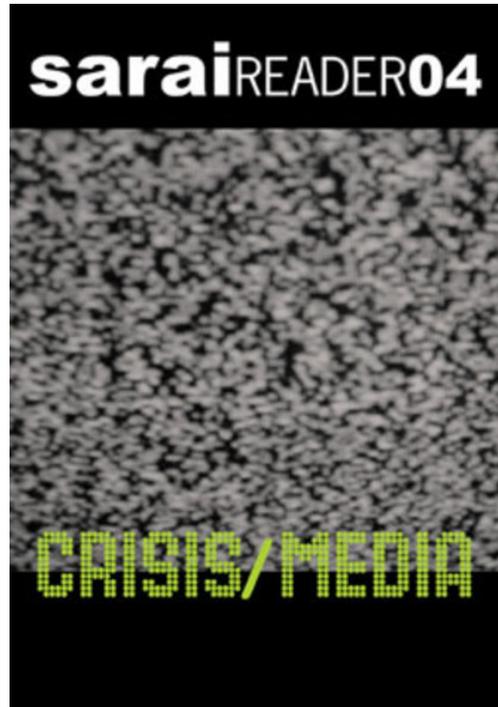Nitin Govil

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"Every age constructs its own type of war".
Fernand Braudel

War in the Age of Pirate Reproduction

N I T I N   G O V I L

To the State and market technocracies charged with bureaucratizing our experiences of everyday fear, contemporary terror is placeless. The history of the late twentieth century narrates the intimacy of terror and territoriality: crisis mapped onto discrete somewheres like Auschwitz, Hiroshima, East Timor, Belfast, Halabja, Kosovo, Rwanda, New York and Gujarat. Now, however, the hysterical movements of modern terror are calculated on the logic of everywhere. The ubiquity of terror justifies the unprecedented efforts of enforcement agencies to counter the spatial transgressions of the terrorist: we recall how Mohammed Atta moved effortlessly through airport security, even as the close-circuit cameras winked and whirred away. The banal sequence of photographs that captured his movements sent a tremor down the spine of the security establishment, short-circuiting the delicate machinery of vigilance (modernity, after all, has always slept better with its eyes open). Armed with post 9/11 righteousness, the surveillance establishment is urgently recruiting new allies in the 'war on terror'. This is the story of one such courtship.

The initial attraction that brought piracy and terror together is the subject of considerable conjecture. But we know that the 9/11 hijacker's use of counterfeit Microsoft 'Flight Simulator' programs, now sold in many parts of the world with bin Laden's face on the cover, helped cement a decade-long equivalency between intellectual property piracy and terrorism. Nowadays, intellectual property (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 (http://www.microsoft.com/piracy/). The scare tactics of copyright maximalism suggest that, like the unhindered movements of the terrorist, the culture of the copy infiltrates the flows of 'legitimate' commodity exchange. For these IP advocates, the parallel trajectories of the pirate and the terrorist – from Delhi to Davao City to Cuidad del Este – threaten the otherwise healthy circulatory regime of the international body politic. The millenarian anxiety of viral invasion is reflected in a recent US Department of Transportation newsletter: "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).

In the peculiar speech genre of the policy manifesto, the "they" indicates that the pirate and the terrorist are not like us. They only partially subscribe to the sacrosanct norms of proper citizenship, without proper reverence for country and conduct. They are *unheimlich*, without a home: mere shells of us, as if from a 1950s science fiction film, they are manufactured in a churning vat of religious fundamentalism and commodity fetishism.

