

FREEDOM FROM PROFIT

ESCHEWING COPYRIGHT IN
RESISTANCE ART



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Arjun Ghosh

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ARJUN GHOSH



Indian Institute of Advanced Study
Rashtrapati Nivas, Shimla

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Nilanjana and I will remember this project for a snowy morning on Summer Hill.

the fact that the \mathbb{Z}_2 -action on \mathbb{C}^2 is not free, the quotient space $\mathbb{C}^2/\mathbb{Z}_2$ is not a manifold. However, the quotient space $\mathbb{C}^2/\mathbb{Z}_2$ is a complex orbifold. The orbifold structure is given by the quotient map $\pi: \mathbb{C}^2 \rightarrow \mathbb{C}^2/\mathbb{Z}_2$. The orbifold is a complex manifold with a singular point at the origin. The orbifold is a complex manifold with a singular point at the origin. The orbifold is a complex manifold with a singular point at the origin.

Introduction

सितारों की चमक, खरीद सकते हो?
हवाओं की महक का बताओ तोल क्या?
सागर की गहराई, वेच सकते हो?
इस कायनात का, बताओ मोल क्या?
दुनिया बनाने वाले की मेहनत का मोल क्या?

(*Jana Natya Manch* 2002, 101)

In 2007, following the practice of erecting *pandals* in the style of famous buildings during the Durga Puja celebrations, the FD Block Durga Puja Committee in Salt Lake, Kolkata, had recreated the Hogwarts School of Magic and Wizardry from the popular 'Harry Potter' stories by J.K. Rowling (Anon. 2009a). To its dismay, with 90 per cent of the work on the *pandal* complete and with the festival a few days away, the FD Block Puja Committee received a 394-page summons served on it by Penguin Books, the publisher of J.K. Rowling's books. The publisher demanded a compensation of 'Rs 20 lakhs for copyright violation through unauthorised use of an idea from Rowling's book' (Anon. 2009b). The matter went to court and the Kolkata High Court, in its order, directed the Puja Committee to pull down the structure immediately after the festival was over but exempted it from paying any compensation to the publishers.

It was unlikely that the copyright holders would have lost revenue due to the depiction. If anything, the huge number of visitors to the *pandal* would have increased the exposure of the 'Harry Potter' brand. So was this a case of cultural gap, with the Western litigant unaware of the culture and implications of the Durga Puja festival in Kolkata? Possibly yes. But there

was more to it. In recent years, media companies have taken up techniques of guerrilla litigation against instances of copyright violation selectively and arbitrarily to create deterrents. The litigants, unsuspectingly, fall prey to legal and financial muscle of the powerful corporate litigants. These cases attract media publicity, attempting to set examples for other possible violators of intellectual property.

One of the most famous instances of such strategy was that of Jesse Jordan, a student at the Rensselaer Polytechnic Institute (RPI), in Troy, New York. The Polytechnic, one of the foremost in the United States of America, was a place for training students who were to take up the task of building improved networks in the years to come. Therefore, it was part of the normal activity of students, and indeed in some cases as part of assignments, to tinker with existing software to try to understand their working and if possible improve them. In 2002-03, Jesse undertook the task of developing a search engine for the computers on the RPI network. The concept of a search engine was nothing new. The internet, being a network of computers, has an unimaginable amount of data which is publicly accessible. A search engine is merely a set of algorithms which helps a user to zero in on relevant material based on a set of keywords. What Jesse attempted to do was to develop a search engine for the RPI intra-net. Again, such search engines for intra-net were nothing new. Jesse's search engine was a simple tweak on Microsoft's network file system. The intranet searches existing till then would cause the computer to crash if the user tried to access a file from a computer that was currently switched off. Jesse's search engine added a button that would allow the user to find out whether a network computer was currently on or not before attempting to retrieve the file. Once in place, users on the RPI network could share any kind of file which other users placed in their "Public" folder. They could have shared personal pictures, notes and articles. When put to practice, it so happened that young college students took to sharing music

files more than anything else. Perhaps, the students did share their music files anyway, but till now they would have had to know each other to do so. Jesse's search engine merely made the task of sharing much easier. There was no way, therefore, that Jesse could have been held responsible for inducing his fellow students to indulge in music piracy. But to his great horror Jesse learnt that the Recording Industry Association of America (RIAA), a powerful conglomerate of music labels, branded Jesse a 'pirate' and demanded a compensation of \$150,000 per instance copyright infringement. Given that more than one hundred songs may have been exchanged across the RPI network using Jesse's search engine, the RIAA asked Jesse to pay a compensation of at least \$15,000,000. Of course, Jesse could not pay that much. The RIAA offered him a settlement of parting with all his saving, worth \$12,000, which would have funded his further education and early career or face a prison term. Left with no option, Jesse had to comply (Lessig 2004, 48-52). What the RIAA was looking for was not compensation for any financial losses that the music companies may have incurred but to get Jesse to admit that he was in the wrong. Though Jesse would have argued his innocence, the intimidation of the financial might of the RIAA and its sleuth of lawyers meant Jesse lost the case before it even reached the courts. In Jesse the RIAA wanted to create a demonstration of its might to deter any future instance of online file sharing.

In the matter of the Puja *pandal* at Salt Lake, the target of Warner Brothers or Penguin Books was not to get compensated for loss, but by flexing legal muscles get the Puja Committee to admit that they were in the wrong even if in ignorance. In fact, the case offered enough publicity to the copyright norms which the litigants wanted to enforce.

