into thinking that they bought the real deal. On the other side of things, pirated goods, the story goes, trumpet their stolen nature, with no apparent regard for whether consumers believe in the provenance of what they are buying. Put somewhat differently, counterfeit goods, it is often argued, are made to look real, whereas pirated goods are simply ripped-off and resold. The root of some legalistic parsing of these two lies in the differences between forms of IP protection, in particular, the differences between brands, patents, trademarks, and copyrights. Each of these behaves a little differently, the lawyers will say. Indeed, these four areas are often the subjects of entirely different courses in law schools. Pointing these differences out can sometimes be a way to get textual creators and sharers to back off from trying to control IP themselves, without legal help. It is too complicated for the uninitiated; leave it to the lawyers. At the level of the establishment of rights across borders, and at the level of policy and advocacy, mainstream textual producers frequently maintain an interest in the multiplicity of different forms of offense against IP.

Sometimes, however, mainstream text producers who are interested in reaping rewards from texts deemed originary benefit from the unification of IP violations under one rubric. Witness the tremendous rise in the application of the term piracy to all manner of unauthorized uses since the late 1990s. These sorts of claims toward unification are made in antipiracy advertising campaigns, which seek to group as many possible violations of IP as possible together under one banner (including perfectly legal generic drugs or auto parts). These sorts of grouping tactics are also frequently useful in persuading local law enforcement agencies to police the strict rules that are so often on the books, even in developing economies where such policing is potentially counterproductive (about which, more below). Under such circumstances, a strongly pro-IP industry practicing a form of doctrine that has been dubbed “IP maximalism” (Sell 2010) strives to render all these various domains (copyright, trademark, brand, and patent) as homogeneous. This should be viewed as a political-economic project that attempts to unite anxieties about authenticity in the context of digital textuality.

³Haecceity was coined by Medieval scholastic philosopher Duns Scotus to refer to “thisness.” Scotus opposed haecceity to quiddity, which was a person or object’s more universal, or categorical, properties. The terms are later taken up by Charles Sanders Peirce.

One of the established tasks of anthropology has always been to problematize mainstream discourses, often showing how they become problematic when viewed more “locally” (Geertz 1983). This often takes the form of arguments for how localized approaches to IP do not match international ones, calling attention to a sort of imposition of maximalist approaches to IP in ill-suited contexts (Boateng 2011, Wang 2003). For example, one effect of IP maximalism has been that localized beliefs about material purity (the way physical objects signal ties to origins) are ignited by internationalizing discourses and applied in new ways.

Difference has also been construed through analysis of the senses in relation to subjectivity (Kockelman 2004, Majors 2001, Ortner 2005), in part because different forms of textuality interface with the body in slightly different ways. Branded or often brand-counterfeit clothing involves a kind of tactile and visual experience (Boateng 2011, Luvaas 2013, Nakassis 2013, Thomas 2013). Musical texts largely enter the body by way of sound (Condry 2004, Sinnreich 2013). Films are watched (Larkin 2008, Lobato 2012, Lobato & Thomas 2015). Pharmaceuticals are absorbed into the body with quite specific aspirations for something called health (Greene 2004, Petryna et al. 2006). Perfume is smelled (Cano et al. 2011, Moeran 2007). Wine is drunk (Black & Ulin 2013, Holmberg 2010, Silverstein 2003a). Across these registers, the sensorium (Howes 2005, Laplantine 2015, Ong 1991) emerges as part of a contested pedagogical project. In other words, the space between IP and piracy/counterfeiting involves a contest of the senses. Pro-piracy proponents encourage you to just trust yourself and get the pirated copy because it is experienceable in precisely the same way as an overpriced original; why pay more when the experience is the same? Critics of piracy encourage subjects conceived of as consumers to hone their perceptual apparatus, attuning it to finer transformations in the good or service being offered—honing sight, taste, smell, touch, and hearing—to detect the fake, refusing to buy it, or ridiculing its buyer. Across both perspectives, the acts of consumption frequently thought to comprise selves are calibrated to this sensory acceptance or refusal. Put somewhat differently, the battle between IP and piracy/counterfeiting has the effect of sharpening our sensory awareness with respect to acts of consumption that are supposed to constitute our subjectivity. In economic hands, this sort of argument can even be stretched to allow piracy to justify a panhistorical and pancultural “human nature” (Leeson 2009).

