They run computer manufacturing plants and noodle shops, sell ‘designer clothes’ and ‘bargain basement’ CDs. They invest, pay taxes, give to charity, and fly like trapeze artists between one international venue and another. The end game, however, is not to buy a bigger house or send the kids to an Ivy League school – it’s to blow up a building, to hijack a jet, to release a plague, and to kill thousands of innocent civilians.

(US Department of Transportation, 2003)

Our Department of Transportation epigraph reads like an updated voiceover from a 1950s ‘red-scare’ science-fiction film: media pirates and terrorists walk freely among us, cloaked by superficial resemblances; but they are actually pod people, manufactured in a churning vat of commodity fetishism and religious fundamentalism (with a dash of philanthropy thrown in for good measure) that hides their contempt for country and conduct. But this is no remake of Invasion of the Body Snatchers (Don Siegel, 1956).

The group that stalks the pod people – and this chapter – is the MPAA’s foreign-office distribution equivalent, the MPA. It is made up of Buena Vista International (Disney), Columbia TriStar Film Distributors, 20th Century-Fox International, MGM, Paramount Pictures, Universal International Films and Warner Bros. International Theatrical Distribution. The Association was formed to combat the growing tide of restrictions and barriers to audiovisual entertainment that targeted Hollywood motion-picture export after the Second World War (see Guback, 1984 and 1985). That was its central mission during the 1950s, while Kevin McCarthy was keeping the US safe from aliens who sought to take over US bodies.

But its name has changed from those McCarthyite days. Unlike 1956, its mission today is to prevent aliens from cloning not Yanquis, but movies, as it lobbies for global Hollywood’s proprietary rights under the NICL. What had been the Motion Picture Export Association of America became the Motion Picture Association (MPA) in 1994, signifying ‘the global nature of audiovisual entertainment in today’s global media marketplace’ (quoted at www.mpaa.org/about/content.html). However, excising the territorial moniker ‘America’ points more to the priority of the international market for Hollywood. While
'America' may have been removed from the acronym, territoriality and national specificity still guarantee the MPAs litigation infrastructure.

The equivalence between copyright piracy and terrorism is part of the US enforcement technocracy's hardening anti-piracy rhetoric. As we noted in Chapter 1, after 9/11, Hollywood delayed the release of big-budget disaster spectacles and re-edited scenes of urban catastrophe in Spider-Man and The Time Machine (Simon Wells, 2002), and went to war. Like the linkage of Saddam Hussein and al-Qaeda in the years to come, the justification for Hollywood's twenty-first-century crusade rested on a mixture of evidentiary sleight-of-hand, bellicose rhetoric and the sheer urgency of a venerable but unbending militarism searching for new targets to acquire. Borrowing Bush Minor's precedent of retrofitting connections to substantive unilateral intervention, Hollywood translated contemporary intellectual property threats into millenarian hyperbole.

Fear lies at the heart of such discourses; and a Chinese wholesale market at the turn of the twenty-first century is certainly a terrifying place for the US. At the US$3 billion-per-year Yiwu market, which attracts 200,000 visitors a day, 33,000 stalls and shops offer shrink-wrapped tributes to brand fetishism: Rolex watches, Gillette razor blades, Sony TVs, American Standard toilets, Beanie Babies, Viagra pills (even Viagra soup), Suzuki motorcycles, Evian bottled water, Duracell batteries, Timberland boots, Levi jeans, Marlboro cigarettes and Microsoft Windows. As regular shoppers know – indeed, this is the reason why many come in the first place – an estimated 80 per cent of goods sold at Yiwu are fakes. Testifying to the international desire for forgeries, Yiwu distributors have opened branches in Brazil and South Africa and plan to expand in Nigeria, Pakistan and Thailand. The flag of Hollywood flies prominently aboard this pirate ship, where 90 per cent of video discs are illegal copies that play on PCs, 75 million earlier-generation VCD players and 20 million DVD players (cheaply bought in greyware hardware markets like Yiwu). The MPA estimates that members lose close to US$170 million to Chinese DVD piracy every year. Closer religiously to the alleged heart of terrorism, Bangladeshis can look up movie titles online, then find them at Dakar's Rifles Square market as pirate DVDs (Mohaiemen, 2004).

Mission: Impossible 2, released in the US on 24 May 2000, was in Chinese shops three days later. Titanic, pirated a few days after its US release and nine months before its projected video release in China, sold 300,000 legal units and between 20 and 25 million pirate copies, mostly on the streets, for the equivalent of US$2–4. Prices have dropped quickly since then, and pirate DVDs of Gladiator, Shanghai Noon and the Harry Potter films are available for a dollar on the street (theatrical admissions in urban centres are anywhere from four to ten times as expensive, and rentals twice to three times as much). Demonstrating a humour lacking in Hollywood's sternly worded copyright manifestos, the pirate version of The Matrix Reloaded is called Hacker Empire, and was avail-
able in Guangzhou shortly after its US release in 2003. In Beijing, pirate Hollywood is just around the corner from the US embassy in Xiushui Street (better known to foreign tourists as Silk Alley), a huge counterfeit apparel and electronics market. Chinese college students can make up to US$30 per film by entering subtitles on the pirate copies from Hollywood scripts distributed over the Internet, or hard copies that travel the ancient heroin-smuggling routes (Behar, 2000; Long, 1998; Smith, 2000b: 13; Leow, 2003; Buckley, 2003).

This chapter tells the story of piracy's grand pursuit: Hollywood's intellectual property (IP) regime. We track its history, from a fledgling domestic industry flaunting loopholes in late-nineteenth-century US copyright law to pirate French film, through to today's global corporate powerhouse, desperate to control digital reproduction and direct other national copyright systems. From the Film Theft Committee of the late 1910s and the Copyright Protection Bureau of the 1920s, to contemporary alignments between the MPA and national governments, the US film lobby has struggled to keep up with new distribution technologies (including piracy) and legislation across local and global contexts. To trace copyright's role in the NICL, we look at:

- copyright history and theory
- its intrication with state security
- borrowing versus piracy
- the international record; and
- dilemmas and opportunities posed by the Internet.

The question Hollywood has not asked, which we pose here, is whether it should acknowledge piracy as a viable form of film distribution. As we will see, the ever-proprietary MPAs strategies to combat Hollywood's estimated annual US$3 billion losses to piracy include the surveillance and prosecution of IP malefactors, local consumer-education campaigns indoctrinating children into copyright's civic virtues, and the international coordination of customs and excise departments in piracy hotspots such as Indonesia, Singapore, Hong Kong, Macao, the Middle East and Eastern Europe.

Despite the detail and flavour of the anecdotes above and to come, it is difficult to measure the overall extra-legal trade in audiovisual products. The passage of audio, video and digital signals is rarely prevented or counted at borders and customs checkpoints. But there are ways to estimate revenues lost to piracy, and some even have the status of orthodoxy in the screen trade (like the assumption that one counterfeit DVD, CD or VHS cassette seized by enforcement authorities corresponds to the loss of another legally purchased product). The neatness of statistical reflexivity forms a framework of objectivity for trade disputes and the groundwork for their articulation, what Foucault calls a 'condition of validity for judgments and a condition of reality for statements' (1972: 127). Official statistics bolster the power of the state to secure enforcement
A Brief History of Screen Copyright

Who can be blind today to the threat of a world gradually invaded by an identical culture, Anglo-Saxon culture, under the cover of economic liberalism?

(François Mitterand, quoted in Brooks, 1994: 35)

Even before the statutory 'invention' of copyright in the eighteenth century gave birth to the author as a legal category, owners of texts devised ways to control the dissemination of the printed word. Monasteries, for example, where most transcription and copying of scripture took place, used their geographical remoteness to institute complex lending procedures for tracking a book's whereabouts. Later, European university libraries would take a page from the protection strategies of their ancient predecessors, securing books to one another and then finally to chest-high lecterns by means of a chain. Removing them required the complex and cumbersome detachment of rings and rods. Indeed, 'reading within the length of the chain' remains an apt metaphor for copyright's central imperatives to this day (Petroski, 1999: 60).

Copyright is, literally, the right to make copies of a given work while preventing others from making copies without permission. The historical origins of copyright as a legal determination are intimately linked to the industrial development of duplication technologies, beginning with the printing press, but it protects seemingly intangible products of the human mind – 'fugitive' property that resists easy legal circumscription. Spatial metaphors are apt, because copyright law is based on where infringements occur. In film, copyright gives distributors the ability to control exhibition (Huettig, 1944: 113). Therefore, a Hollywood studio that charges a New Zealander/Aotearoan with copyright infringement for pirating videocassettes will have to plead the case under New Zealand/Aotearoan rather than US law. Such territorial differences have increased copyright-owners' desires for international harmonisation. In addition to the articulation of space under regimes such as copyright protection, complex changes are under way with the advent and proliferation of digital technology, because the Internet fractures the traditional spatial infrastructure of TIS. While simultaneity is the general condition of any service – where the production of the service and its consumption are coterminous – innovation in information technology produces trans-border data flows that reconfigure the spatial parameters of trade between consumer and producer that were perhaps more 'concrete' in traditional forms of TIS, such as tourism, migration, sport and the mail (Nayar, 1988).

Copyright is one of three traditional forms of IP. The other areas are covered by patent law, which deals with technological invention and protects the intellectual labour involved in creating new products, and trademark law, which polices marketing and advertising and protects symbols that identify a single product or product source. Put simply, copyright covers laws of duplication, patents are laws of invention and trademarks are laws of recognition and discrimination (Goldstein, 1994). Only patents protect ideas – trademarks and copyrights locate protection in their material expression. The distinctions between content and carriage are, however, often provisional markers rather than firm boundaries.

In calling copyright officials 'guardians at the gates', who 'build barricades tight and strong to defend the sanctity of copyright', Valenti seems to engage characteristically contradictory forms of institutional address (quoted in 'With a Wild', 1996). The author as a legal/economic hybrid, what David Saunders and Ian Hunter call a 'monstrous contingency', has its roots in the very formation of copyright law (1991: 485; see also Foucault, 1977). In another instance of his mytho-poetic rhetoric, Valenti (1998b) notes that 'IP which leaps full
blown and imagined from the brain pan of creative talent is antagonistic to artificial barriers, defies regulation, and resists official definition. This articulation of authorship— a rhetorical swipe at the division of cultural labour— has been invoked for the past two hundred years or so whenever geographic fragmentation has offered a conduit to accumulation.

Driven by the exigencies of establishing an international market for literary works and redefining the dimensions of book publishing, the nineteenth-century internationalisation of copyright was part of the drive to create a world market by overcoming spatial and temporal barriers that might impede the turnover of publishing capital (Feltes, 1994). In addition to the regulation of international publishing, by the late nineteenth century, the 'creation of indigenous national producers seemed to have acquired importance as an exportable product and the source of cultural legitimacy', the economic incentive of a national literary patrimony (a 'national literature') that could be legitimated through its export to other states (Saunders, 1992: 171). Nations differed in their respective domestic articulations of authorial domicile. Some used territoriality as the threshold definition of authorial rights, others adopted a citizenship criterion. But the primary motivations behind internationalisation were curtailing literary piracy and codifying a universal notion of authorship. The Swiss government's boosterist invitation to 'all civilised nations' to join a new international copyright convention in 1883 and Valenti's rhetoric today exhibit inevitable contradictions:

It is, in fact, in the nature of things that the work of man's genius, once it has seen the light, can no longer be restricted to one country and to one nationality. If it possesses any value, it is not long in spreading itself in all countries, under forms which may vary more or less, but which, however, leave in its essence and its principal manifestations the creative idea.

(Ricketson, 1987: 54)

The internationalisation of film copyright has a turbulent history. In some countries, screenplay writers were most closely associated with copyright protection, with films considered to be adaptations of screenplays. The 1908 Berlin revision to the Berne Convention for the Protection of Literary and Artistic Works folded cinema under the rubric of adaptation. The Convention did not recognise film as an independent category until its 1948 revision in Brussels. In the 1967 Stockholm revision, a new article attempted to resolve the issue of film authorship by shifting protection away from the author towards the work, thus blunting individual 'moral rights' in favour of corporate ownership. After noting that 'ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed', Section 2b of the Berne Convention's Article 14bis states that

in the countries of the Union, which, by legislation include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

The Stockholm revision also considered whether to extend copyright protection to film in its 'unfixed' transmission, for example over live television, but decided to leave the matter to national discretion, although coverage was available under the revision. The crucial policy change was expressed in a subtle language shift: the 1948 revision protected 'reproduction or production obtained by any other process analogous to cinematography; the 1967 revision protected works expressed by a process analogous to cinematography' (Salokannel, 1997: 66-67). Such distinctions are part of the semantic gymnastics of international trade policy, with linguistic contortions struggling to steady the (ever-narrowing) bar between legal protection and its denial.