As the world media gets concentrated into fewer and fewer hands it is also using every trick in the book to continue its monopoly over the media and information sector. It uses monopolistic practices to prevent competition, works in close

relationship with national governments and international agencies to mold policy to suit their business interests, uses technology to protect intellectual property, as well as uses strong arm tactics as described above to ensure hegemony over the world of information, which has become an important means of power and control in today's world. This monograph will be an occasion, for me to look closely at the history and development of copyright to trace the links between hegemonic control over information and ideas and the emergence of the myth of creative property. I shall locate the origins and development of the copyright regime within the context of creative methods and the technologies of dissemination or ideas. The decisive moment in the development of copyright and notions of creative property came with the advent of print and therefore, the coming of the age of mechanical reproduction of art and literature. The use of technology further accentuated the already emerging influx of the modes of capitalist production in the arts. It now called for investment in technology, an element in the production of art which existed outside the ordinary capabilities of the artist. The gradual replacement of orality with mechanical reproduction as a means of mass circulation in western European countries provided space for the entry of a third party into the creative process — the printer, publisher, producer, financier or the rent earner of creative produce. Since the sixteenth century, the monarchies of the various western European countries negotiated with the printers to provide for a censor control on libelous and blasphemous literature in exchange for guarantees of profit. This arrangement continued to evolve over the centuries and over many lands beyond Europe, growing in scope and effectiveness with the advancement of technology. But there always existed systems of creative production which belied the assumptions on which copyright legislations were based. Though the emergence of digital technology has led to a gradual obliteration of the brokering role of the printer, publisher, producer, we can spot

an alternative creative system in other forms of non-mechanical art which have existed alongside the print, cinema and the music industry. In theatre, and indeed in case of all the performance forms, it is difficult to define a fixed text which could be copyrighted. The very notion of 'copyright' assumed the presence of and therefore the need to regulate 'copies' of 'original' works. But in the context of performance forms, every performance is an 'original', similar to and different from all other performances. Thus, attempts to bring performances within the purview of copyright legislation causes definitional conflicts. However, the copyright regime exists not only in legislative and administrative terms, but also within the value system which sustains and legitimises the capitalist system of production. Added to this is the over all publicity environment which propagates copyright and intellectual property right to be a natural right which guarantees protection to the creative individual. As a result, performance artistes too articulate the need to protect copyright over their creative produce. However, the conflict between the constantly mutable nature of performance art and the immutability guaranteed by the copyright regime have resulted in many instances of dispute among performance artistes. It is possible, however, to identify another attitude towards creative produce which disregards the fundamental assumptions of copyright. Wherever art and other creativity has come to the service of an ideological motivation, artistes and activists have shown little concern about the copying and recopying of their work by other activists. This is especially true in the case of theatre collectives engaged in agit prop theatre activity.

Through an analysis of the development and consolidation of the copyright regime, the conflicts arising out of the administration of the copyright legislation, the resolutions to these conflicts, the existence of various creative systems which operate and thrive outside the purview of the copyright doctrines, I argue in this monograph that the notion of copyright

and intellectual property is inherently status quoist. Scholars of copyright and intellectual property have repeatedly argued that the copyright regime has an effect exactly the opposite of what it promises to achieve — it hinders creativity instead of promoting it. They cite the increasing ferocity of copyright laws and the ever-increasing duration of protection guaranteed to a published work as antithetical to the function of knowledge as an element which exists in the public domain. But the ever increasing fetish of privatisation of everything around us which till very recently was taken to be common property to be enjoyed by everyone — rivers, lakes, minerals, renewable sources of energy, air space — knowledge and information has been a casualty to the ravages of private capital. With the ever-lengthening terms of copyright protection creative works have receded further and further away from the promise of one day being returned to the public domain.

The first chapter, 'Writing, Copyright and Wrongs', begins the story from the days of the oral and scriptural distribution of texts. This was also the time where the prevalent mode of earning for the creative artist was patronage. Within the patronage structure, the creative artist did not relate to the work of creation as his property. Also, much of the scriptural literature was religious in nature and it was undertaken under the tutelage of an ecclesiastical authority. The rewards for such efforts were mostly other-worldly. But with the coming of creativity outside the purview of ecclesiastical and patronage structures artists began to look upon their works as property, as a source of earning a livelihood and in certain cases as a route to riches. Then, with the advent of print and mechanical reproduction of art, the profit motive entered into the domain of the distribution of art. Art, which was till now a medium of communication between the artist and the audience, was now to be mediated by the needs of profit earning for the print, publisher and producer. The coming of mechanical and mass distribution of art also altered the manner in which the state would control

expression and dissent. It was at this moment that first steps were taken to the birth of copyright when various Western European monarchies struck a deal with the printers to guarantee profit and monopoly in the trade in exchange for ensuring that all matter printed by them were free from libellous content. For a long time, the copyright legislations continued in accordance to the conveniences of the crown and the printers, with patronage structures and the manuscript circulation continuing to be a viable system of artistic production. But as the market of print assumed primacy, authors began to resent the authority of the printers and argued in favour of limiting the latter's monopoly. It was at this stage that the British Crown intervened with the Statute of Queen Anne in 1709, a legislation which put itself forward as an act in favour of learning and knowledge. It specified that beyond a stipulated period the work would revert to the public domain. Thereafter, in France and in Germany, authors argued for an addition of the concept of moral rights of the author into the copyright legislation. They argued that even when the author had sold away the commercial rights for a particular work to the publisher, the law ought to grant the author protection against unjustified usage or distortion of her work. The notion of the linkage between the author and the work continued to grow as the cult of individualism grew in emphasis during the Romantic movement. The Romantic notion of the individual author genius whose power of imagination was the fountain source of a work of art went on to argue in favour of greater protection being granted to the author to ensure that the author reaps the benefits of her creative energies and efforts.