Just as bodies are constructed as sensate, so, too, can the surface of the globe be mapped by IP–piracy debates. To begin, certain nations become figured—by policy makers, antipiracy NGO operatives, and police—as zones of risk for IP violations. In many contexts, this categorization involves a border that indexes an unequal power relation that is figured in monetary, cultural, or racial terms. Consider the deeply contested US–Mexico border (Alvarez 1995), the US–Canada border (Pratt & Thompson 2008), the Paraguay–Brazil border (Aguar 2010, Rabossi 2012), or China and the rest of the world (Machado 2009). In this context, notice that the literature establishes territories that are deemed riskier, where people just don’t care about IP. This said, power dynamics do not always flow in expected ways; compelling arguments have been made, for instance, that fakeness in some sense lies at the core of the American cultural experience (Baudrillard 1989, Chidester 2005; notice that these framings emerge from France and Britain). On the surface, we can notice a certain structural linkage between the tremendous fear of piracy and fakeness that the United States promulgates abroad and the fact that its very own public culture seems, often self-consciously, to rely on it. In other contexts, we can discern forms of critical practice, where pirates (be they Brazilian, Russian, or Chinese) can take pride, in a culturally intimate fashion, in how piracy is normal “here” (Herzfeld 1996).

This global topography by way of IP is rendered even more complex when we take maritime piracy into account. Just as zones of the terrestrial globe are viewed as dens of piracy, the sea is often perceived to be open and lawless. Particular swaths of coastline are often singled out for special treatment; even now, Somalia is broadly associated with acts of piracy (Dua 2013, Gluck 2015,

Taussig-Rubbo 2011). In this context, it behooves us to recall that booksellers in England in the 1700s complained plangently to the King that illegal printers were like the Caribbean pirates of the day (Policante 2015). As some have noticed (Dawdy 2011), the liquidities of the ocean and the fears associated with unauthorized use of texts have not overlapped merely because of a forced metaphor.

DIGITAL MEDIATION AS OPPORTUNITY AND CRISIS

Both inside the academy and outside it, discussion of media is often an occasion for debate over the positives and negatives of modernity, progress, and change. In part for this reason, mediation is also frequently a dumping ground for our utopianism and for our corresponding horrors. Much current engagement with what gets called media (including new media, news media, and mass media) promulgates the notion that modes of mediation in this day and age have outstripped natural circulatory limits; such perspectives sometimes find their way into earnest attempts to theorize something called globalization (Appadurai 1996). Other modes of analyzing media view it with more historical perspective, placing claims for newness into the context of broader discussions of oppression and liberation (Larkin 2008, Mazzarella 2004, Spitulnik 1997, Turner 1996). Across these modes, one of the central tenets of Raymond Williams bears remembering, that at its root, much understanding of media revolves around the notion of a conduit or channel (Williams & Williams 2003). In this sense, mediation may be thought of as a form of translation that involves the movement of a text from one status to another, with varying connotations for spatial and temporal components of the text itself, as well as its perceived authors and receivers (Boon 1999, Severi & Hanks 2015, Silverstein 2003b). When we speak of translation, we focus on the texts before and after; when we focus on mediation, we focus on the process of movement from one form to another.

In this way, mediation is translation in a particular mode. Indeed, what we call media are self-proclaimed forms of critical practice: Designers and users of new media critique the way an immediately preceding form of media solved almost precisely the same set of communicative, expressive, and storage-related problems. A few examples illustrate this point. The printed book was a critique of the hand-copied book. The telegraph was a critique of the posted letter. The telephone was a critique of the telegraph. These engagements sought to transform a specific set of textual practices with important connotations for scale. For example, the printed book could be made much more quickly and could reach many more people than could the hand-copied manuscript (Johns 1998). The telegraph could move much more quickly than the letter, covering more space in a shorter time. The telephone could be placed into individual homes, making the necessity of going to the post office to send a telegraph a thing of the past.