Hollywood has always articulated its copyright initiatives with a forked tongue. US-based IP owners have characterised infringements of their rights as trade barriers for well over a century. We often hear that these barriers restrict the free flow of US motion picture and television entertainment around the world. In fact, as Ronald Bettig notes, 'new communications technologies have caused this programming to flow too freely' (1990: 65): digital reproduction and the distributive capabilities of the Internet break through geographic and legal restrictions. While Hollywood's early international history consists of attempts to remove barriers that impeded the free flow of its media forms, new media and reprographic technologies present challenges because of their excessive distributional freedom. Clearly, the discourse of the 'free flow of information and entertainment never meant “without charge”' It exists to legitimate 'US government and multinational corporate efforts to pry foreign markets open' for US copyright-related export (Bettig, 1990: 65). The rhetorical lifting of restrictions takes a backseat when ownership and trade are confronted by the relatively borderless data flows in piracy's shadow politics of distribution.

Copyright concerns more than ownership, however. Beyond the statutory sphere, copyright permeates everyday assumptions about the uses of culture, conditioning ideas of authenticity and originality and drawing boundary lines that divide winners from losers in cultural production. It systematises the 'semiotic affluence' of reception practices through the enumeration, governance and disciplining of audiences (Hartley, 1996: 66). Since its inception, copyright has fragmented media consumption into public and private terrain, often with convoluted results. For example, while eighteenth-century English
law withheld copyright protection (which allows for dissemination to a paying public) from printed works deemed pornographic, that lack of protection ensured a work's place in the public domain. Hence, the public that is served by copyright's commercial imperatives (rewarding legitimate creators with an economic incentive) and ostensibly protected from the immorality of 'obscene' literature can pirate pornography for private and public free use (see Saunders, 1990). Copyright's characteristic equations of the commercial with the public have often resulted in proactive protections of privacy. In the US, cases on the legality of private copying, whether by photocopying or videotaping, affirm most local copyright decisions of the last two centuries, which generally understand copyright to be a law of 'public places and commercial interests.' This means that only public performances can constitute infringement. Non-commercial use is more likely to be protected under fair-use clauses than commercial use, where economic detriment can be demonstrated (Goldstein, 1994: 131). By bringing the issue of cultural ownership into play, copyright legitimises certain forms of media consumption and prohibits others. While art historian Otto Kurz notes that forgeries 'translate the work into present-day language' and 'serve the same purpose as translations and modernizations in literature' (1967: 320), copyright traditionally refuses to grant legitimacy to pirated products.

If this history shows that that 'genius' is free to roam in the supra-national, it also benefits from spatial restriction. Copyright's historical roots in the re-conceptualisation of land as 'the paradigm of alienable, marketable property' in the eighteenth century make the relationship between land and author clear. The first English copyright statutes take advantage of the transformation of land into the model against which other types of interests were analogized or compared to assess market value (Aoki, 1996: 1327). Referring to what he calls 'the invasion of the copyright snatchers', Valenti admits that digital piracy takes advantage of a redefined 'IP landscape where there are no protective signs that warn intruders: "THIS IS PRIVATE COPYRIGHTED PROPERTY"' (quoted in 'Protecting America's', 1998).

And in its evocation of ethical self-management, moral invigilation and spatial ubiquity, Hollywood is tapping into a much older connection between piracy and terrorism. This equation is clearly indicated in the history of 'universal jurisdiction.' In recent applications of international law, this category has been used by national courts to prosecute human-rights abuses in foreign nations. In these cases, the moral heinousness of crimes against humanity circumvents the normal territorial sovereignty of national jurisdiction. However, for centuries prior to the post-Second World War application of universal jurisdiction against genocide, apartheid and war crimes, maritime piracy was the only crime deemed heinous enough to warrant universal jurisdiction under international law (Bassiouni, 2001). While rarely invoked in actual application, linking piracy and crimes against humanity was established in late-eighteenth-

and nineteenth-century theoretical treatises that argued for extra-territorial jurisdiction. Although state-sanctioned piracy or 'privateering' was widely condoned - maritime piracy has always been legitimate business of the state - stealing on the high seas without a licence was long the most serious transgression of international law (Kontorovich, 2004). The moral righteousness of contemporary anti-piracy initiatives draws on precedent for the universally accepted immorality of piracy, still understood by the community of nations as exceeding even the sovereign power of national jurisdiction.

Hollywood's global rights intersect with the NICL in complicated ways. The US and the EU recently derailed a World IP Conference by disagreeing over movie royalties in audiovisual trade. The thorny issue was the transfer of performers' rights (which state that a performer has the right to 'object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation') from the protection-rich and creative labour-friendly terrain of European copyright law to the litigation-heavy and producer-friendly landscape of the US (McClintock, 2000b). Clearly, the US negotiation team was frustrated in its desire to bring the NICL to the lowest common denominator of legal protection by extending domestic copyright provisions to other places. Differences in the territorial protection of performers' rights can result in such intricate stories of international litigation as the Asphalt Jungle colourisation controversy described in Chapter 2.

As the patent wars that enveloped the early US film industry indicate, securing monopoly rights over new technologies paves the way for distributional hegemony. Modern media piracy circumvents national citizenship protection, labour rights and state subvention - precisely those national arenas where differences are exploited by the NICL. Piracy's negligible production costs run on the model of small-scale manufacture. Of course, counterfeiting has different economies of scale. The worldwide trade in counterfeit apparel uses low-paid workers in huge underground Chinese factories. Entry into the pirate videodisc market simply requires a certain degree of entrepreneurial and computer savvy, a few duplication machines, a small air-conditioned space in which to do business and a table to fill out mail orders. Media piracy takes full advantage of its commodity's infinite reproducibility more fully and flexibly than any other form of manufacture. There is a reason why most copyright enforcement materialises at the retail level: it is much harder to capture pirates at the moment of production, because manufacture is so dispersed, operations so small and distribution pipelines so informal. Much pirate media distribution operates along an organisational structure detailed by cyberpunk guru William Gibson's account of trademark and logo advertising fifteen minutes into the future: 'relatively tiny in terms of permanent staff, globally distributed, more post-geographic than multinational... a high-speed low-drop life-form in an [ecology] of lumbering herbivores' (2003: 6). At the same time, piracy is as embedded in localities as are traditional forms of cultural labour. For example,
in the 1980s, government reports suggested that the Indian trade in pornographic videos relied on unemployed teenagers hired by a network of video entrepreneurs to travel to Nepal (via Katmandu), Bangkok, Hong Kong and Singapore to purchase pornographic videotapes, after which they were smuggled over the Indo-Nepali border; another frequent route included travel by land over Burma and Bangladesh or by sea to Thailand (Holloway, 1989). In the 1990s, Hollywood film piracy might involve recording the film in a US theatre, sending the tapes to China for dubbing and photo enhancement, stamping the discs in Taiwan and retailing them in Latin America. National differences in the protection of IP law most often dictate where pirate production occurs, and pirate distribution is concentrated in sectors that are last in line for hard-top theatrical exhibition (which is why Hollywood’s major anti-piracy tactic is worldwide simultaneous film release). The contemporary moment’s technological and economic innovations mark a shift in the centre of copyright enforcement from the global North to the global South. Must its theory change as well?

Copyright as a Theory of Distribution

In our country we don’t have copyrights, we feel free to read and do whatever we like.

(Iranian director Dariush Mehrjui after his film was pulled from a 1998 New York Film Festival for its alleged resemblance to J. D. Salinger’s Franny and Zooey, quoted in ‘IP Watch’, 1999)

As our above accounts suggest, several types of distribution exceed ‘legal’ intellectual property consumption. The first references tactical and informal transactions at the everyday level of street exchange through mobile, small-scale pirate networks that cater to local populations rooted in the practices of ‘transformative appropriation’. They engage in what Michel de Certeau and Luce Giard call the ‘daily murmur of secret creativity’ (1997: 96). The second form of extra-legal IP distribution references large-scale pirate industries of reproduction, rooted in the classical political economy of uneven development and comparative advantage. Of course, local networks have always been embedded with global ones. Contemporary international media distribution maps onto the extra-legal movements of capital, people, goods and services: piracy does not simply invert the conventional circuits of the ‘authentic’ commodity through social space. Extra-legal movements may be symmetrical, asymmetrical or interdependent with the circuits of ‘authorised’ cultural trade, part of continually shifting alignments between legal and pirate economies. The demarcation lines were once drawn by state apparatuses; new technologies of distribution have ‘fuzzed’ the traditional forms and logics of distinction between legality and its assumed other (Sundaram, 2000; Liang, 2003). In addition to explaining the exploitation of uneven development in the terrain of international labour that spoils Hollywood around the world, the NICL explains the tensions between pirate production and distribution. For example, relatively lax national copyright enforcement can accelerate the domestic production of pirate media, outstripping traditional import chains. So, Russia’s twenty-six optical disc factories, with a capacity of 300 million units, have curtailed pirate imports into the country; at the same time, large-scale domestic production has facilitated Russia’s emergence as a new centre for international piracy (Wolf, 2003). Copyright addresses an issue at the heart of the NICL: what do culture and ownership have to do with one another?

Cultural ownership motivates a number of non-Western nations to undermine international legislative homogeneity (especially the notion of equal national treatment). They correctly diagnose Western initiatives on copyright internationalisation as a thinly veiled recapitulation of traditional dependency, and seek to prevent foreign monopolisation of cultural ownership or the flight of foreign exchange. Some economists claim that stronger IP protection in less-developed countries rises as foreign direct investment from developed nations increases (Lai, 1998; Seyoum, 1996). Others suggest that this correlation polarises domestic copyright regimes into extremes of high and low protection, and that Hollywood services foreign markets with moderate levels of national IP protection in a variety of ways, from local studio affiliates to licensing agreements (McCalman, 2004).

The mass media produce public goods – their value does not necessarily diminish as the number of users rises. Media commodities are also intangible goods; while they are embodied in material products such as videotape, satellite and the Internet engage with media as immaterial forms of service, as signal (Duarte and Cavusgil, 1996). As the complex distinctions between content and carriage suggest, media owners have trouble anticipating usages of immaterial goods except retroactively, i.e. their use by people (Frow, 1997: 188). This is precisely why control of delivery is of utmost importance to the MPA, which brokers media products through IP protection and permits access to cultural knowledges by renting consumers access. As Frow notes, media ownership continually struggles with the dual ‘problems of defining and enforcing exclusive property rights in something intangible’ and ‘attaching exchange value to an entity which has almost limitless use-value’. There are, of course, infrastructures that provide for the uncertainty of media via copyright, the control of distribution channels, obsolescence, state subsidy and the ‘institution of authorship, which remains the single most important channel for the creation of textual desire and the minimization of market scarcity’ (Frow, 1997: 188–90). Yet this circumscription of use enervates what is unique about information. Unlike Igor Kopytoff’s (1986) ‘terminal commodities’, whose social biographies involve only one journey from production to consumption, information leads multiple lives. They embody transversality, a ‘dimension that overcomes the impasses of pure
verticality and mere horizontality [that] tends to be achieved when there is maximum communication among the different levels and, above all, in the different directions’ (Felix Guattari quoted in Bosteels, 1998: 157). Information moves from production to reception and back at a velocity that outruns the declarative injunction of ‘proper’ use mandated by legal consumption. Such transverse commodities cut across the common intersections and agglomerations of production and use, creating new affiliations. In the legal arena, the commodity imperative overrides the public good. Ownership of copyrighted materials is conferred as an economic incentive to be creative. The problematic position of the public good — which reveals the tensions between public and private property — is generative of copyright’s crucial distinction between idea and expression (Boyle, 1996: 57–58): ideas are not subject to copyright protection, but their material instantiation is. IP laws endeavour to draw boundary lines between private property and the public domain. They deal with the essential contradictions between free expression and a free market. Indeed, in recent years, alongside the privatisation of the public domain — which ‘turns the information superhighway into a toll road’ (Venturelli, 1997: 69) — copyright infringement claims are invoked because information has become ‘too free’. This encourages us to suggest that questions of legal propriety must turn not only on where and how to draw boundary lines, but why to draw them at all?

To merit copyright, an expression must be ‘fixed’ as a work, leading to the exclusion of production within oral traditions. At the same time, the intensity of protection extended to productions that qualify as works of authorship tends to bar their use for new creative purposes, making outlaws of those who draw on such works for their raw material. Since it is derived from Western, especially Continental, principles of authors’ rights, the international copyright regime that governs relations between developed and developing nations has huge problems. It is a structural feature of the NICL that while the traditional, folkloric and collaborative productions of these countries circulate internationally and are subject to appropriation by the culture industries of the developed world, for the most part they go unprotected by both national laws and international copyright (see Jaszi and Woodmansee, 1996, and Hayden, 2003, for pharmacological and bioprospecting IP issues). James Boyle astutely summarises the ‘author concept’ as a

gate that tends disproportionately to favor the developed countries’ contribution to world science and culture. Curare, batik, myths, and the dance ‘lamdaba’ flow out of developing countries, unprotected by IP rights, while Prozac, Levis, Grisham and the movie Lambada! [we note that three different films with this title came out in 1990 and 1991, directed respectively by Joel Silberg, Giandomenico Curi and Fabio Barreto] flow in — protected by a suite of IP laws, which in turn are backed by the threat of trade sanctions.