As time progressed, the copyright regime grew in various aspects, from provinces to national legislations, which in due course took the shape of international legislations. Legislation had to constantly adapt itself to newer technologies. But most significantly, the term of copyright protection has been increased gradually till almost perpetuity. The original argument of

copyright legislation, to allow the publisher a few years of protection to realise profit against investment so as to encourage the printers, publishers, producers to facilitate advent of the work to the public domain. But the promise of the public domain and the public good has since receded in the era of the Trade Related Intellectual Property Rights (TRIPs) and creative works are now regarded as inviolable private property. Interesting that all such legislations are based on the argument of the protection of the rights of the author though the artist/artiste gives up the commercial right entailed by her creation to the printer, publisher or producer at the very instance of publication. I have demonstrated that not only do artists/artistes not reap the greatest benefits of the protection offered by copyright laws — it is the printer, publisher, producer who does — but also that increasingly the printers, publishers, producers are asserting themselves to make decision in creative inputs, thereby stifling creativity to commercial interests. Scholars have argued that copyright legislation in effect stifles creativity.

'Creativity and Ideas Beyond Copyright' takes this argument forward to recount various systems of artistic production where creativity has existed without the protection of copyright legislation. It also presents cases of disputes which have arisen between artistes and producers on the issue of creative discretion and copyright. 'The State and the Theatre' takes a close look at theatre as a creative form which has existed alongside the copyright regime whereas, its functioning defies many assumptions of the copyright laws. Theatre and other performance forms are difficult to pin down to an unchangeable text. Therefore, historically the state has placed restrictions on it through censorship and licensing. Yet attribution of authorship is difficult in theatre and other forms of collective and easily mutable art. Moreover, theatre has always been a favourite mode of propaganda for political activists and movements. The final chapter 'Theatre, Sharing, Change' studies agit prop theatre groups which not only produce their

plays collectively but also display a degree of unconcern about protecting their ‘intellectual property’ and would prefer that the texts they produce travel freely. The principles of copyright not only prove inappropriate for collective forms of art, they are also inimical to social change. Moreover, the theatre which has existed outside the purview of mechanical reproduction of art presents itself as a precursor to an age of digital reproduction where minimisation of production and distribution costs has been made possible. I shall look at the possibilities which have been thrown up by the Creative Commons movement and relate them to experiences of theatre.

In various stages of working on this project, I have had the occasion to interact with numerous scholars many of whom other than showing a deep interest in the subject have also shared with me ideas and insights which have helped develop my arguments. However, there have also been occasions when people have questioned the validity of my claims and expressed doubts over my intentions, sometimes implying that my intentions may not be entirely honourable. I take this introduction to be an occasion to answer some of the questions raised, often in jest, by people steeped in the validity of the claims of the copyright regime.

The first of these questions is point blank: Do you support piracy? This question reminds me of the classic US former president George Bush formulation — you are either with us or with the terrorists. The possibility of a third alternative does not exist. The unipolarity of a post-Cold War world seems to have rubbed off on almost all aspects of human existence and thought and the possibility of a third alternative and a non-aligned position is rudely written off. My answer resides precisely in this non-aligned space. I do not support piracy but I hate to be in a system where piracy is the only way by which one can have access to knowledge, information and art if one does not have the ability to pay for it. When I go to a river which has not been privatised, I do not have to pay anyone.

When I use the road in a city, other than private expressways which charge toll taxes, I do not have to pay any user charges. Knowledge should be free, both as free lunch and free speech, and should be paid for through common resources and administered by the community. If a book is available for sharing in a library why do I have to steal it from someone who has a copy? If a book, a piece of music or a certain software application is available is freely distributed why should I be required to steal it? I advocate increasing and adaptive use of the Creative Commons licences to ensure great and freer distribution of knowledge, information and art. Knowledge cannot be restricted to the privileged few rationed through purchasing power. If knowledge, information and art are freely available and distributed, piracy itself would be a misnomer. But till such time that our legal and judicial system accepts this point of view, over-riding the restrictive practices of the hunger for profit of the information industry, we cannot keep the growth and development of human kind a prisoner to profit accumulation. At the risk of being labelled a 'pirate' the thirst for knowledge needs to disregard the hunger for profit.

The second question that has been asked of me is: Do you support plagiarism? To this my answer is legal. Plagiarism and piracy are not one and the same. Piracy is a legal issue, plagiarism is a moral and professional one. No one can be sued in a court of law on account of plagiarism — the matter has to be framed as one of piracy, that is violation of copyright. There can be two instances in which a case of legal copying can still be guilty of plagiarism. Copyright legislation includes the provision for what is termed fair-use policy. That is, a certain portion of a text can be legally borrowed for the purposes of citing in a later work. However, to include such borrowing without adequate attribution would be a case of plagiarism. For this would mean to pass off another's idea(s) as one's own. The proper redressal of violations related to plagiarism would not be the courts of law, but the public domain, the community

of academicians, the media and the readership of a work at large. The fall out and compensation for a crime of plagiarism would be moral, professional and loss of reputation of the wrongful borrower and not in immediate monetary terms. The second instance where an act of plagiarism need not be an act of piracy is for works which exist in the public domain or have been distributed under Creative Commons or Copyleft Licences. If one passes off a couplet by Tulsidas as one's own the matter cannot be settled in a court of law, though it can be considered to be an act of great offense and condemnation. Therefore, my answer to the question is I do not support plagiarism. I do consider borrowing of ideas an essential fact of life and is essential for the growth of the human intellect. Even in circumstances where one may not be able to attribute an idea or a portion of work to someone for various reasons, the publishing agency or the author should not pass off the borrowing as one's own creation.