The critical dialogues involved in successive waves of technological revisionism take on particular intensity in the digital context; indeed, more than zeros and ones, this notion of dialogue might make for a more meaningful definition of digital technology. Added to the critical engagements with space, time, and scale that have come with each change in mediation come the added dimensions of communicative cohesion and portability. The current instantiation, at the writing of this review, is the smartphone: that compilation of communicative functions, material affordances, and uneasy incitements. The smartphone's designers and users aspire to condense as many communicative functions as possible into a highly portable form, ramping up the spatial and temporal transformations found in previous media dialogics. Billets-doux, shopping lists, cocktail recipes, social networks, trade secrets, personal itineraries, and more all reside in one place.

In this context, then, in the movement of a digital text from one status to another, we hear all kinds of calls for redemption and perdition; once again, these discussions are normative. On the dystopian side, one important kind of perdition revolves around the notion of the Internet

as a space of lurking, where anonymity qua impunity are the norm (Coleman 2014). Also chief among fears of digital mediation in particular is the notion that it is becoming ever more difficult to trace the origins of a text; given the ease of file transfers, how can we know where something came from? Nonetheless, texts still leave traces in searchable ways in a manner that conversations, passed notes, and even cassettes did not, making us potentially more vulnerable than in a pre-cell phone age (boyd 2014, Turkle 2015). Media, cellular phones in particular, make it so that we are always “on” (Baron 2008). New forms of mediation (and, in particular, the strong forms of IP policing that go along with these new forms) may be indicted for producing a kind of “information feudalism” (Braithwaite & Drahos 2002). Such are negative associations with contemporary digital mediation.

These and other assumed attributes of contemporary textuality can also take on strongly positive connotations, however. For instance, the idea that knowledge wants to be free has become the watchword of a frequently left-leaning group of activists, hackers, and proponents of “free” or “shared” software. Much of this literature seeks to consider how alternative channels of distribution develop (Boon 2010, Coleman 2013, Kelty 2008), sometimes attending to the ways in which particular semiotic modalities shape these “informalities” (Lobato 2012, Lobato & Thomas 2015) and, at other moments, seeking to embed them in local ecologies (Castells & Cardoso 2013, Eckstein & Schwarz 2014, Sinnreich 2010). Digital accrual and searchability are also rendered positively in the recent attempts to put all the world’s books into a shared space (Murrell 2010).

We should notice that the circulatory legitimacy of the text is at the very center of these discussions. Because the distances have become so great, the temporalities so quick, the communicative condensation so thorough, and the devices so portable, the crises of authenticity have become more protracted and more ever present. This, in turn, has created a need for control mechanisms, so the story goes.

SCALES, DEGREES, AND MODES OF POLICING

One of the signal attributes of contemporary capitalism (whether or not it ends up having been “late”) seems to be a perceived distinction between formal and informal productive sectors. The distinction itself seems to rest on a now quaint modernist aspiration that all economic activity might be legible to the state. This legibility would, in turn, accrue certain benefits for workers and employers alike. In earlier phases of capitalism, it seemed as though we might be headed overwhelmingly in this direction (this, despite the warnings of Weber 1958). The effectiveness of the neoliberal critique of mid-twentieth-century capitalist practice, however, shrank the formal sector substantially, in large part in such a way that the formal sector subcontracted portions of its productive process out to the informal sector (Portes & Haller 2005).