(Boyle, 1996: 124–28)

The primary marker of protection in textual dissemination constitutes the author as a privileged frame or node. The temporal and spatial considerations of authorship and policy are crucial in the production of juridical knowledges. While reproduction has different valencies and taxonomies of repetition and replication, copyright law engages reproduction as a social practice. As Celia Lury notes, reproduction is regulated through specific regimes of rights of copying. Although juridically determined, they are the outcome of economic, political and cultural struggles between participants in cycles of cultural reproduction. Imbricated in the constitution of particular types of cultural work as IP, such regimes define the terms under which such property may be copied and distributed for reception (1993: 4). Using the definitional rubrics of ‘originality’, ‘innovation’ and ‘novelty’, copyright law adjudicates between the need to secure the free circulation of ideas, a process which is commonly accepted to be integral to the functioning of the democratic public sphere, and the commercial demand for monopoly rights in copying and the associated creation of markets in cultural commodities. …

Regimes of copying rights can thus be considered in terms of both the possibilities and constraints they offer cultural producers in the organization of the processes of internalization, and the actual constraints that they offer for reactivation.

(Lury, 1993: 8)

Legal possibilities and constraints and particular constructions of the audience constitute the field of cultural consumption: copyright law adjudicates the realm of acceptable behaviour in cultural consumption, in best DEM-GEM fashion. The central assumption of copyright systems is that creators of intellectual works need economic incentives. Economic reward is implied in the exclusive right to exploit copyrighted work, which is meant to motivate intellectual and artistic activity and ensure creators a source of income. The argument goes that if copyright functions in this way, it is a social good, because it stimulates creativity. That is not to say that duplication is an issue restricted to the courtroom. Cultural quotation and recycling, such as genre, are also ways of dealing with difference and repetition. Entangled with duplication technologies such as the printing press, genre makes clear the cultural demarcations of textuality and obligation alongside the more juridical parameters of ownership and use. In addition, genre is indebted to a legal conception of the public domain that understands creativity as a collective process. As early as 1845, US courts recognised that ‘every book in literature, science and art, borrows, and must necessarily borrow, and use much which was well known and used before’ (quoted in Cohen, 1996: 1006). Many copyright decisions of the early twentieth century understood that the textual stuff of genre — ‘plots, titles, characters, ideas, situations and style’ — were part of the public domain, as were textual
Emergent media technologies remind us of fundamental contradictions at the heart of copyright law itself. Copyright law is predicated on securing and individuating the fruits of artistic labour to encourage and diversify creative innovation. However, copyright’s historical implementation only highlights the tendency towards monopoly control and privatisation of IP by a shrinking number of multinational media conglomerates. In addition, IP’s transformation of knowledge into property traditionally prioritises ownership over use, creators over audiences and production over reception.

For Frow, ‘the tension between free public provision and the pressures to treat information as a commodity with a price is … an aspect of the aporia that organizes liberal and neoliberal theories of the market’ (1997: 209). Through the construction of consumption and prohibition in the public sphere, copyright law plays an important role in the formation of audiences and practices of reception. This is primarily due to the fact that ‘the law is never a simple reflection or instrument of socioeconomic processes [and therefore] can register with … detailed exactitude the slow historical transformation of social categories’ (Frow, 1997: 132). The most significant outcome of the continuing pressures put upon extant copyright law is to question privacy, public interest, access and economic gain.

Political-economy theories of copyright protection have been instrumental in recognising the historical conditions that led to the protection of cultural products as forms of intellectual and private property. But economic imperatives and an analysis of state intervention alone cannot explain Hollywood’s engagement with copyright. On the one hand, Hollywood uses the proprietary logic of ownership to buttress distribution. On the other, it strategically espouses a freedom-of-dissemination doctrine that should value piracy’s role in creating audiences and demand for media products. Indeed, that role sets the stage for Hollywood marketing strategies in many parts of the world. It also points beyond the legal regime imposed upon IP by the jurisdictional authority of the territorial state. In some cases, piracy even inverts the conventional expectations that media will somehow follow patterns of uneven development.

In his reincarnation as Tony Blair’s ‘Third Way’ guru, New-Labour lapdog ‘Lord’ Anthony Giddens makes this point for us:

A friend of mine studies village life in central Africa. A few years ago, she paid her first visit to a remote area where she was to carry out her fieldwork. The day she arrived, she was invited to a local home for an evening’s entertainment. She expected to find out about the traditional pastimes of this isolated community. Instead, the occasion turned out to be a viewing of ‘Basic Instinct’ on video. The film at that point hadn’t even reached the cinemas in London, where we lived.

(Giddens, 2002: 6)

How quaint. For such cosmopolitans, ‘London’ and ‘Africa’ are located at the alpha and omega of copyright’s temporal and imperial regime – the world out of spatial joint. This story illustrates how media piracy disrupts the conventional time-lag between centre and the periphery, between modernity and its native other. The frenetic, confounding spatiality of piracy is a source of the copyright industry’s exasperation and its desperate attempt to link the disjointed spatiality of piracy to stateless terrorism. The national plays a key role here: as the war on terror focuses on the global circuits of the information commodity, the national tames the affective anxieties brought on by the frenetic movements of contemporary intellectual property, the uncanny ubiquity of piracy. In fact, the moral commensurability of piracy and terrorism – as equal partners in the heresy of spatial dislocation – is ensured by their simultaneous threats to the nation.

Yet, the national is affiliated with social practices of identity and domicile. The territoriality of the national is not simply mapped on a pre-existing space: social practices under the sign of nations perform the territorial as a provisional and improvisational spatial marker (Ford, 1999). We can see this exemplified in competing domains of the national that are invoked in large-scale media exchange. For example, in Malaysia, media pirates have been, as in many other places, prosecuted under Trade Descriptions Acts for proffering fraudulent ‘Made in USA’ labels, ‘True Name and Address’ statutes, which form the backbone of the MPAAs Yanqui anti-video piracy litigation, impose ‘criminal penalties for the rental and sale of videocassettes that do not bear the true name and address of the manufacturer’. Similarly, new Russian copyright laws mandate that every CD, DVD and cassette must display the name and location of its manufacturer along with a unique licensing number (Nutron, 2002). Yet US and Russian copyright law’s insistence on registering location to designate authenticity falls under the ambit of international maritime law, where registered goods can end up in cargo vessels bearing an imprimatur of national origin that can be openly traded in the international market. These marks of national origin are called ‘flags of convenience’ and can be obtained from numerous governments willing to sell their national attribution to third-party shipping distributors in exchange for a portion of the profits on a percentage basis or a one-time fee. Such forked evocations of national authenticity and locational primacy are part-and-parcel of territorially governed IP regimes that respond to contemporary spaces of circulation.

Fundamentally, then, copyright establishes relations between textuality, ownership and use. It provides a mechanism for differentiating among texts and articulating relations between the labour of textual production as a form of property and restrictions placed upon textual reception. Securing reception nodes becomes important precisely because of the indeterminacy of the information commodity’s use. Establishing scarcity through exclusivity is one of the enduring aims of copyright protection. The information commodity relies on
its circulation as a protected form of legal property that can serve as a subsidy for the enormous costs of its production. Distribution and predictability become key in the corporate control of IP, deflecting the law (at least in its Yanqui incarnation) away from authorship and towards ownership.

By engaging media copyright in its institutional and symbolic form, we recognise the transitory, palimpsestic and permeable nature of producers and consumers, and the ways in which legal, public and cultural policy has manifested the audience as a fictive, yet constitutive marker of social difference, action and mobilisation, veering between the DEM and the GEM. While we are clearly interested in the disciplinary shifts towards institutional and policy analysis in cultural studies, we do not wish to reinscribe Tony Bennett’s provocation that the ‘network of relations that fall under the properly theoretical understanding of policy have a substantive priority over the semiotic properties of such practices’ (1992: 28). This prescription results from his interests in ‘severing the connection between philosophical aesthetics and Marxist socio-economic analyses’ (Bennett, 1990: 117–90), but distinctions between textuality and policy are untenable when one works on copyright and IP. The semiotics of image and content analysis are absolutely critical in policy determinations of duplication, where legal determination of what constitutes fair use and juridical notions of substantial similarity turn on textual resemblance. In addition, by arguing for a productive relation between post-structuralist literary theory and law, some have suggested that copyright’s evocation of the singular work might be shifted to a conception of a de-propertised, dynamic textuality that recognises the fundamentally incomplete nature of all forms of cultural production and reimagines the audience as co-creators of textual forms (see Rotstein, 1992, and Aoki, 1993b). We favour a hybrid methodology that approaches policy and institutions as they are imbricated in both the political economy of cultural enumeration and the signifying power of ownership in everyday life. That is clearly what the MPAA and the US government utilise when they tie IP to national security.

IP and the National Security State

The prospect of piracy is terrorizing.

(Jack Valenti, quoted in Machan, 1997)

In many ways, the digital signals an apocalypse to Hollywood. File-sharing on peer-to-peer (P2P) networks at the end of 2003 made close to 60,000 unauthorised copies of Terminator 3: Rise of the Machines (Jonathan Mostow, 2003) and Finding Nemo available for free at more than 200,000 websites, many run on network servers beyond the jurisdictional authority of the US. BayTSP, a California-based Internet policing company contracted to a number of Hollywood studios, claims that there are between 1 and 3 million copyright infringements per day (Kipnis, 2004). Assimilating file-sharing within existing risks – video piracy, theatrical print theft, signal and broadcast piracy, and parallel imports – the MPA upped its rhetorical strategies to address the mounting threat as ‘a national issue that should concern the citizens of this free and loving land’. Two years after 9/11, and armed with self-comparisons to Winston Churchill and John F. Kennedy, Valenti (2003b) decried the ‘kidnapping’ and ‘illegal abduction’ of film as it travelled from theatrical to home VHS and DVD exhibition windows. By defining piracy as an abrogation of film’s right to proceed on its ‘natural’ journey from production to profit, Hollywood has cleverly hijacked something of its own: an equivalence between copyright infringement and terrorism.

As usual, Hollywood was not inventing something new here. The equivalence between piracy and terrorism gained legitimacy in 1995, when New York’s Joint Terrorism Taskforce claimed that profits from counterfeit T-shirt sales – sold in the very shadow of the twin towers – helped fund the 1993 bombing of the World Trade Center. Post-9/11, policy proposals from the EC have naturalised the relationship between IP piracy and terrorism, suggesting that financing networks have gone global. A widely circulated 2002 US customs report notes that anti-terrorist organizations in the US and abroad are homing in on the close connections between transnational crime and terrorism. Before 9/11, law enforcement defined both as strategic threats, but tended to approach each problem separately. ... Today, in a post 9/11 environment, agencies like Customs and Interpol understand that the international underworld is a breeding ground for terrorism, providing groups like Al Qaeda, Hamas, Hezbollah and the IRA with funds generated by illegal scams.

(Millar, 2002:1)

Valenti used the same report as the centrepiece of his testimony before the US House of Representatives in 2003 on ‘International Copyright Piracy: Links to Organized Crime and Terrorism’. Valenti urged the US security establishment to crack down on international syndicates thought to funnel money to terrorists. After noting that new forms of digital reproduction and distribution (primarily over the Internet) were supplanting older forms of analogue video piracy, Valenti borrowed Bush Minor’s favourite clause from his stockpile of millenarian hubris: ‘And then the world changed’.

Before the world changed, international-relations orthodoxy had directed its criticism of the global trade in counterfeit goods at the relative porosity of state borders. To counter this, theorists called for states to criminalise piracy and share information and resources to enforce IP (see Friman and Andreas, 1999). Some pushed for international cooperation because counterfeit and other ‘grey-area phenomena’ were threats to the stability of sovereign-states (see Chalk, 1997); others claimed that border controls offered more than a simple
deterrent to the clandestine trade, that they 'projected an image of moral resolve and [a] propping up of the state's territorial legitimacy ... in times of high societal insecurity' (Andreas, 2003: 107). Valenti appeared to crib from these sources (without footnotes) when he told the House Piracy Committee that 'to deal with this kind of organized crime', the MPA

and our fellow copyright associations need the help of governments – both here and abroad. It is simply not possible for a private sector organization to penetrate this kind of organized, criminal endeavor without the help of governments. Governments need to dedicate the same kinds of legal tools to fighting piracy that they bring to other kinds of organized crime: money laundering statutes, surveillance techniques, and organized crime laws. . . .

Large, violent and highly organized criminal groups are getting rich from the theft of Hollywood's copyrighted products. Only when governments around the world effectively bring to bear the full powers of the state against these criminals can we expect to make progress.

(Valenti, 2003b)

At a 2003 hearing, the US House International Relations Committee noted the 'human costs' of copyright piracy. In a display of nationalist bravado, the Chair of the Committee, former Clinton inquisitor Henry Hyde, professed extreme 'concern that our most valuable export, American ingenuity and the blood, sweat and tears behind it, is being taken from us as a nation' (quoted in 'Intellectual Property', 2003). Despite Hyde's clichéd advocacy for the libidinal economy of authorship, the language of Yanqui homeland security dominated proceedings. The Secretary-General of the International Police Organization (Interpol), Ronald Noble, was also among the witnesses present, the first time the head of Interpol had testified in a Congressional hearing (Johnston, 2003).