The third question is, perhaps, most pertinent: Would you keep the copyright to this monograph to yourself? This question, also made in jest, can also be considered insinuatary. It can be paraphrased to read — we know that you are going to keep the copyright to your own book while you are advocating a rethink of the copyright regime. The question carries in it an accusation of double standards. Let my answer also begin in jest. 'Copyright' legislation by its very definition regulates the right to copy and, therefore, comes into contention only when there exists or is about to exist more than one copy of a work. This is as of now the only copy of this monograph. Hence, the issue of copyright does not come into play unless someone thinks of it as worthy of making further copies of. But more seriously speaking, I would like to maintain two different attitudes to the two aspects of copyright — commercial rights and moral rights. While I would like to eschew the commercial rights, I would like to maintain my moral rights to be called the author of this monograph. Ideally, I would have liked to distribute this

monograph under a Creative Commons Attribution-Share Alike Licence distributed in open-standards electronic version on the internet. But that is the ideal situation and the world around me is far from perfect. For professional reasons I have to go through a peer review process and certification from some publisher who is recognised by the academic world. Also, just putting up the ebook on any website on the internet may cause my work to be missed by much of the probable readership. The stamp of approval of an established publisher is important. Unfortunately, most established publishers in India today are yet to welcome the idea of making copies of a book they publish available for free download on the internet. Thus, the roles of the printer and editor continue to remain amalgamated. So I have to accept the conditions of publication and copyright. However, may I add that in the event of a publisher agreeing to publish a manuscript the commercial rights of the author comes to an end the very moment at which the author signs an agreement with the publisher in exchange for a specified amount in royalties.

Writing, Copyright and Wrongs

Before the advent of print in England, the primary modes of dissemination of ideas was through oral communication and script. The two worked in tandem with script forming a mode of communication among the literate population. Secular literature declined with the advent of Christianity and copies of ecclesiastical literature were made by church scribes. Such literature were studied by the clergy and belonged to the church. The manuscripts and their content, therefore, were fully within the control of the church and the state to which it was closely allied. There was no sense of individual ownership of such ecclesiastical manuscript and heavenly reward was the just compensation for the scribes and ecclesiastical writers. It was with the growth of the universities that laymen became men of letters and secular literature was revived. The men of the university needed much more than heavenly reward and assumed a position under the patronage of noblemen (Masterson 1940, 622-25). The moment of technological change when the relationship between the author and the text was altered came in 1476 when William Caxton produced the first printed book in English. Initially, though the printing of books was vastly restricted to classics and religious tracts. The advent of printing did not immediately alter the attitude to copying—printing behaved as a more efficient way of copying, with mass production still not a reality. By the sixteenth century, with the growth of learning, the demand for cheaper books rose and the printers' search for saleable books increased. The unceasing demand for books gave rise to a new industry. There were very few printing presses in England, mostly located in London. The printers did not want competition and were secretive about

the process of printing (Judge 1934, 3-4). A book once printed can be reprinted several times by other printers, thus limiting the earnings of the first printer (Masterson 1940, 467).

From this point on it is possible to identify two relationships—one, between the author and the printer over the ownership of the texts and two, between various printers over the right to copy the text. It was not until the reformation was well under way that the church grew suspicious of the blasphemous potential of the printing press. It was then that a third relationship developed, that between the state and the printers, over the right to print books. To begin with, the printers did not seek permission from the author to print their manuscripts. In fact, on numerous occasions a book was printed without the author's knowledge, and sometimes without knowing who the author was (Baumol 2006, 58). It was also possible that the version which was printed would have been copied many times and be an imperfect copy of the work, or the author would have made changes to the original which would not be reflected in print.

Early Legislation

Since authors had not started depending on the printing of their books for livelihood, they continued to view the manuscript as the primary source of circulation. In certain occasions the printer did offer some money to the author of a book, but it was more in the nature of patronage which governed the creative economy. The author was not looked upon as the sole and soul source of the creative work, but as providing one of the factors which went into book production. In Germany, where the development of the printing industry developed much later, this is how the "book" was described in 1753:

Book, either numerous sheets of white paper that have been stitched together in such a way that they can be filled with writing; or, a highly useful and convenient instrument constructed of printed sheets

variously bound in cardboard, paper, vellum, leather, etc. for presenting the truth to another in such a way that it can be conveniently read and recognized. Many people work on this ware before it is complete and becomes an actual book in this sense. The scholar and the writer, the papermaker, the type founder, the typesetter and the printer, the proofreader, the publisher, the bookbinder, sometimes even the gilder and the brass-worker, etc. Thus many mouths are fed by this branch of manufacture.