One of the powerful economic discourses supporting a broader promulgation of the tools and incitements of entrepreneurialism—that of Hernando de Soto (1989)—espoused a kind of democratization of capitalism; some of this ethos underwrites new movements for microcredit, for example (Moodie 2013). An integral part of this ethos is a belief that digital tools have made productive technologies that were once out of reach to the broader populace more attainable. The catch-22 of all this, of course, is that as you shrink the state, and with it the state’s knowledge of the activities of its citizens, you open up space for alternative structures to take over what were once formalized tasks. Doing so ostensibly feeds the neoliberal injunction to let nature take its course (Friedman 1962). In addition, you create the need for an expanded policing apparatus that must attempt to wade through the complexities of this back-and-forth, deciding which aspects of the informal will be subject to scrutiny and which will be left alone. But how do we police illicit textual production and circulation in circumstances where the very grounds of that textuality are

sometimes the shelter of pirates, but at other times, the new hope for optimizing the knowledge economy? This question is not easily resolved.

In trying to answer it, the IP—unauthorized use dialogic emerges as an important aspect of contemporary understandings of governance (Biehl 2006, Chatterjee 2006, Greenhalgh 2008, Povinelli 2002). Put somewhat differently, the dialogue between IP and its violations permits a growing policing apparatus to parse who gets to participate in an ostensibly growing global economy and who cannot—as well as the very terms of that participation. Often, circulatory legitimacy becomes one of the primary grounds for regimes of censorship (Boyer 2003, Kaur & Mazzarella 2009, Mazzarella 2013), but these are regimes of censorship that focus on the form of the text and not on its content. Much of this policing can be glossed by notions not just of informality, but of illegality, fueling fears and fantasies about organized crime (Erami & Keshavarzian 2015, Fassin 2011, Garriott 2013, Schneider & Schneider 2008). In this context, everything is potentially up for grabs—even the state itself (Graan 2013).

Even though the pirating of IP has been monitored closely for a long time, the scale and reach of contemporary policing seem new (Haupt 2012, Lemos et al. 2008, Skinner 2012, Stobart 2010). More precisely, contemporary policing, allied in significant ways with emerging modes of governance, makes use of myriad possibilities for the supervision of infractions, often construing diverse modes of unauthorized use as piracy. Where a certain communicative practice gets placed on a kind of degree scale between IP and piracy/counterfeiting—by policy makers, police, consumers, and producers—becomes immensely consequential.

VECTORS OF TEXTUAL ACCRUAL AND THE DIGITAL SUBLIME

As has been argued in linguistic anthropology, a “structure of voicing” is an orientation of participant roles across interactional space (Silverstein 1999, p. 6). Because of the sheer variety of contexts in which some position between IP and piracy is required, practitioners move around quite a bit in the course of their day-to-day affairs; with the possible exception of the most die-hard representative of the pharmaceutical industry, or the most inveterate hacker, most of us shift on these issues depending on the text in play and our orientation to that text. It is this process of reorientation that we are increasingly being asked to understand in the context of emerging anthropologies of subjectivity, governance, authorization, mediation, and policing.

Recall the four sets of dynamics within the context of our collective horizons of awareness. This review has argued that the dynamic relationship between IP and piracy/counterfeiting appears as a means of organizing sense perception and subjectivity, parsing geopolitical space, handling the surfeits and deficits that emerge in contemporary text circulation, distinguishing formality from informality, and deciding levels and forms of acceptable participation in the production and consumption of commodities.

All this is occurring at quite a particular moment. It is no coincidence that the ocean and the Internet are so frequently compared in the context of discussions of piracy and counterfeiting. The spatial and temporal qualities of the ocean have allowed piracy to be a compelling receptacle for anxieties about emergent forms of textuality in the past. Today, we can attend to anxieties and celebrations of piracy/counterfeiting as emerging from perceptions of the potential limitlessness of circulation—circulation that threatens never to end. In this sense, the classificatory and boundary-making qualities of unauthorized use partake, once again, of very old arguments about being overwhelmed in the face of something that is too large to contemplate and something that is both beautiful and terrible because of this enormity. Discussions of piracy and counterfeiting index a crisis of textual representation, of memory, of social class, and of classification—all by way of a contemporary sublime (Masco 2013, Mosco 2005).

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