He set up Interpol's first IP working group in 2002, after years of intensive lobbying by the National Federation of the Phonographic Industry and EC reports that pirated CDs accounted for almost half of a US$2 billion counterfeiting trade in the EU in 2001 (Masson, 2002). Interpol had adopted resolutions to police audiovisual trade since the mid-1970s, but raised the bar at its annual meeting in 2003 when Noble addressed the links between organised crime and large-scale counterfeiting, adding Chechen separatists and Northern Ireland paramilitaries (who traffic in Disney's The Lion King [Roger Allers and Rob Minkoff, 1994] and Sony PlayStation video games) to the growing list of organisations suspected of using profits from pirated software, film and music to fund their networks. The two nationalist groups joined a growing list of others linked to both terrorism and IP piracy, from usual suspects like al-Qaeda, Hezbollah and Hamas, to Albanian and Basque separatists, anti-Arroyo agitators in the Philippines, the FARC in Colombia and the Sicilian Cosa Nostra and its international affiliates. A report issued by Interpol at the end of 2003 notes that one kilogram of pirated CDs or DVDs is more profitable than a kilo of cannabis resin (Oliver, 2003). Heyday material.

But Hollywood, the US government and Interpol are not the only copyright monopolists drunk on state-sanctioned anti-terrorism. British police have claimed that Pakistani DVDs account for 40 per cent of their anti-piracy confiscations, and that profits from pirated versions of Love Actually (Richard Curtis, 2003) and Master and Commander go to Pakistan-based al-Qaeda operatives ('Terrorists Run', 2003). In India, anti-piracy evangelist Julio Riberio, Punjab's former Director-General of police and current IP tsar for the music industry, has alleged that pirate CD factories in Pakistan fund Inter-Services Intelligence, Pakistan's premier spy agency. Meanwhile, Hindu nationalists consider the Bombay film industry a front for Islamic terrorism. Washgold gained some bilateral traction in the region when the Indian Deputy Prime Minister declared that crime magnate Dawood Ibrahim has the same resonance in India as Osama bin Laden has in the US, and the corporate media asserted that Ibrahim's music and video pirate trade in Karachi funds al-Qaeda and Kashmiri separatists like Lashkar-e-Toiba (Kartik, 2003; Chengappa et al., 2003).

Hollywood's command over this unruly sector of the NICL is clearly uneven, even as it maps onto conventional targets. In 2003, responding to a cease-and-desist email from the MPA, the Palestinian P2P file-sharing site Earthstation 5 (www.earthstation5.com) declared war on the MPA and the Recording Industry Association of America (RIAA). Claiming physical location in the Jenin refugee camp on the West Bank and Gaza City, Earthstation 5 says it has over 550 employees and field agents throughout the region as well as in India, Mexico and Russia. Managed by a mix of Palestinians, Israelis, Jordanians and Russians, Earthstation 5 is backed by close to US$2 million a month in financing. While other locally based file-sharing companies doubt Earthstation 5's estimate of 19 million active online users, the president of Earthstation 5 (who goes by the pseudonym 'Ras Kabir' – Arabic for 'big head') addressed the copyright majority in language familiar to active Star Trek audiences: 'The next revolution in P2P file sharing is upon you. Resistance is futile and we are now in control' (Abbey, 2003; 'Sex, Lies', 2003; 'Earth Station 5', 2003).

Earthstation 5's clever geopolitical manoeuvre offers an example of ways to stymie Hollywood's latest anti-piracy campaign, while the sheer volume and speed of Internet distribution confound conventional surveillance and enforcement. In response, the MPAA has sought to manage domestic consumption via a pedagogy that internalises anti-piracy as a moral source of national subjectivity. In 2003, it invested in a middle-school programme for US pupils called 'What's the Diff: A Guide to Digital Citizenship'. The programme has been promoted with public-service announcements released in 5,000 US movie theatres, with above- and below-the-line labourers arguing that piracy threatens their livelihoods. One such advertisement articulates moviegoers' cynicism about the real copyright beneficiaries, the major distributors, with testimony from a
Hollywood set painter who proudly references his contributions to *Dick Tracy, Beverly Hills Cop* (Martin Brest, 1984) and *The Natural* (Barry Levinson, 1984):

the piracy issue … I don’t think it will affect the producers. I mean, it does affect them, but it’s minuscule to the way it affects me, the guy working on construction, the lighting guy, the sound guy, because we’re not million-dollar employees.

(Quoted in Scott, 2003)

Volunteer teachers from the business sector were deployed to 36,000 classrooms to convince 900,000 students in grades 5–9 that P2P file-sharing was improper. Designed in collaboration with Junior Achievement, the initiative urges teachers to:

bring home the message that P2P downloading is illegal, immoral and wrong … as students recognize that there is essentially ‘no diff’ (i.e. no difference) between the illegal and unethical nature of these practices, it is our hope that they will begin to adopt more appropriate attitudes and beliefs about digital media, which will help guide their future behavior.

Well aware that altruism is no match for bribery in lessons of citizenship, the MPAA offers DVDs, CDs, players, movie tickets and expenses-paid trips to Hollywood for students who write prize-winning essays denouncing piracy. The contest rules for the ‘Xcellent Xtreme Challenge’ note that ‘best of all, when you and your friends help stop the downloading of files from the Internet, EVERYBODY WINS!’ (Motion Picture Association of America, 2003; Regardie, 2003). While the National Education Association is sanguine about corporate involvement in cash-strapped classrooms, the non-profit cyberterrorist watchdog group, the Electronic Frontier Foundation, complains about ‘Soviet-style education’. Meanwhile, in the classroom itself, teenagers are rolling their eyes at lectures from guest speakers like a PriceWaterhouse tax accountant. ‘It’s not illegal if you decide to give it away’, says one thirteen-year-old who enjoys burning music CDs for friends: ‘it’s a gift, you’re not selling it’ (quoted in Harris, 2003).

Corporate IP owners delight in their born-again identity as warriors against transnational terrorism, because the claim that pirate commodity chains enrich terrorist economies serves to normalise Hollywood’s tightening control over cultural consumption. The mundane business of empirically proving piracy’s harms is forgotten, as the narrative of homeland security turns IP into a strategic asset against terrorism. For IP advocates, the parallel trajectories of the pirate and the terrorist, from Davao City to Ciudad del Este, threatens the international body politic. Nowadays, IP monopolists claim that the viral threat of piracy overlaps with terrorism’s wild, ubiquitous spatiality: ‘piracy can be found everywhere’, declares Microsoft’s Web portal (at www.microsoft.com/piracy/).3

But the actual evidence of a link between terrorist funding and counterfeit commodities is sparse and culled from a variety of disparate events, like a raid on a New York souvenir shop that turned up counterfeit watches and Boeing 767 manuals with notes written in Arabic, or the seizure of eight tons of counterfeit Vaseline petroleum jelly, Head and Shoulders shampoo, Oil of Olay cream, Vicks Vaporub and Chanel No. 5 perfume shipped by a suspected al-Qaeda operative from Britain to Dubai in 2002 (Hering, 2002; ‘Al-Qa’idah Trading’, 2002). And while pirate media culture disrupts and infiltrates flows of commodity exchange, as Brian Larkin (2004) notes, the polarisation of legal and pirate media obscures ‘the fact that for many people outside the West, legal and illegal media are interdependent and part of a common infrastructure of reproducing media’.

Hollywood has followed this logic of transposing today’s spectral ubiquity of terror with the frenetic movements of the pirate commodity (especially in digital form); or as Valenti (2003a) puts it, ‘the mysterious magic of being able, with a simple click of a mouse, to send a full-length movie hurtling with the speed of light to any part of the planet’. At the same time that Hollywood and other commercial film industries have collectively embraced the equivalence between IP piracy and terrorism to justify enforcement assistance to stem file-sharing, along with video, VCD and DVD bootlegging, the ‘What’s the Diff’ campaign to educate youth on proper forms of reception demonstrates that the labour of consumption is within hailing distance of the state. This pedagogy of ‘infantile citizenship’ – to borrow Lauren Berlant’s (1997) formulation – depends on an ethical self-management that combines social obligation with sovereign consumption (see Chapter 5). It turns out that, in addition to all the complex international harmonisation initiatives and technological locks that we describe in this chapter, Hollywood and the copyright establishment still bid for hearts and minds.

**Texts for Rent?**

The Internet marauders argue that copyright is old-fashioned, a decaying relic of a non-Internet world. But suppose some genius invented a magic key that could open the front door of every home in America and wanted to make the keys available to everyone under a canopy sign that read, ‘It’s a new world – take what you want’.

(Jack Valenti, 2000b)

In a 2000 speech outlining corporate strategy in the new digital environment, Disney CEO and head Mouseketeer Eisner gave a visual presentation that demonstrated the indebtedness of *Dinosaur* (Eric Leighton and Ralph Zondag, 2000) to *The Lost World* (Harry O. Hoyt, 1925), *King Kong* (Merian C. Cooper and Ernest B. Schoedsack, 1933), *Godzilla* (Roland Emmerich, 1998) and *Jurassic Park*. Noting that Disney had obtained copyright clearance to show clips
from most of these films (but not Jurassic Park), Eisner explained that IP law provided economic and moral incentives to create art. He neglected to mention the loopholes in patent law that allow film studios to reverse-engineer the software code in patented high-tech special effects technologies and save valuable research-and-development time and money, and that genre takes advantage of viewers’ cultural competencies. While all art is in a sense derivative, terms like originality, skill and labour have complex valencies when legal ownership is to be decided (see Van Camp, 1994). And the big corporate owners are often on the other side of the litigation fence: Disney has itself been sued for copyright violation (albeit mostly unsuccessfully) for stealing: the idea for a sports complex; the ‘tinkerbell’ trademark from a perfume company; screen treatments; children’s magazine formats; and the concepts behind The Lion King and Finding Nemo (Henley, 2004). Of course, Disney’s zealotousness about its own IP is not a new issue; in 1989, the House of Mouse sniffed out three South Florida pre-schools that had painted some Disney characters on their outside walls and pursued retribution in the courts (Verrrier, 2000).

Eisner offers this five-point plan for copyright protection:

1. Avoid extending compulsory licensing (which requires, for example, broadcasters to make their signal available to cable companies)
2. Coordinate global legal efforts
3. Foster civic education
4. Erect technological firewalls; and
5. Lobby for fair pricing.

His list brings demarcations between commerce and art in IP law into sharp relief. The central and (to stay within Disney’s purview) animating question is who will set prices and establish the logic of distribution – workers, who invest their intellectual labour and creativity in the manufacture of an art object; corporations, which finance and invest in the material production of these objects; or the consuming public?

The success of most copyright-infringement suits turns on the relationship between economics and use. Section 107 of the US Copyright Act of 1976 excludes certain forms of use from the category of infringement. These forms of ‘fair use’ allow copying for a limited range of activities (teaching and scholarship, social criticism and commentary and news reporting) so long as these activities do not cause economic detriment to the copyright holder. The section on statutory fair use in the Copyright Act outlines four factors in considering whether usage constitutes infringement:

1. The purpose and character of the use (whether it is of a commercial nature or for not-for-profit educational purposes)
2. The nature of the copyrighted work
3. The amount/substantiality of the portion used relative to the copyrighted work as a whole; and
4. The effect of use on the potential value of the copyrighted work.

In the historical evocation of Section 107, the key element separating fair use from infringement has often been the last issue – commercial worth. Since the statute makes clear that some forms of use are public and others private, the major problem for corporate copyright owners like the Hollywood studios is how to substantiate the key category of ‘detrimental effect’. Can the owners of copyrighted material like songs and films specify the money they have lost because of unsanctioned proliferation, for instance through new duplication technology? Once the potential effect on the market is substantiated by the copyright owner, however, it has been very difficult to overturn the commercial limitations on fair use.

In Universal City Studios, Inc. v. Sony Corp of America (1979), the corporate owners of copyrighted images claimed ‘contributory infringement’ and sought to impose liability on manufacturers of VCRs. The court decided that most uses of VCRs, such as time shifting or accumulating private libraries, were protected under fair use. Upon appeal in 1981, the decision was reversed in favour of Universal (joined by Disney). As the case reached final arbitration in the Supreme Court two years later, the MPAA suggested a fixed royalty on VCRs and blank videotapes to compensate for purported losses. The key issue, again, was private copying and time shifting. The court decided that these were non-infringing uses and granted Sony’s appeal. In other words, although VCR hardware could be used for infringing purposes, fair use of the technology outweighed any infringement. The Sony case lives on in current debates about the encryption of digital television transmissions to prevent the possible taping of ‘superpremium’ pay-TV programming and other digital content. Recent cases regarding digital multimedia have sought the legal protection of ‘transformativeness’ – i.e. the use significantly changes the dimensions of the original, and multimedia developers are authors too (see Goldberg, 1995). Consumer electronics is again locked in a struggle with the corporate owners of copyrighted materials, and fair use will determine the outcome (Goldstein, 1994).