(quoted in Woodmanse 1984, 425)

Thus, 'the scholar' or 'the writer' is but one component in book production and is treated as equal to the bookbinder, the typesetter and even the brass-worker. There was nothing in this definition which suggested any special position or faculty with which the author is endowed. Or that the work of the author constituted a value that transcended the manuscript in its physical form (Woodmanse 1984, 443). The experience of the writers could be related to the other arts as well. Painters in the 15th century Florence were regarded as skilled artisans and paid accordingly (De Marchi and Miegroet 2006, 97). For performance art forms like music and drama the experience was slightly different due to difference in form. The modern concept of the performance text was yet to emerge. Musicians, who were making the transition from the church to the courts of noble men between the fifteenth and the seventeenth century, could hope to earn freelance income by publishing the music script. But the impresario of the opera had the first right to the musician's script. Spurious copies of the score could make their way into foreign courts and cause the musician to lose his position with his patron who would charge him for disloyalty (Scherer 2006, 129-37). On the Elizabethan stage it was the theatre manager who had the say over the script and not the playwright. The theatre manager further had the privilege of utilising the services of more than one writer for a particular act.

The printers who made the maximum capital investment in

paying for the various factors of production, printed for profit—and like other manufacturing guilds wanted to protect themselves from competition. The need for ecclesiastical and state control on potentially seditious material and the pressure from printers' guild for monopoly over the books that they printed resulted in the earliest legislations en route to the copyright regime. In a move to restrict the entry of papistical literature into England, Henry VIII banned all commerce in foreign-bound books. In 1557, Mary granted the Stationers' Company a monopoly on printing. The Stationers' Company was directly answerable to the Queen and so this allowed the monarch control over material produced by enemies and challengers to the crown (Judge 1934, 19-25). The wording of the licence granted to the Stationers' Company makes it very clear that the Crown's concern was to put in place an effective mechanism for ensuring censorship of the press. Fines would be levied on stationers or printers for printing a book "contrary to our ordenaunces that ys not havynge lycense from the master and wardyns" (quoted in Feather 1994, 196). It decreed that, "Euery boke or thinge to be allowed by the stationers before yt be printed". Though the Injunctions of 1559 suggested that the authority for censorship lay with the Privy Council and other officials of the church and the state, in practice it was the charge of the Stationers' Company to ensure that all that was printed by the printers associated with the Company was permissible under the law. Each book had to be placed before the Company's register and had to be approved by the Master and Wardens, the elected senior officers of the Company and their advisers, a body soon formalized into the Court of Assistants. The Stationers' Company maintained a register of books — the Stationers' Register — which was in fact a record of the assent provided to the printing of a book by the Masters and Wardens of the Company. In exchange for this service the Crown granted the Stationers' Company the right to print books, which was interpreted under

the norms of the licences granted to various trade guilds at the time to be a 'unique right' to print books within the land. Within its own constituents, the Stationers' Company further ensured the monopoly of a certain printer to print a particular book. The 'copy', the manuscript as it came to be known, was looked upon as the property of the first printer who printed it and others were disallowed from attempting to reprint the same 'copy'. An entry made in 1564 records a transaction between two printers over the transfer of the rights to print a copy — the name of Thomas Marsh being registered as being the owner of two copies "which he boughte of" Luke Harrison (quoted in Feather 1994, 197). By 1579, there was even evidence of 'copies' being used as security for debt and against mortgages. The manner in which a printer would acquire a copy was quite different from the present day. The printer could pick up any text, either freshly written or available in manuscript form or even commission a writer to prepare a copy for the print. By the early seventeenth century, a certain kind of copies was differentiated from the rest and was termed as "prerogative copies", that is copies for which there was "no particular author". For instance, works which were compiled over long periods of time by several authors would come under the category of "prerogative copies". The Crown had the ownership of all "prerogative copies".

Though this charter of monopoly granted to the Stationers' Company was effective in controlling the circulation of seditious material, as printing technology improved, piracy flourished mainly among poorer men in the trade who tried to scrape up earnings by printing a popular book. The printers were unhappy with the 1557 law as it granted the monarch a monopoly over book production. The English Monopolies Act of 1614 nullified the control of the crown over printing and once again piracy flourished. The restrictions were replaced once again when the Cromwellian regime took power in 1642.

After the restoration of the monarchy in 1660, the printers demanded a law that applied itself to the printed book and not to the act of printing.

Though the bulk of the pressure on the state to enact a legislation protecting the act of book publishing was exerted by the printers, authors too had their issues in seeking similar legislation. The period between sixteenth and eighteenth century was one when, like almost all aspects of European life at the time, literary and artistic activity was undergoing a process of transformation. With increasing involvement of the writer in public life more and more writers sought to make a career through publication of their work. But the censorship of the press, the unwillingness of printers to take on experimental work, the incidence of unauthorized printing of manuscripts and piracy of published works made this option extremely difficult. In 1643, John Milton argued against the censorship of the press in *Areopagitica*. John Locke's essay of 1690, *Essay Concerning Human Understanding* and *Second Treatise of Government*, argued that since art and other creative material are produced by the labour of the human body, it rightly belongs to the person producing it. In 1704, barely five years before the Statute of Anne ushered in the first legislation on copyright protection, Daniel Defoe argued in *An Essay on the Regulation of the Press* (1704) for the state to encourage writers to act in the service of knowledge by guaranteeing the right to prevent the unauthorized publication of their works (Defoe 1958). Edward Young raised the issue of property and argued, in *Conjectures on Original Composition* (1759), that the writer was entitled to his creation due to his original contribution to the world of letters (Woodmanse 1984, 430-31). Young's work in translation produced a response from the German philosophers Herder, Goethe, Kant and Fichte who in their arguments sought to locate each book as carrying the imprint of its author.