In September 2003, influenced by European Commission studies on the links between organized crime and large-scale counterfeiting, the International Police Organization (Interpol) added Chechen separatists and Northern Irish paramilitaries (who traffic in Disney's *The Lion King* and Sony Playstation videogames) to the growing list of organizations 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 intellectual property piracy, from Al Qaeda, Hezbollah, Hamas, and Albanian and Basque separatists, to anti-Arroyo agitators in the Philippines, FARC in Columbia, and the Sicilian Cosa Nostra and its international affiliates. 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 Centre. Post 9/11, policy proposals from the European Commission and Interpol alike have naturalized the relationship between IP piracy and terrorism and the connections are flowing fast and furiously. For example, British detectives claim that Pakistani DVDs account for 40% of anti-piracy confiscations in the UK, and that profits from pirated versions of *Love Actually* and *Master and Commander* funnel back to the coffers of Pakistan-based Al Qaeda operatives. Similarly, anti-piracy evangelists, like Bombay's former police commissioner Julio Riberio, claim that pirate CD factories in Pakistan fund the Inter-Services Intelligence, even as Hindu nationalists consider the Bombay film industry a front for Islamic terrorism. An Indian intelligence community, eager to build on US-India joint military exercises begun in May 2002, claims that Dawood Ibrahim's Karachi-based music and video piracy outfits help fund Al Qaeda and Lashkar-e-Toiba. Not to be left out, Kerala police organized a national seminar on anti-piracy in late 2003, claiming that pirated Tamil films sold in Canada help fund LTTE.

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 everywhere-ness of piracy. In fact, the moral commensurability of piracy and terrorism – as equal partners in the heresy of spatial dislocation – is insured by their simultaneous threats to the properly interpolated spaces of the nation. While the national has been central to the inscription of difference in the IP policy archive, functioning as a command metaphor for the distribution of scarcity, its evocation is far from static. The first English copyright statutes in the early eighteenth century transformed land "into the model against which other types of interests were analogized or compared to assess market value, of information commodities" (Aoki: 1327). However, the elevation of

local vernacular print traditions to national literary patrimonies in the late nineteenth century was fuelled by early international copyright conventions claiming an extra-territorial, universalist criteria for legal protection. The Swiss government, for example, invited "all civilized nations to join the planned Berne copyright convention in 1883, claiming that 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: 54).

While information technology facilitates the deterritorialization of flexible accumulation on a global scale, the national continues to play an important role in anchoring IP within existing spatial regimes. Multilateral treaties from the Berne Convention to the EU Satellite and Cable Directive invoke a number of national criteria to fix the space of production and reception, from industrial or commercial domicile, to place of first publication or the location where electronic signals are 'introduced'. International trade and information policy in the 1990s insisted that the development of 'local' cultural industries depends upon a national infrastructure of intellectual property rights overseen by global enforcement and procedural norms. This has lent weight to the prevailing World Bank orthodoxy that the rest of the world must strengthen domestic intellectual property regimes in order to lure the direct foreign investment capital required for the ascension to Western modernity. Clearly, the national is still the coin of the realm in the currency of global IP governance.

But this is not mere reterritorialization. The national cuts across an array of social practices, from informal codes of belonging to bureaucratic regularizations of identity and domicile. The territoriality of the national is not simply mapped on a pre-existing space: social practices under the sign of the national perform the territorial as a provisional and improvisational marker (Ford, 1999). For example, media pirates in Malaysia have been charged by Hollywood studios under trade description laws that prosecute based on fraudulent 'Made in USA' labels. Given Hollywood's thoroughly globalized production, the mandate to fix national authenticity through the (trade)marks of American exceptionalism is partly a response to piracy's spatial 'wildness'. Similarly, new Russian copyright laws mandate that every CD, DVD and cassette sold must display the name and location of its manufacturer along with a unique licensing number. While American and Russian copyright laws insist on registering national authenticity, the material transportation of properly registered goods is governed by international maritime laws that allow the insignia of national origin to be traded on the open market. Media goods with national attribution are routinely transported on cargo vessels bearing purchased 'flags of convenience', easily obtained from any government willing to sell their national attribution to third-party shipping distributors in exchange for a portion of the profits on a percentage basis or for a one-time fee.