Piracy and the MPA’s International Imperatives

There’s no free Hollywood.

(Jack Valenti, quoted in Streif, 2000)

Look at Titanic – it’s a Hindi film. Gladiator is a Hindi film. Woody Allen’s Everybody Says I Love You is beautiful, just like a Hindi film. James Bond always does well in India – that’s a Hindi film. Man, I want to be James Bond. Please make me the first Indian James Bond.

(Shah Rukh Khan, quoted in Dalton, 2002)
In order to secure its interests in making Hollywood a global form, however, the MPA knows that it has to be more fluid than copyright's evocations of spatial metaphor suggest, and focus on the geographic and politico-territorial referents that abound in US statutory language on intellectual property (Aoki, 1996: 1300). In addition to its espousal of authenticity and ownership in a specified time and space, the MPA engages spatial flexibility.

Hollywood's unitary conception of IP protection is based on territorial boundaries in order to 'produce not only the conceptual, but also the actual physical spaces of the information age' (Aoki 1996: 1297). As Kevin Cox puts it, spatial organisation - not its traditional annihilation theorised by many discourses of media globalisation - 'becomes a productive force rather than a discrete set of exchange opportunities and offers capital with competitive advantages. Accordingly, capital can become impeded in particular localities and dependent upon their reproduction' (1997: 131). We shall look here at the MPA's recent history to uncover the strategies that Hollywood adopts to police textuality in the NICL.

But this does not signify a preparedness yet to slacken copyright vigilance. In 1990, the Singapore High Court ruled that the country's Board of Film Censors must disclose information about pirated tapes submitted for review. Valenti said of the court decision that 'it became a favorite ploy of the pirates to submit their illegally copied tapes to the Film Board for review in order to win its approval, making them appear legitimate to unaware buyers'. After Singapore's Copyright Act came into effect in 1987, the then MPEAA reported that in just two years, the island's piracy rate had dropped from 90 per cent to 15–20 per cent, albeit that parallel imports (where a video cassette was licensed in another market) were being brought into the country for sale or rental ('MPEAA Victory', 1990). The Association reported that over a million pirated video cassettes were seized in 1991, 20 per cent more than in 1990. In the same year, the organisation initiated over 21,000 piracy investigations, collecting over US$1.13 million dollars in international piracy court cases, in addition to US$4.19 million received by its member companies in US cases. Forecasting an annual loss of US$1.2 billion, the MPEAA singled out Indonesia, Thailand, Taiwan and Eastern European countries for their lack of copyright protection, and Greece and Italy as judicially lenient. Its worldwide director for anti-piracy noted that 'piracy represents a moving target ... once a serious problem is brought under control in one country - for example Korea in 1991 - we can divert our attention to another area, such as Thailand'. In addition, the MPEAA committed what it called 'significant funds' against black-market audiovisual trade in Eastern Europe, taking advantage of Czechoslovakia's recent accession to the Berne Convention ('MPEAA: Piracy', 1992; Frankiin, 1991). In 1993, the Association consolidated anti-piracy operations in Europe, Africa and the Middle East into a single office based in Brussels - adding to their Far East operations centred in Singapore and their Latin American operations based in Los Angeles. The same year, with a suspected US$2 billion lost in revenue, it conducted over 20,000 investigations and 11,500 anti-piracy raids, seizing close to 2 million cassettes and initiating almost 5,000 legal actions ('MPEAA Merges', 1993; 'In Short', 1994).

With the opening of US–Russia trade relations under perestroika, and Time Warner poised to build multiplexes there, the US–USSR trade agreement signed at the turn of the 1990s obliged the Soviets to enact copyright law consistent with the Berne Convention. Though the MPEA only sent a handful of films there via the Moscow Film Festival, the vast network of small exhibition sites at trade union and club venues - in the range of 150,000 projection units - provided both sources of pirate screenings and a possible infrastructure for the MPEA to exploit later on. Seeking retroactive coverage for older releases under the new copyright law, it looked forward to exploiting the lack of constitutional copyright provisions in Russian law - provisions that made it impossible for the MPA to enact ex post facto terms of copyright protection under the US Constitution (Marich, 1993). In 1995, the Russian Society for Intellectual Property (RISP), an anti-piracy monitoring service for a number of major domestic distributors, called on the MPA to provide technical and financial support against piracy after a number of successful court actions against local TV stations: RISP estimated that only 5 per cent of programming broadcast on the 250 local TV stations was legal ('Russia Calls', 1995). When Russian authorities committed to greater anti-piracy action after meeting with US representatives in 1997, Valenti claimed that the Russian government lost US$300 to US$400 million dollars a year in tax revenue (with the distribution and production industry losing US$500 million). Valenti also pledged that US companies would train Russian film professionals in new technology. But Russia topped the MPA's 1999 list of problem countries (Birchenough, 1997; Marich, 1999). That year, Russian police were featured on world television driving tanks over a half-million pirate software disks outside Moscow to demonstrate the government's commitment to combating IP infringement.

In 1998, the MPA estimated that its revenue losses due to piracy amounted to US$320 million in Russia, US$200 million in Italy, US$149 million in Japan, US$125 million in Brazil and US$120 million in China - where illicit duplication operations were moving to Hong Kong and Macao. The same year, piracy was estimated at close to 100 per cent in eleven countries, with the MPA incurring losses estimated at US$2 million in Bolivia and US$5 million in Vietnam. In Nigeria, the MPA had no representation. It continued to wait for compensation for assets seized during the nationalisation of the film industry in 1981 (Marich, 1999). In 1997, the Association joined forces with the World Customs Organization, which represented customs divisions in 144 countries. While the MPA participated in an estimated 40,000 piracy investigations and seized 5 million cassettes in 1996 alone, the Association wanted to increase surveillance of digital piracy. As a spokesperson noted, 'we're looking to boost the...
interception of pirated product as it crosses frontiers ... to increase investigative programs and foster effective criminal prosecutions' (Williams, 1997). In 1999, the MPA signed an agreement with the International Federation of the Phonographic Industry (IFPI) (which represented over 1,400 record producers in 76 countries) to share resources in the fight against optical disc and Internet piracy. The IFPI calculated that piracy cost its industries US$4.5 billion a year, while the MPA estimated piracy losses in 1999 at US$2.5 billion ('In Brief', 2000).

The MPA estimates that video piracy cost the US studios over US$550 million in lost revenues in Asia in 2000, and that 90 per cent of the video industry was illegally controlled in China and Indonesia, 85 per cent in Malaysia, 52 per cent in Thailand and 25 per cent in Singapore (Groves, 2000b). In 1999, MPA liaisons with government agencies resulted in large cable crackdowns in Pakistan, where copyright laws were relatively lax, and the MPA played a prominent role in a New Delhi ruling prosecuting the two largest Indian cable providers for illegal transmission of films. In China, tightening copyright regulation is understood as a necessary corollary to its fourteen-year ascent to the WTO, as it was for Taiwan. In mid-1996, the US Trade Representative threatened China with US$2 billion in trade sanctions, citing its poor record on IP enforcement and the wide-scale piracy of US-owned copyrighted material to the tune of US$2.3 billion (L. Atkinson, 1997). The threat was withdrawn after the Chinese Propaganda Department and Press and Publications Administration cracked down on new pirate CD factories, and the Public Security Bureau promised to strengthen IP monitoring in such centres of piracy as Guangdong (Crock et al., 1997).

India has between 40,000 and 70,000 cable operators, with over 2,000 in Delhi alone, largely unregulated and without firm licensing procedures for film exhibition (Lall, 1999). Malaysia's Johor Baru is home to a number of pirate VCD firms, and Hollywood is deeply worried about a 2000 Malay court decision that copyright owners must be present to execute affidavits of ownership in infringement suits, rather than submit them via local company representatives. The International IP Alliance, which represents the key US copyright industries, reports that Malaysia is a major supplier of pirated product throughout Asia and even as far as Latin America, and the MPA lists Malaysia second only to China in projected piracy losses (at about US$40 million in 1998) (Oh, 2000). And while the MPA insists that free trade depends on loosening protective national barriers and securing IP provisions, a significant feature of the 1996 Asia-Pacific Economic Cooperation Forum was the extension of free-trade agreements to the region, using NAFTA's language to block Hollywood imports.

In India, the numerous regional-language cinemas borrow liberally from each other's scripts and character typologies, and Hollywood has been used as a wellspring of themes and plot ideas since the early history of Indian cinema.

As we noted above, generic forms emerge from the works that precede them. In 'the genre world, every day is Jurassic Park day' (Altman, 1998: 24). Especially with the anarchic state of film financing in India, with most producers interested in short-term investments and quick profits, and the underdeveloped state of ancillary industries like video cassette and international sales which amortise Hollywood production, relying on the proven success of a Hollywood genre to provide script ideas helps to diminish the Indian film producer's risk. This form of pre-selling existed long before Hollywood's international copyright initiatives and India's domestic provisions. The remaking of Hollywood film has long been a mainstay of Indian film production. A US writer had this to say in the mid-1950s:

Hollywood supplies a great deal of the Indian movie industry's raw material in plots and ideas, without having anything to say about it. Local producers watch imported features with an eagle eye and frankly plagiarize the more popular productions scene by scene. One producer explained that he saw nothing ethically wrong with this, as otherwise the Indian masses who do not understand English, and have few chances to see foreign films anyway, would be denied these masterpieces.

(Trumbull, 1953)

These Indian remakes have long been a sore spot for Hollywood, particularly as the Indian industry became the most prolific in the world and domestic protective measures were enacted to ensure its national dominance. In the 1980s alone, it was estimated that US majors lost over US$1 billion in royalties and remake fees in India alone, based on a figure for remake rights of about US$100,000 per film.

Coming to America (John Landis, 1988) had little box-office impact when it arrived in India in 1989, but its Tamil-language remake was very successful, as was Appu Raja (Kamal Hassan, 1990), based on Twins (Ivan Reitman, 1988). In the early 1990s, at least three versions of Pretty Woman and four versions of Ghost (Jerry Zucker, 1990) were being remade in a number of Indian languages, and film songwriter often rewrote song lyrics and soundtracks from Hollywood films as well, integrated into the richly textured polyphonic space of Indian 'cassette culture' (Manuel, 1993). Ram Gopal Varma's Raat (1992), for example, evokes the familiar background score from Halloween (John Carpenter, 1978). Up to 1990, the only time a Hollywood company successfully sued an illegal remake was when Warner Bros. took the producers of Khon Khon (Mohammed Husain, 1973) to court for remaking Dirty Harry (Don Siegel, 1971) scene by scene. Warners received US$50,000 in punitive damages against the producers of the film, Eagle Films. Eagle acted differently when it decided to remake Billy Wilder's Irma la Douce (1963) and obtained remake rights from Universal (Pais, 1990).
With the wide availability of Hollywood on multiplex screens and cable television, Bollywood's remake culture has blossomed in more recent years: Qayamat (Harry Baweja, 2003) revisits The Rock (Michael Bay, 1996); Dewaangee (Aneeze Bazmee, 2002) mirrors Primal Fear (Gregory Hoblit, 1996); Jism (Amit Saxena, 2003) does a double-take on Double Indemnity (Billy Wilder, 1944); Meri Yaar Ki Shaadi Hai (Sanjay Gadhavi, 2002) is a literal translation of My Best Friend's Wedding (P. J. Hogan, 1997); Humraaz (Abbas Mastan, 2002) recommits A Perfect Murder (Andrew Davis, 2002); Kuchh to Hai (Anil Kumar, 2003) recalls I Know What You Did Last Summer (Jim Gillespie, 1997). The list (and our bad puns) are practically endless. Sometimes, Bollywood operationalises the Hollywood remake beyond the usual confines of generic intertextuality: the producers of Kaante (Sanjay Gupta, 2002) remade Reservoir Dogs (Quentin Tarantino, 1992) in Los Angeles with a crew partially drawn from Tarantino's 'original' (itself a remake of Long Hu Feng Yun [City on Fire, Ringo Lam, 1987]). One Hollywood lawyer notes that 'until now it has not been worth our time tangling with film-makers in a Bombay court. But if this Reservoir Dogs restarts making serious money ... we will have to start investigating how closely such movies are copying the originals' (Harlow, 2002).

Such legal entanglements may well be on the rise. A high-profile civil lawsuit brought by the best-selling Yaqqui author Barbara Taylor Bradford against Sahara Television's production of the soap opera Karishma resulted in mud-slinging on both sides. Bradford contended that they are stealing, pinching intellectual properties every hour, on the hour. Bollywood people grab a film or a novel and make a Hindi version ... unfortunately, the world is becoming a global village – thanks to the Internet – and it's easy to find out now.

(Quoted in Abdi, 2003)

The editor of the Bombay-based Trade Guide claims that Indian remake-happy screenwriters are 'mere translators' (Badam, 2003). Hollywood's support of the globalisation and greater exposure of mainstream Indian cinema – 20th Century-Fox recently became the first Hollywood studio to pick up an Indian-made film The Rising (Ketan Mehta, 2004) for wide international release – is seen as the greatest deterrent against copyright infringement in remakes. When the producers of the Bombay film Aankhen (Vipul Shah, 2002), learned that a US producer wanted to remake their film for Hollywood, they insisted on one clause in their contract, 'in the credits of the Hollywood version, we just want one line saying the film is based on Aankhen' (quoted in 'Hollywood Eyes', 2002).