Copies for Empire

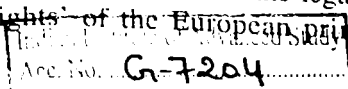
The entry of the ideas of copyright into India when the subcontinent became a part of the British Empire is a fascinating story. It was with the advent of print in India that the ideas of copyright entered India. And like many other concepts which were imported to the colony from Europe, copyright too took some time to adapt itself to the needs and peculiarities of functioning in a new environment. Before the British introduced printing Indians were not accustomed to mechanical reproduction of the word. Both the initial reasons for the use of the printing press in India were ideological, both sought to help the assertion for British superiority and to fulfill the meta-narrative of the civilizing mission — the missionaries' zeal to propagate and convert Indians to Christianity; and the educationists (including missionaries) to set up schools and educational institutions. So the initial printing efforts in India were set up by the missionaries. Over time, presses were set up by secular authorities like the School Book Society and other agencies of the colonial government, as well as private presses. It was with the growth of vernacular education and vernacular literacy that the created demand for books printed in these languages. The first concerns of the colonial government with printing in India were not those which emanated from the desire to protect intellectual property. Certainly the ideological zeal of projecting themselves as the just and natural rulers of their Indian subjects the British printers were not bothered about copyright over their works. Moreover, with the number of printing presses being few and far between under the control of Europeans, the government was not unduly perturbed about challenges to its rule (Chatterjee 2008, 28-29). It was when the printing press reached the hands of the Indians that the colonial government's worries came to the fore — and these worries were not ones related to intellectual property but the possibility of seditious material being published and distributed from these presses. Their concerns were echoed to a certain extent by their

bhadralok subjects who were apprehensive of the cheap press of Bat-tala from which they feared literature encouraging social disorder could be printed. The first copyright legislation in India was enacted in 1847. This legislation was a ratification by the East India Company of the Copyright Amendment Act or the Imperial Copyright Act passed by the British parliament in 1842. The first act enacted specifically for regulating the trade in books and other printed material in British India was the Press and Registration of Books Act of 1867. This act required all printed matter in India to be registered and specified that “the printer and the publisher of every such newspaper shall appear in person or by agent authorized in this behalf in accordance with rules made under section 20, before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published” (Anon. 2010a). The books which were registered, would be published in the Gazette, as in the case of *The Calcutta Gazette* which carried an appendix as the Bengal Library Catalogue. The catalogue recorded the following details for each book: Author and title, brief subject, including the age of the book where the same is obscure, number of pages, name, address of the publisher and place of publication, date given on the title page, edition, price, name of the printer and place of printing and the number of copies. Invaluable as these records are for scholars studying the history of book printing in the colonial era they also help detect initial patterns of ownership of ‘copies’ of various books. While most books are registered with the name of the printer, there are certain where it is the author who is noted as the owner of the ‘copy’ (The Calcutta Gazette 1922).

Disputes related to copyright arose because of the inadequacy of the 1847 copyright legislation with respect to India as a multi-lingual country. The 1847 legislation was framed to satisfy the needs of a monolingual print culture in Britain. It did not envisage the disputes that could arise due to the translations from one language to another, chiefly in this case from

expensive English language books to vastly cheaper vernacular translations. Though by 1886, the Berne convention did provide protection against unauthorized translations such protection was granted for translations made across political borders — for national boundaries for Europe were also linguistic boundaries. However, since British India was politically considered the same territory as Great Britain, the law did not provide any protection against translations of books from English, whether in Britain or in India, into various Indian languages. The Bengali press regularly published translations of articles related to human interest, travel, science, art and education published in English periodicals. Translations of books, novels, histories and other kind of books printed in English provided ready material for publishing in Bengali. These books, published mostly in cheap editions from the Bat-tala presses were popular for they 'were cheap, entertaining, and interpreted the new knowledge and the European worldview in terms that the burgeoning Bengali readership could understand' (Chatterjee 2008, 29).

However, the value on the market for these books was too less for the English language publishers to resort to litigation or campaign for adequate laws to prevent a recurrence of such unauthorized translations. In any case, there was hardly any overlap between the markets for the two alternate language versions of the books. It was when the translation market turned to republishing prescribed text books and other material which had potential mass market that the English publishers could no longer turn a blind eye to the issue of translations. It was not that there did not arise any dispute related to piracy of books among the European printers and publishers in India. But the Europeans were careful not to allow their own disputes to spiral out into legal battles. The matters usually were settled out of court and through social pressure. However, with incidents of piracy where Indian printers were the offenders social pressure did not work. In a situation where the legal provisions failed to protect the 'rights' of the European printers, the only other


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recourse open to them was to themselves undertake the publication of cheaper translations quicker and before any other printer did. In this they relied on a superior network of distributors to maintain an edge over the Indian printers.

Even in conditions when the European publishers attempted to seek protection and exemplary judgment from the courts of law such rulings were not readily to be had. In a case between Macmillan publishers and Khan Bahadur Shamsul Ulama Munshi Muhammad Zaka Ullah, of Kucha Chelan, Faiz Bazar, Delhi, in 1895 the court did not take a view against translation as a violation of copyright. Zaka Ullah was accused by Macmillan of having published an unauthorized Urdu translation of Issac Todhunter's *Mensuration and Surveying*. Moreover, though the publisher of the book Macmillan accused Zaka Ullah of piracy, Zaka Ullah had in actuality secured permission from the author of the book Issac Todhunter himself. But, under the provisions of copyright law, permission from the author is not recognizable as sufficient for publishing a translation unless the publisher's sanction is also available. Zaka Ullah was an educationist and a mathematician and his motive was to ensure the spread of the mathematical ideas contained in the book among the students in the Urdu medium of education.