These forked evocations of location demonstrate the performativity of the national as an index of spatial authenticity. Meanwhile, the territorial governance of IP, while responsive to contemporary cultures of circulation, is effectively bolstered by the ethical management of consumption. Such discourses of citizenship – the primary artefact of national subjectivity – become part of a pedagogy designed to internalize proper forms of media con-

sumption. For example, the Motion Picture Association of America (MPAA) began a middle-school program called "What's the Diff: A Guide to Digital Citizenship" in October 2003. This program 'educates' American students in grades five through nine about the incivility of peer-to-peer (P2P) file sharing. The new initiative (for details, see http://www.ja.org/ programs/programs_supplements_citizenship.shtml) 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 behaviour".

Well aware that altruism is no match for exchange-value in the pedagogy of citizenship, the MPAA offers DVDs and CDs, movie tickets and paid trips to Hollywood for students who write prize-winning essays denigrating copyright piracy. Though, as the contest rules for the "Xcellent Xtreme Challenge" note, "best of all, when you and your friends help stop the downloading of files from the Internet, EVERYBODY WINS!" These happy proclamations are deployed through new techno-bureaucratic architectures, from digital copyright regimes and electronic watermarking, to trusted systems and other digital rights management systems. Representing the vanguard in consumer surveillance, these technologies determine the appropriate consumption of the media commodity by inscribing the logic of proper use in the information good itself: with the mouse-click that signals an acceptance of the media commodity's constraints of use, the consumer takes on the mantle of digital citizenship. Expanding the sphere of copyright criminality to include previously legal forms of circumvention, trusted systems and digital rights management are the latest allies in the coalition of anti-terror metaphors, part of an overarching logic of pre-emption that justifies unilateralism in anti-piracy and anti-terrorism alike.

In its evocation of ethical self-management through the invigilation of consumption, copyright's moral majority is actually tapping into a much older connection between piracy and terrorism as equally heinous crimes. This equation is clearly indicated in the history of 'universal jurisdiction'. In recent applications of international law, the category of universal jurisdiction has been used by national courts to prosecute human rights abuses in foreign nations. Consequently, the moral heinousness of crimes against humanity circumvents the normal territorial sovereignty of national jurisdiction. However, for centuries prior to the post-World War II 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 (see Bassiouni). While rarely invoked in actual application, linking piracy and crimes against humanity was well established in late eighteenth and nine-teenth century theoretical treatises that argued the case for extraterritorial jurisdiction. Although state-sanctioned piracy or 'privateering' was widely condoned – maritime piracy has always been part of the legitimate business of the state – the act of stealing on the 'global commons' of the high seas without state issued license was deemed the most serious transgression in the international law of nations (see Kontorovich). 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. What better basis for unilateral action

against the genocidal implications of intellectual property piracy than its historical abjection by the community of nations?

The global and the digital certainly complicate the classical geometries of cultural exchange, but the crisis in spatial referentiality has only spurred the generation of new forms of reverence. The para-territories of the national and the mnemonic traces of digital rights management are motivated by intellectual property's newfound missionary zeal. Yet the circumscription of use enervates what is most unique about the information commodity. Distinct from the categories of what Igor Kopytoff (1986) called "terminal commodities" – commodities whose social biographies involve only one journey from production to consumption – information goods and their infinite recombinatory possibilities suggest a multiplicity of social biographies. Information goods are a kind of transversal commodity, one that moves across production/reception categories at a velocity that outstrips the declarative injunction of 'proper' use mandated by the normative social contract of legal consumption. These transverse commodities cut across the common intersections and agglomerations of production and use; their transit is figurative and draws the shape of new, transitory, and strategic relations of affiliation.

But for those tallying the gains and losses in the global war on terror, circumnavigating the 'everywhere' of piracy has become a matter of great urgency. From the pre-emptive strikes of digital rights management to the moral invigilation of consumption, and the alternate spatialities of national jurisdiction and its erasure under the historical invocation of genocide and maritime piracy, modern intellectual property initiatives have orchestrated a melodrama of considerable intensity. The script of this new feature locks together the pirate, the consumer, and the terrorist in a fatal attraction that any moviegoer can learn to love.

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