The MPA's anti-piracy push now has outposts in over seventy countries. Large-scale operations have been conducted in Malaysia, Mexico, Poland, Italy, Israel, Germany, Peru, Panama, Brazil and Greece, with new initiatives targeting Russia, China and Ireland. In 1999, the MPA and the Mexican film industry created a joint committee to tackle bi-national issues of piracy (which saw the local government upgrade piracy convictions from misdemeanours to felonies, expedite search-warrant request criteria, and severely restrict bail and pre-trial release for piracy arrests), co-productions and government incentives to keep the Mexican industry afloat (Watling, 1999).

US government support for Hollywood's anti-piracy campaign has been linked to the larger role of the state in helping US capital exploit foreign markets, as per the story told in Chapter 1. As IP rights are really 'privileges granted by the State through a form of statutory subsidy' (Raghavan, 1990: 116), government intervention via IP law has been crucial to Hollywood. Prior to the Uruguay Round of the GATT and the formation of the WTO, international copyright agreements such as the Berne Convention and the Universal Copyright Convention contained no real enforcement procedures. IP rights have only become subject to international trade negotiation and harmonisation at the regional (e.g. the EU) as well as the global level in the last decade. For a long time, refusal to recognise or enforce IP rights was a deliberate policy on the part of many non-US or non-Western European countries, who were concerned to prevent foreign monopoly ownership of culture and the outflow of foreign exchange (Chartrand, 1996).

Given capital's voracious appetite for new markets, it is perhaps inevitable that existing and emerging forms of human artistic and intellectual creativity were integrated into global marketing. So, the pressure on national governments for greater copyright protection comes from both locally based oligopolistic media industries and multinational media companies. Sometimes the US has paid a price for internationalism. For example, as part of the implementation infrastructure of both NAFTA and the GATT, the US gave retroactive copyright protection to foreign works that had gone into the US public domain due to foreign ignorance of certain bureaucratic formalities or the lack of a bilateral agreement between the US and the foreign country. Of course, the US fully expects such restorative copyright protection for its own works in foreign countries (Sobel, 1995). Washington has pursued three strategies to eradicate piracy in foreign markets:

1 bilateral trade-leveraging against countries where piracy was rampant
2 free-trade agreements with selected partners that incorporate IP protection into their frameworks; and
3 multilateral efforts such as the GATT.

The US Copyright Office asks US embassies to collect data about local copyright, patent and trademark activity and infrastructures for the publication, distribution and performance of protected works. US advisers train foreign
Coming into effect at the beginning of 1995, TRIPs established minimum standards for: protection (defining the object to be protected, the rights that accompany its ownership, exceptions and minimum duration of protection); enforcement (civil and administrative procedures, prosecutions and penalties); and dispute settlement. Failure to uphold IP provisions now subjects the offending nation to retaliatory sanctions under unfair trade provisions. The 'Copyright and Related Rights' section of TRIPs (the others deal with 'Trademarks', 'Geographical Destinations' and 'Patents') incorporates the 1971 Berne Convention, whose Article 10 provided for protection of computer programs (in source or object code) as literary works – the culmination of a decade-long effort by Western software manufacturers. In addition, TRIPs affords protection to such neighbouring or related rights as sound recordings and broadcast signals.

Commenting on agricultural law in eighteenth-century Britain, E. P. Thompson (1975) notes that the law is so imbricated in production relations that it is indistinguishable from the mode of production. IP enforcement attempts to regulate the relations of cultural production, the operation of power in the workplace and a redefinition of that workplace to include 'pirates'. IP law also guarantees the consolidation of textual control on behalf of corporate owners of the screen image. Hollywood's fervent interaction with new international governing bodies (like the WTO) convened to organise disparate national copyright regimes is partly an extension of this domestic strategy. But is it that simple? After all, 'doing nothing' is one of the many legitimate strategies that corporate owners have when it comes to IP protection. When dealing with counterfeit cultural products to a Third World region where it has few legal exports, Hollywood might be better off (even in terms of a simple cost-benefit analysis) to avoid bad publicity and take the opportunity of free promotion. Maybe copyright infringement is simply an unofficial tax for doing business in, say, China or India. Backing off on copyright protection might help imbue aspirations that contribute to the cultures of anticipation that buttress Hollywood's ancillary merchandising markets, so that affinities for pirated brand images can be converted to authentic products when the market becomes more developed (Schultz and Saporito, 1996: 22). New directions for Hollywood as it endeavours to come to terms with markets where IP protection is scant (notably China) may include forfeiting an iron-clad grip over media property in favour of stabilising distribution via 'bureaucratic coordination of flows of programs and profits with an eye to maintaining the system overall' (Streeter, 1996: 273). Hardware piracy is not significantly addressed in the Sino-American trade agreement passed by the US Senate in 2000, although copyright is. Hollywood knows that, to play its copyrighted software, you need the hardware – counterfeit or not. Similarly, in late 1995, Sony Pictures Entertainment consolidated its movement into India by teaming with a Singapore-based entertainment company, Argos Communications, to launch a
satellite TV service with some Hindi-language programming. Sony provided 2,000 dish antennae free of charge to cable operators to ensure smooth and quick access to the new channel (da Cunha, 1995b).

The vexed question of publicity is tied to shifting relations between copyright law and trademark law. Films, especially blockbusters, have come to be judged in terms of their capacity to act as logos or have a distinct product image. In these cases, the film sells records, clothes, toys, video games, books, magazines, drinks and food (see Chapter 5). A partial shift in legislative practice since the 1940s, from a conception of textual ownership as copyrightable to a codification of its value as a trademark, is designed to engage texts as icons, systematising regulation through the recognition of symbols rather than readerly semiosis. While trademark law’s earlier claims to civic management showed ‘deference to context, convention and genre’, attempts to prevent consumer confusion between commercial products, giving property-like rights to individual signs (accrued over time by statutory decisions) has ‘frequently trumped free-speech concerns in several US state law anti-dilution cases which have ruled against “recordings”, or subsequent unauthorized uses of marks, even in the absence of consumer confusion’ (Aoki, 1993b: 832; see also Denicola, 1999). The recent enactment of TRIPS agreements at the international level attests to the reach of trademark provision:

Any sign, or combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant good or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

(Article 15 of TRIPS)

The shift from copyright to trademark as the legal infrastructure for dealing with digital reproduction has a history in the older notion of trademark as a form of goodwill branding that guarantees a quality product at the same time as it sets the terms for evaluating quality. Indeed, product education is also part of Hollywood’s new international anti-piracy initiatives, as per the domestic curriculum described earlier. Even in the Internet bootleg film market, ‘trademarked’ copies of The Phantom Menace (George Lucas, 1999) serve as signs of quality. In India, where Hollywood has long nurtured alliances with the major regional film industries, the director of Asia/Pacific anti-piracy operations at the MPA noted in 1996 that ‘our aim is not to pursue every violator, because we don’t have that kind of clout or resources in a country as vast as India’, but to ‘educate viewers and cable operators to insist on the visual quality of the genuine product’ (da Cunha, 1996).

Valenti’s effort to educate audiences around the world on the inferior quality of pirated Hollywood product redeployed trademark law’s nineteenth-century rationale that, as Keith Aoki puts it, ‘prevented consumer confusion over competing marketing goods’, in the service of a more modern focus that protected the corporate owners of IP from ‘dilution and appropriation of a set of positive meanings which have been created by the trademark owner’s investment’ (1993a: 4). The assimilation of authorial legitimacy and consumer protection within the discourse of civil restraint is part of trademark law’s history of signalling quality assurance and consistency in the field of commodity purchase. As the film industry continues to deal with digital transactions, the reputations of sellers will become ever more important as distributors (both legal and otherwise) proliferate – the key will be maximising product differentiation, making sure that people realise that YOU put out a superior, quality product (within narrowly defined criteria of superiority).

The founder of Digimarc, a digital watermarking firm, is a former physicist who developed a process to clean up digital images of outer space. Worried that his doctorated images might be considered public property, he added an almost imperceptible ownership mark to the photographs. This led to the development of both watermarking techniques (which are now themselves patented) and sophisticated search engines that scour the Internet for copyrighted material (Golden, 1998). This is not unprecedented in film history: the French cinema company Pathé once stamped its red rooster trademark on silent-film inter-title cards – not specifically to deter copyright (Pathé never sought copyright protection for its films in the US, and the Copyright Act of 1970 automatically relegated foreign works into the public domain) but to circulate them ‘as a recurring symbol of goodwill that, in guaranteeing the quality of its product’s performance on stage or screen, incited increased consumer demand’ (Abel, 1999: 18–19). Confronted with the lack of industry standards and the remarkably simple ways of circumventing contemporary copy protection – like using a felt-tip marker to cover a digital disc’s outer data ring – media industries are clearly returning to older forms of product differentiation based on consumer reputation.

The Work of Hollywood in the Age of Digital Reproduction

copy protection
n.
A class of methods for preventing incompetent pirates from stealing software and legitimate customers from using it. Considered silly.


I love film, but it’s a 19th Century invention. The century of film has passed.

(George Lucas, quoted in Sabin, 2000)
A recent spate of Internet piracy has made over sixty films available for public download, including *Armageddon* (Michael Bay, 1998), *Godzilla*, *The Matrix*, *Entrapment* (Jon Amiel, 1999), *Saving Private Ryan* and *The Phantom Menace*. The MPAA estimated in 2001 that, on an average day, 275,000 pirated movies were downloaded (Graham, 2001a); the figures for 2004 put the number in the millions. Three factors contribute to the proliferate status of the digital form: fidelity, compression and malleability (Goldstein, 1994: 197). In a contemporary international application of the Sony VCR case, the Dutch music rights organisation Buma Stemra lost a suit against the P2P service KaZaa when an appeals court overturned a lower court’s decision, citing Sony as providing protection for P2P software providers and their ‘substantial non-infringing’ uses (Radcliffe and Sazama, 2002). And in 2003, a federal judge in Los Angeles also cited Sony in dismissing a joint record- and movie-industry suit against file-sharing services Streamcast Networks and Grokster, noting that ‘policy, as well as history, supports our consistent deference to Congress when major technological innovations alter the market for copyrighted materials’ (Music Industry, 2003).

Although film directors protest when ‘their’ work is altered for video, television and airline exhibition, most infringement suits are brought by corporate owners of film copyright, since directors are considered ‘workers for hire’ under US law and hence are not authors. The notion of corporate citizenship, where corporations enjoy similar legal status to individuals, has been crucial in ongoing copyright battles, especially the recording industry. The recording companies initiated infringement actions against Napster.com, an Internet clearing house for sharing digital music files, despite the pro-copyright involvement of musical acts like Metallica (one of the few groups that own its songs). Internet services such as Scour, iMesh, Gnutella and the cleverly named Metallicster and Wrapster allow users to locate and download digital material from others’ hard drives. These companies also learned from Napster that cooperation with the corporate owners of copyright materials is the best way to navigate the legal terrain. Even as Scour fights a copyright-infringement suit brought against it by the Hollywood majors and a number of record companies, it is negotiating licences with Miramax (a plaintiff). Miramax is also allowing Sightsound.com to distribute a number of its titles over the Internet. But Valenti (2000b) argues that, ‘a number of new movies, the ones now in theaters, have already been put on the Internet by pilfering zealots eager to unfold films in the same embrace now choking the music world’. He reserves Hollywood’s greatest ire for P2P networks like KaZaa, which allow users to exchange downloaded movie files:

> We know that the infestation of P2P not only threatens the well-being of the copyright industries but consumers and their families as well. … It can bring into your home and expose your children to pornography of the most vile and depraved character imaginable. Most insidious of all, the pornography finds its way to your children disguised as wholesome material: your son or daughter may ‘search’ for ‘Harry Potter’ or ‘Britney Spears’ and be confronted with files that contain bestiality or child pornography. The pornography distributed through P2P networks is so horrific that the District Attorney from Suffolk County, New York, recently called it the worst his office had ever seen on the Internet. And the most disturbing fact of all is that any 10-year old can easily and swiftly bring down this unwelcome perversion. Therefore, the business model that current P2P networks celebrate as ‘the digital democracy’ is built on the fetid foundation of pornography and pilfering copyrighted works.

*(Valenti, 2003b)*

Unlike Napster, the new file-sharing services like Morpheus and KaZaa do not link users through a centralised server; instead they enable file-swapers to connect directly to each other’s machines, creating a decentralised and tactical distribution network whose shape and infrastructure shift according to usage patterns. KaZaa is incorporated in the South Pacific Island of Vanuatu, which doubles as a tax haven.