In his judgment, the judge Justice Farran ruled that Macmillan's case wrested not on what the law was but 'what the law ought to have been'. Farran further remarked that this particular case concerned

a conflict of rights and interests; a conflict between the intellectual interests of the persons for whom the translations are intended, and the caprice or possible pecuniary interest of the proprietor of the copyright.... There is no hardship on him; he can always protect himself by being the first in the field with a translation. (quoted in Chatterjee 2008, 33-35)

The interpretation of the court, therefore, had the interests of the spread of education among the Indians as a greater

responsibility of the British establishment than safeguarding the interests of the publishers. It suggested that though it was the prerogative of the first publisher to print translations of textbooks, if they failed to do so the public cannot be deprived of access to these books. And if another printer came forward to provide a vernacular translation of the book it cannot be held against him. That as far as the expansion, consolidation and defence of the regime in India was concerned, the colonial establishment took a lenient view over the protection of private interests of European printers and a lax interpretation of the intellectual property. In fact, there were several instances in which the publishers were locked in battle with Indian universities who had published extracts from books or cheap reprints as part of their curricula (Chatterjee 2008, 61-62).

There were also cases of cheap reprints of English textbooks or the publication of guide books and educational helps for texts in subjects like English literature. Though the law did have a clear position on the illegality of such operations, it was not possible for the European publishers to chase down each and every case of breach to the court. They had to respond through such other means as publishing cheaper editions of the books themselves and ensuring that they were available in bookstores before any competitor. It is evident that in this period any campaign invoking the consumers of such books to refrain from purchasing pirated volumes, as undertaken by the entertainment industry today, was not to be of much consequence. For the people then, and even today as one might argue, were more than willing to be complicit with any action which would fetch them the same goods at a cheaper price. Some of the publishers were even extremely ingenious in involving the readers in the act of piracy. One clever method was to leave vacant portions in help books of literature and instruct the students to copy the required text against the appropriate explanatory passages. Of course the buyers were happy to be able to procure both the text and the notes in one

place at a fraction of the cost of the original edition and copy in the text from a library (Chatterjee 2008, 69).

However, such leniency ended where the security of the colonial regime was concerned. By the early nineteenth century Indian opponents of British rule had taken to reprinting and translating books which could inspire further dissidence or dissatisfaction against the government. By then the government had started adopting a stricter approach on intellectual property (Bently 2007).

Soviet Copyright

Perhaps it would be pertinent here to take a quick look at copyright legislation as it prevailed in the Soviet Union. As the Soviet Union was formed with a stated objective of building a system distinct from the one prevailing in the capitalist countries, it would be interesting to see whether Soviet attitude to intellectual effort was any different than that in the capitalist countries. Like many other countries the Soviets refused to join international copyright agreements till very late. It was only in 1973 that the Soviets became signatories to the Universal Copyright Convention (UCC). Though the Soviet Union did have a copyright legislation in place before this period, significantly the protection it provided to the works of foreign authors did not conform to international norms. It might be noted here that translations of works of foreign authors were extremely popular among the people of the Soviet Union. In fact, translation of works from one language to another, particularly within the Soviet Union was a very important aspect of the Soviet publication policy. Books in the Soviet Union, as of 1973, were published in eighty nine languages spoken in the country as well as in many foreign languages and were exported for sale in different countries outside the Soviet Union (Newcity 1978, v).

Initial Soviet copyright laws carried the legacy of the Czarist

regime. Russia had always maintained its right to translate freely from foreign authors and adopt their works for the theatre and the opera. Though in the early part of the twentieth century the Czarist government had entered into bilateral agreements with some foreign governments to seek permission from the writers and publishers and pay requisite royalties. Once they had assumed power, the Bolsheviks annulled all international treaties signed by the Czarist government. In the initial years of the Bolshevik government, many works, both past and present were nationalised — which meant that only the Soviet government had the right to publish them. In 1971, a decree was issued to set up the People's Commissariat of Education which was directed to publish cheap edition of all national works. These works were also available for private publication but the royalties paid would go to state than to the heirs of the authors. In the early 1930s, the Commissariat directed the setting up of the All Union Administration for the Protection of Copyrights which was to protect the rights of all authors and ensure their royalties were paid. However, the author could no longer refuse permission to print a work as long as the royalties were paid. The royalties were to be collected by the Union on behalf of the author and small percentage of it went into the Union coffers. With the funds so collected, the Union ran a press, bookstores, medical clinics and allowances for writers (Newcity 1978, 25-26).

An important feature of Soviet copyright law was that copyright agreements between the authors and publishers were limited in character. They were not a blanket transfer of rights from the author to the publisher. The agreement would specify the number of copies of the work which could be printed along with the price of the book, and these number of copies would have to be published within a specific period beyond which the author could negotiate with another publisher or the same publisher for another limited agreement. Though this sounds to be extremely liberating, let me add that all printing presses

in the Soviet Union were owned by the state or agencies of the state.

We therefore, find in the Soviet copyright system a greater stress maintaining the public character of works of art. The state policy attempted to support the authors by setting up social security mechanisms. However, the system was also one which allowed the Soviet government to maintain a strict control of all published content.