The RIAA shut down Napster in 2001 and handed out subpoenas, cease-and-desist orders and some 261 lawsuits in September 2003, seeking an average of US$150,000 per violation, but settling most for around US$3,000 (including a case involving a twelve-year old downloader). The RIAA bundled cases against 532 computer users in four lawsuits filed in 2004, insisting that music sales are suffering because of 2.6 billion files are being exchanged every month; the MPAA supports the RIAA tactics, claiming that some 600,000 digital and analogue copies of films exchange hands daily. Nielsen Soundscan data show that 687 million CDs were sold in 2003 compared with 693 million in 2002 — a decline of less than 1 per cent — yet those facing lawsuits have inverted the RIAA insistence that file-sharing is a theft of creative labour: after being sued and fined in 2003, one litigant insisted that we are hardly in the position to pay the recording industry as their sacrificial lamb … we feel victimized and angry, but mostly we feel hurt. We are good, honest, hardworking people. My husband works two jobs and I work one. We have never stolen anything.

*(Maier, 2004)*

The RIAA and the MPAA have suffered some setbacks in their copyright drive. US courts have overturned suits against file-sharing sites like Grokster, noting that the 1998 DMCA (Digital Millennium Copyright Act) mandate for ISPs to surrender customer names and profiles does not extend to file-sharing networks. And Hollywood’s bid to curtail Internet piracy suffered a
public-relations embarrassment when a study by AT&T Labs suggested that the primary source of new movies on P2P networks was movie-industry insiders, not consumers (Holson, 2003). Shareware Networks, the company behind KaZaa, filed a federal lawsuit in 2003 against the RIAA and other entertainment companies for violating its copyrights by downloading an unauthorised version of its software to troll the Internet for alleged downloaders (Gross, 2003). Accounts of innovative file-sharing abound in the popular press. For example, fans of Harry Potter have used file-sharing software to distribute the tasks of translating the books in areas where 'official' translations are unavailable, resorting to email when the copyright industries try to shut down their P2P networks (Harmon, 2003). And independent and alternative media companies claim that P2P represents a business model that supports innovation, insisting that in artist development, file-sharing is not really hurting you (Nelson, 2003).

The divergent forms of address manifest the difficulty in 'signifying' the Internet, which has so many possible uses for Hollywood. The Internet is a spatial force that is both centripetal, in that it preserves gates and barriers, and centrifugal, in that it hurls us into new relations between producers and consumers. It is all at once: a delivery conduit; an exhibition site; a distribution philosophy; a content gathering and talent-differentiating device; an advertising platform; and a globally linked network of copying machines. Even the act of downloading visual media can mean a number of different, simultaneous money-making schemes for Hollywood, from being a sale (the Internet as a point-of-purchase) to a broadcast (the Internet as transmitter technology) to a mechanical copy (the Internet as a copy-clearance centre) (see Mann, 2000).

These qualities explain Hollywood's cosmic ambivalence about the Internet. One film industry executive referred to the computer as 'our nemesis' (Alexander, 2000). The Academy of Motion Picture Arts and Sciences has ruled that films shown on the Internet prior to theatrical release are ineligible for Oscar consideration. Blockbuster Video plans to stream video, bypassing the Internet in favour of a private network provided by phone companies. In the face of the de facto strike by Hollywood talent over contract negotiations in 2001, members of the DGA, WGA, Cartoonist Union Local 839 and SAG signed agreements with Internet content producers that were not yet fully amalgamated into the Alliance of Motion Picture and Television Producers (Swanson, 2000). And when the MPA recently shut down companies offering movies over the Internet for US$1, like Movie88.com (based in Taiwan) and Film88.com (based in Iran), it was protecting its own future Internet distribution plans (see Chapter 5). The MPAs digital duplicity stresses the economic eradication of geographic space alongside its reterritorialisation. Valenti notes that the fury of the future is already upon us. The explosion of channel capacity, the hurling to homes by direct satellite, the multiplicity of optic fibre, among other magic, are the new centurions of the digital age, marching over continents and across geographic borders, breaking down artificial government barriers, the most powerful audiovisual armies ever known.

(Quoted in 'Quo Vadis?', 1996)

The industry's attacks on Internet piracy began in 1999 via a collaboration between Lucasfilm Ltd, the FBI, the MPAA and the Department of Justice, when Lucasfilm shut down more than 500 Internet sites offering pirated copies of its latest Star Wars instalment. Counterfeit versions of the film were available in Malaysia two days after its domestic release, and a few days later in Hong Kong, with Chinese-language jackets (for the equivalent of less than US$3) courtesy of one of four CD printing machines in Hong Kong, each capable of producing 20,000 discs per day (Michael, 1999). Filmed with a camcorder in a US theatre, this version was quickly supplanted by copies made from a stolen print. Digital piracy's shadow politics of distribution honoured The Phantom Menace as the first feature to be downloaded illegally in the UK from servers in Eastern Europe.

While the Internet has been notoriously difficult to police, the MPAA has recently created its own Internet investigative unit. Recalling the imagery of medieval chastity belts, Valenti calls this unit 'a technological armor plate that guards our movies from being hauled out in a profligate manner by everybody with a computer'. The appointment of a former digital scanning and imaging company executive as its Chief Technology Officer reflects the MPAs mandate for 'creating technical standards for the digital transmission and distribution of films' and safeguarding against digital piracy (MPA Appoints, 1999).

Following strong lobbying by the MPAs and the Consumer Electronics Manufacturers Association for a digital anti-copying bill to protect the 'sanctity of copyright', Congress began to take a number of measures. After the No Electronic Theft Act in 1997, it passed the DMCA in 1998, in accord with the World IP Organization Treaties signed in Geneva in late 1996. The DMCA is separate to the Federal Copyright Act. It is designed to provide legal coverage for new digital technologies and contains an 'anti-circumvention provision' that prohibits the distribution of devices that crack copyright encryption; exonerates online service providers for copyright infringements committed on their system by subscribers; and codifies penalties and prison terms for convicted infringers. The statute was designed to ban 'black boxes' that might promote the piracy of copyright works. But as Pamela Samuelson suggests, 'the ban is far broader than this and threatens to bring about a flood of litigation challenging a broad range of technologies, even where there is no proof that the technologies have or realistically would be widely used to enable piracy' (1999: 563–64). At the most basic level, the DMCA admits corporate tracking technologies to PCs to ascertain whether an infringement is taking place.

US courts have circumscribed the protective materiality of digital data. Through a number of cases dating back to 1993, they have affirmed that the
right of reproduction contained in copyright law is subject to infringement when a digital copy is stored in a computer’s memory (Sullivan, 1996). Antici-pating digital distribution of films over the Internet or on digital television set-top boxes, Hollywood teamed up with computer manufacturers like IBM to develop rights-protection technology that uses unique serial numbers on recordable media to create single encryption keys, ensuring that downloaded material can only be saved to a single source. The MPAA maintains that this technology will extend to hard drives, so that ‘copy-once protection technology goes beyond just a pay-per-view business model to a pay-per-copy business model’ (Chmielewski, 2000). Thus, Hollywood is revisiting the sealed-set hardware innovation of commercial radio that made the medium a technology of reception rather than relay.

However, the legal terrain in software protection is harrowing indeed. Do computer games, for example, meet the criteria for ‘aesthetic representation’ maintained by a number of countries? Does interactivity render obsolete the traditional notion of an authorial right? In France, a bastion of support for authorial rights, new software provisions in national copyright law resemble the ‘work for hire’ doctrine of US copyright law, where the employer gains ‘all the rights’ of an ‘author’ working under their contract (McColley, 1997). Some countries have drawn up ‘composite work’ criteria, with different aspects of the same media object protected under a number of IP provisions (which means that the musical score and still images in a video game are protected under separate criteria). The accreting logic of legal protection is designed, of course, to limit access to the design playing-field. Furthermore, the countries that Hollywood pursues for IP harmonisation are also high on the software piracy list; for example, China is accused by the Software Publishers Association of selling US$1.5 billion in pirated business software in 1997 via ‘compilation CD-ROMS’ (which contain tens of thousands of dollars of retail business software) that cost under US$10. In the Philippines, an estimated 80 per cent of business software is pirated, with government offices the major culprits (Tanzer, 1998).

Studying the contexts of legal and cultural history can help us understand these forms of image duplication and the audiences that are constituted by them. For example, a late-1960s case in the US (Williams and Wilkins Co. v. The United States) was brought on by new Xerox copying technology, which allowed libraries to keep photocopies of journals in their collection without compensating the publisher. The subsequent establishment of copyright clearance houses and licensing fees for photocopies may become a precedent for digital-film downloading and transformations after the model of fair use, since such copying technologies allow for the creation of derivative works. Copying and creativity would converge as forms of digital use. Barring this radical redefinition of reception – which begins with a foundational acceptance of fair use rather than its invocation as a pothole in the road to full commercial exploitation of the work – Hollywood might borrow from the American Society of Composers, Authors and Publishers and track royalty revenue for each download. Integrated digital systems designed for online transactions and the generation of customer databases for profiling purposes are also a means of implementing technological and price restrictions on uses of copyrighted works (Cohen, 1996: 984).

‘Trusted system’ technology, designed to track a work via digital property-rights language, is in development at places like IBM and Xerox. Forms of trusted system hardware might look and feel like a normal duplication platform (e.g. a printer, a VCR, a stereo) but would have the capability to implement a copyright holder’s restrictions over usage in a number of arenas:

- rendering (to play, print or export media via the translation of digital code to a usable form)
- transportation (to copy, transfer or lend digital works among other trusted systems); and
- derivation (to extract, edit or embed a copyrighted work in a derivative usage).

Along with the implementation of digital watermarking technologies, trusted system technology allows a tremendous level of control over the use of digital works (Gimbel, 1998: 1677–80). While it was once commonly understood that information commodities ‘can never be endowed with real scarcity, since its most important quality is its inexhaustible reproducibility’ (Frow, 1997: 188), the techno-bureaucratic management of film threatens to impose new regimes of scarcity.

When the fifteen-year-old Norwegian teenager Jon Johansen and two friends wrote a program that descrambled the anti-piracy Contents Scrambling System (CSS), which Hollywood encrypts on DVDs, and posted it on the Internet in the autumn of 1999, they incurred the MPAA’s wrath. And after the Web magazine 2600: The Hacker Quarterly posted the descrambling software (called DeCSS) on its website, Hollywood sued under new DMCA guidelines. Interestingly, those same issues of creativity and originality came to bear when a computer scientist claimed on the witness stand that ‘if the court upholds this injunction, what would happen is that certain uses of computer language – my preferred means of expression – would be illegal’ (Harmon, 2000). Copyright and the US Constitution’s First Amendment guarantees of free speech come together when computer code is deemed a form of personal expression. In the DeCSS case, a US District Court judge distinguished code from speech, noting that ‘computer code is not purely expressive any more than the assassination of a political leader is purely a political statement’. How are such forms of expression to be weighed against more traditional forms of IP, such as copyright, which secure the expressive content of the owner? Cognisant of shifts in determinations of expressivity, the MPAA’s Director of Legal Affairs
notes that ‘this case is not about infringement of copyright, but about the illegal tracking in the device (code) that makes illegal copies’ (Alexander, 2000). Nevertheless, copies of DeCSS are available from Internet sites based in the Czech Republic, Finland, Russia, Slovenia, Israel, Greece and Mexico (VerSteeg, 2000: 12A). When an Oslo court eventually cleared Johansen of copyright violation, he said he would ‘celebrate by watching a few DVDs on unauthorized equipment’. In the years since inventing DeCSS, Johansen has also cracked Apple’s online music distribution service’s encryption code, cementing his position as a maverick whose aim, in the words of his lawyer, was to ‘defend the principle of consumer rights’ (quoted in ‘Setback’, 2003).

In an effort to address the commercial possibilities of digital distribution with the attendant forms of high-fidelity piracy, the MPA, along with the US government, is attempting to extend TRIPs-related protections. At the 1996 World IP Conference in Geneva, US negotiators outlined a possible future for copyright in the global information society. Although its most strongly worded policy suggestions were derailed (the WIPO has always been aligned with relatively Third World-friendly organisations like UNESCO and UNCTAD), the negotiators worked towards draft language that would find powerful proponents in both the US copyright industries and within the government (and possibly for future WTO/GATS accords, which, as we have seen, are aligned with the IMF and the World Bank). In calling for protection for temporary reproductions of copyrighted works in a private PC’s random-access memory (therefore treating digital transmissions as distribution copies), the US team upheld President Clinton’s Information Infrastructure Task Force’s 1995 White Paper, which ‘deprived the public of the “first sale rights” it had long enjoyed in the print world’ and conceived of ‘electronic forwarding as a violation of both the reproduction and distribution rights of copyright law’ (Samuelson, 1996: 136). The ‘first-sale’ statute, guaranteed by Section 109(a) of the US Copyright Act of 1976, reaffirmed that the purchaser of a particular work is entitled, without the permission of the copyright owner, ‘to sell or otherwise dispose of the possession of that copy’. While copyright owners had struggled against the statute for years, it nevertheless prevented movie studios from claiming a royalty on video rentals, or book/record owners from claiming a royalty on copies loaned from a public library. In conceptualising the distribution of digital works as inherently a form of copying, the US WIPO team sublimely sidestepped the first-sale restrictions. The drafters of copyright’s digital initiatives could therefore argue for an elimination of fair-use rights wherever a licensed use was possible, as well as buttress their demands for encrypted tracking software designed to police the use of digital media (Samuelson, 1996: 136).

The US characterises digital transmission as the distribution of copies, because it is necessary to copy a digital work in order to reproduce it. This makes such transfers amenable to copyright protection, part of a larger agenda at the WIPO to limit user rights and curtail ‘fair use and kindred priv-

ileges under which private or personal copying of protected works has often found shelter’ (Samuelson, 1997: 398). This stance has effectively rolled back fair-use precepts upheld by US courts that allowed private videotaping of audiovisual programming in the early 1980s. Here we find the savvy corporate owners of copyright using the distinctive technology of the digital against itself, since one must copy a text in order to read it (i.e. materialise in some new way, even as signals). Conveniently, ‘copyright’s legal threshold of originality is a simple requirement of creation without any copying’ (Litman, 1990: 1000). Infringement is assimilable to every act of reception – the ‘transient reproduction in use’ addressed by the US at the WIPO. Every act of digital reading is, therefore, an act of copying. As the President of the US Consumer Electronics Association recently put it, ‘if the content industry has its way, the “play” button will become the “pay” button’ (Snider, 2001). For example, say you watch a movie (accessed legally from a studio website) on your computer. While it plays, parts of it are stored within your PC’s random-access memory; and because a copy (of sorts) is being created, the studio has the right to make sure that you are not circumventing its encrypted rights management software, something that it can only do by entering the domain of your PC. Privacy evaporates in a puff of logic. Surveillance takes its place (for which see Chapter 5).

The RIAA and MPAA used file-sharing networks to send anti-piracy pop-up messages to users logged on the network, which begs the question, couldn’t they do the same for advertising and promotion? While the partial assimilation of P2P within corporate IP regimes is likely – much like the corporate support of open-source software development – Hollywood’s copyright idi-
communications services markets in Europe, challenging 'the EC's freedom to maneuver and regulate emerging services due to their massive economic potential' (Wheeler, 2000: 258). In a globalised digital environment, where the WTO guarantees that customs duties will not be levied on electronic transmissions, and the US leads the way in 'the creation of a market-driven policy architecture for this new digital economy' (US Government Working Group on Electronic Commerce, 1998: 30), the danger looms that the neoclassical tenets of copyright (fundamental to IP's economic imperative) will overwhelm the public domain and free use.

Conclusion

'The law, my boy, puts us in everything.'

(Al Pacino in The Devil's Advocate, Taylor Hackford, 1997)

With over 8,500 video-rental stores in 29 countries, and worldwide sales topping US$5 billion a year, Blockbuster became the world's largest video/DVD rental chain in the 1990s. As part of its parent company Viacom's expansion strategy, Blockbuster entered Hong Kong in 1999, buying up stores from a local video-rental chain facing receivership to tap into the local film industry and catapult rental business revenue on the mainland. Blockbuster's corporate parent, Viacom, then focused attention on the Chinese mainland. MTV, another of Viacom's subsidiaries, was broadcast in programme blocks by local cable networks, and given broadcasting rights to air in Chinese in Guangdong in 2003, capping the southern province's meteoric rise as the foreign media portal to the rest of the mainland. In early 2004, however, Blockbuster announced that it was not renewing the lease on its twenty-four Hong Kong stores and was putting off its push into China for 'the foreseeable future', even as the chain's US success was dwindling. Beginning in 1997, Blockbuster had steadily edged out independent video-rental shops in the US by using its Hollywood connections (Viacom also owns Paramount) to negotiate revenue-sharing agreements with the major studios. While one independent video retailer claimed that Blockbuster was 'killing the market with copy depth' (Coolidge, 2002), 'copy theft' killed Blockbuster in Hong Kong. The MPA reported that close to 45 million pirated DVDs were seized in its Asia-Pacific jurisdiction in 2003 – a 12 per cent upswing in piracy that 'cost' the film industry well over US$700 million, part of a US$1.85 billion overall loss for the US IP industries in China alone (Craven, 2004; Luk, 2004).

Viacom's experience in China demonstrates the complex spatial invocation of contemporary IP: DVD rental revenue based on the rental of physical space may fail, but television syndication provides a way forward. Hollywood's growth in China is conditioned by material and immaterial forms of property acquisition, rendered legible through the familiar territorial grammar of intel-

lectual property, where multiplex construction through local partnerships takes place alongside tailored programming that fits 'local' tastes (see Chapter 5).

As the Internet and digital duplication continue to disarticulate the geographic sensitivities of the MPA, regulation and enforcement policies struggle to recapitulate this spatial imperative of corporate capital. Clifford Schultz and Bill Saporito (1996) suggest a number of strategies for IP protection:

- 'grin and bear it', trusting in the mythic levelling 'even hand' of capitalism
- co-opt offenders and offer them legitimate business opportunities
- educate the public
- eradicate demand for piracy through advertising
- erect investigative and surveillance procedures
- engineer labels and embed anti-piracy technologies
- create a constantly evolving product
- lobby for IP legislation
- build coalitions with international organisations, foreign governments and local enforcement agencies; and
- cede certain sectors of the industry.

The priority of IP control is manifested in the proliferation of alliances and mergers in the media trade: for example, DreamWorks and Microsoft, AOL and Time Warner, and a hostile takeover bid for Disney from Comcast, the US' largest cable company, which has a growing Internet presence. These mergers of content and distribution promise Hollywood access to digital pipelines without compromising their IP, although some suggest that content will have to take a backseat to Internet telephony (see Norris, 2004). How these developments play out alongside Hollywood's attempt to enter hitherto hostile digital IP terrain is unclear. NICL-influenced convergence strategies consolidate creative workforces through the 'vertical integration of new production with inventory management of owned information' (Benkler, 1999: 401), moving towards further privatisation and enclosure of information. When problems arise in Hollywood mergers – as in the debacle of AOL–Time Warner, or the more prosaic separation of Pixar and Walt Disney – management volatility and a clash of corporate cultures are most often blamed. Distribution, labour and IP ownership still drive the engine of corporate media synergy – even in reverse.

At the beginning of this chapter, we raised the thorny question of whether Hollywood should acknowledge piracy as a viable form of film distribution. We maintain that cultural policy should reformulate traditional forms of IP ownership in recognition of the proliferate status of media readerships. This means that, along with fracturing the singularity of authors, policy should recognise the multiplicity of readers. As John Hartley notes, reading is not a 'solitary, individualist, consumptive, supplementary act of silent subjection to a series of
imperial graphic impressions', but 'a social, communal, productive, act of writing, a dialogic process which is so fundamental to (and may even be) popular culture' (Hartley, 1996: 51). There is little doubt that the sheer proliferation of digital reproduction ensures that the MPA make use of piracy's powerfully signifying vernacular. At the same time, as it tries to extend markets into places where it has traditionally been a minority culture — markets that encompass almost half the globe — Hollywood will have to be more innovative about disentangling media from proprietary ownership. Borrowing from observations made during the aforementioned Sony case, Hollywood might recognise that piracy has forms of fair use in areas where traditional forms of distribution/exhibition result in market failure. In India and China, where structural and socio-economic factors impede the 'legitimate' distribution of Hollywood, provisional fair use might be extended to piracy for three reasons: (a) market flaws exist; (b) transfer of use is socially and economically desirable (it creates the cultures of anticipation that buttress Hollywood's merchandising markets); and (c) substantial economic injury is not really a factor (Gordon, 1982: 1614).

Of course, Hollywood and its representatives in the USTR would be the first to 'Yank' such provisional fair-use privileges once the market became profitable. With the advent of new digital technologies, international IP law and attendant public policy might structure textual ownership across variegated terrain rather than yoking it to antiquated and dubious notions of singular authorial genius. For example, taxation and licensing schemes, horizontal private law and centralised purchasing relationships 'might be preferable to a strong interference from the state in the shape of the vertical relationships' established by traditional copyright (Van der Merwe, 1999: 313). Ultimately though, something much stronger and more fundamental must take place. With the explosive interrelation of convergence and diversification engendered by new forms of distribution and duplication technology, ordinary consumers' rights must be taken more seriously — with their reception practices recognised as forms of creative labour: 'moves in a conversation rather than as endpoints for the delivery of product' (Benkler, 2000: 564). In 2004, Morris County, New Jersey, resident Michele Scimeca was making her own cultural policy. After being accused of sharing 1,400 copyrighted songs through the Internet (part of her child's research project), Ms Scimeca and 531 others across the country charged record-company executives with racketeering in their attempts to extort funds by terrorising citizens (Coughlin, 2004).

Sociological orthodoxy in the early twentieth century linked consumer culture with a loss of social control exacerbated by the insecurities of a changing world (Lears, 1989). The early twenty-first century's linkage of piracy (an over-conscious form of consumption) with terrorism proves that nothing much has changed in a hundred years: one mouse-click keeps us from becoming potential accessories to 9/11 after the fact. Why has not cultural policy simply asked consumers what they want out of the audiovisual media? Of course, Hollywood has been doing that for a while. The next chapter shows how.

Notes
1 The software giant also has to face the rather delicate fact that the 9/11 hijackers' use of counterfeit Microsoft 'Flight Simulator' programs helped to popularise pirated versions of the program, which is now sold in many parts of the world with bin Laden's face on the cover. In another uncanny doubling with the hijackers' mission, Microsoft deleted the World Trade Center from new versions of the Flight Simulator software beginning in 2001. As one company spokesman put it, 'we did decide, after some careful consideration, that we wanted to do the appropriate thing, the right thing, so we decided to remove the Towers' (Gaudiosi, 2001; for background and critique of this post-traumatic drama of deletion, see Govil, 2002).
2 Carey Heckman, co-director of the Stanford Law and Technology Policy Center, compares the new Internet copyright issues to the barbed wiring that attended new property rights on open territory in the Wild West at the turn of the nineteenth century. See Jonathan Rabinovitz, 'Internet Becomes New Frontier in Copyright Battles', San Jose Mercury News (7 November, 1999). Indeed, Westerns provide the gun-slinging with a lingua franca, since the MPA offers a whistle-blowing reward programme called 'The Bounty for Pirates Program', which allows those concerned with combating the civic evils of copyright violation — a 'cancer that cheats the consumer', as Valenti puts it — to pursue temporary deputation under the legal aegis of the MPA (quoted in MPAA press release, 'Almost 18,000 Pirate Videos Seized Nationwide', 8 February 1995). Piracy is a form of contagion in the rhetoric of the MPA, illegal video disc plants in China are 'the cancerous core of piracy problems', producing 'poisoned product'; piracy is the 'cancer in the belly of global business', a 'toxin for which there is no known cure' except stronger legislation, penalties and national resolve (MPAA press releases: 'Valenti Announces Enhanced MPAA/VSDA Anti-Piracy Hotline', 21 May 1995; 'Valenti Testimony before the Senate Subcommittee on East Asian and Pacific Affairs', 29 November 1995; 'Quo Vadis?', 23 May 1996).
3 International copyright law originated in the years immediately following the French Revolution, when French national law made no distinctions between French and foreign authors and freely granted French copyright to foreign works. Such reciprocity, it was hoped, might engender similar protection of French works in other nations. But underlying this reciprocity was the idealism of a burgeoning modernism, deployed in the push towards unilaterality. A universal law of copyright would transcend nationality and territoriality, and would, as Sam Ricketson notes: 'accord directly with the
conception of the author's natural right of property in his work, existing independently of, and prior to, the formal rules and sanctions of positive law and admitting no artificial restrictions such as a limited term or protection or national boundaries' (1987: 40).

Chapter Five
Getting the Audience

In most societies in which supernatural elements are important in attaining success, some form of divination is practiced, because foreknowledge is one way of control. In parts of East Africa, the entrails of chickens are used for divining the future, while among the Karen of Burma it is the gall bladder of a pig; in Hollywood polls are used to determine the mysterious tastes of the audience.

(Hortense Powdermaker, 1950: 285)

Entertainment is one of the purest marketplaces in the world. If people don't like a movie or record they won't see it or buy it. The fact that the American entertainment industry has been so successful on a worldwide basis speaks to the quality and attractiveness of what we're creating.

(Robert Shaye, Chair of New Line Pictures, quoted in Weinraub, 1993)

The DVD phenom is part of the more customized, individualized approach to leisure that is turning the phrase 'mass audience' into an oh-so-20th-century concept.

(Elisabeth Guider et al., 2004)

We have travelled from globalisation, cultural imperialism and Hollywood's historical structure, through the labour that gives films meaning and value and the policies and laws that police them. In this chapter, we look at the target of these processes - viewers - through three lenses: marketing; surveillance; and distribution and exhibition.

The Conditions of Film Marketing

Viacom boss Sumner Redstone recently told Bill Kartozian, president of the National Association of Theatre Owners, that he had a special formula for reducing film production spending. 'We're not going to make any more bad movies,' he said.

('Hollywood's Incredible', 1999)