Progress and Pervasiveness of Copyright

The idea of copyright emanated as a system to maintain balance between an incentive to printers for bringing literature to the public domain and exercise of control over the content of such literature. Prior to 1709, the idea of a 'copyright' was just that, the right to copy. Yet the Statute of Anne in 1709, marked several changes in the attitude of the law towards the production of intellectual goods, which differentiated it from other sorts of goods. It now applied the right to print on a particular work, rather than the entire exercise of printing. But the monopoly granted to the printer to print a particular book was not a perpetual right but limited to 14 years. The law, which was titled "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies", recognized the role of information in the public domain which could be accessed by all other users to create further works (Jaszi 1991, 468). Even in the copyright period the law did not seek to restrict the availability of the book in public libraries for non-commercial distribution. Thus, even at its originary moment the legal view on protection of intellectual property displayed ambivalence between the need for free access to information and that of incentivising the act of bringing information and knowledge in the public domain. This was so because intellectual property differs from other forms of property in two crucial ways. First, intellectual property or

information is what economists term to be “public goods” which are non-rival and non-exclusive in their consumption, i.e. the consumption of the good by one person does not prevent another person from using it. Second, all creative products involve two kinds of costs — the “cost of expression” or the cost of the producing the first copy of the work, this being fixed cost; and the “cost of reproduction”, that is the cost of producing multiple copies of the product from its first copy (Landes and Levine 2006, 214). In the era of mechanical reproduction of art, a combination of the two costs involved prevents the author or the artist from bringing the work to the public domain through mass production, which was possible in the manuscript and oral cultures. In the era of mechanical reproduction a fairly large capital input is involved. Also, the cost of producing the second and subsequent copies is substantially lower than that for producing the first mechanical copy. A combination of these two factors meant that while one had to depend on the printer to bring the work into the public domain, the printer in turn demanded substantial protections in order to reap returns against their investment which amounted to restricting access to the work. By restricting the copyright period to 14 years and ensuring that the work is free for being stocked in Circulating Public Libraries, the 1709 law registered this ambivalence in the basic tenets of intellectual property legislation.

Interestingly, while the copyright legislation restricts the tenure of right to reproduce a work, it is distinguished from the “moral right” of the author of the work. “Moral right” was the addition of French writers like Victor Hugo to the Anglo-Saxon concept of copyright which was primarily concerned with economic rights. By agreeing to grant the publisher permission to print a work penned by her, the author gives up the copyright over the work, but that does not transfer the “moral right” to be called the author of the work and to be protected from damage caused to her reputation through inappropriate usage of the

work. However, in the modern day “moral rights” of authors too are restricted through extra legal measures. Law does not recognize the “moral rights” of artists involved in the creation of “works for hire”, e.g. programmers working in a software firm or copywriters preparing a jingle in an advertising agency. Protecting the misuse of an artist’s material is often subject to huge legal expenses and it is seldom that an individual artist can match up to the might of a corporate. “Moral right” is also restricted to the artist’s life term (Landes and Levine 2006, 224-225).

Copyright laws have grown in scope and severity down the centuries and, today, have encompassed almost all forms of creative expression from mechanically reproducible art-like books and films, to the visual arts like painting and sculpture to the even intangible forms like theatre and choreography. From the fourteen years in the 1709, the Statute copyright protection is extended to fifty years after the death of the author under the Trade Related Intellectual Property Rights (TRIPS) regime. What initially was a right to copy has now been extended to the right to control the usage of the work in any form. Lawrence Lessig explains in *Free Culture*, “even if the copyright to Shakespeare’s works were perpetual, all that would have meant under the original meaning of the term was that no one could reprint Shakespeare’s work without the permission of the Shakespeare estate.” Whereas, had Shakespeare’s works been produced under the conditions laid down by the TRIPS regime, the copyright holders could control over “about how the work could be performed, whether the work could be translated, or whether Kenneth Branagh would be allowed to make his films” (Lessig 2004, 90). The grant of copyright protection was initially at the hands of local councils often varying substantially in conditions in various parts of a monarchy or dukedom. National copyright laws came about in the eighteenth century. In the nineteenth century, various nation-states entered into bi-lateral agreements to grant copyright

protection to works produced in each other's territories. It was with the establishment of the Berne Convention in 1886 that the first move to develop an international standard of copyright was undertaken. It was revised through the years till the Universal Copyright Convention (UCC) was adopted in Geneva in 1952. But the UCC was not acceptable to many countries outside of the French and British empires — the Soviet Union joined it only in 1973, the United States as late as in 1980s and China in 1992. The international regime on copyrights was brought under the most uniform character in history with the TRIPS agreement in 1995 followed by the establishment of the World Intellectual Property Organization (WIPO) in 2002.

Freedom to Copy

In *The Gift*, Marcel Mauss suggests that the creative good is “the product of the collective mind as much as of individual mind” and that authors are the “benefactors of humanity”. He laments that the law creates conditions which does not allow the creative work to “fall into the public domain or join the general circulation of wealth as quickly as possible” (Mauss 1990, 67). No work can be fully original. To begin with the language of expression of the author's ideas belongs to the community. The author borrows from the public domain and alters according to the needs of individual expression. Creativity, thus, exists in the in-between space between the langue and the parole, between the individual and the collective, between the original and the traditional. Even when the awareness of the nature of borrowing has been there, the difficulty of quantifying the exact contribution of each benefactor and paying adequate compensation has meant that compensation is paid only to the last contributor. This has occurred essentially because of the existing system of compensation — a monetary compensation essential to clearing the conscience of the financier who then appropriates all rights pertaining to the work.

As I have demonstrated earlier, monetary compensation is not necessarily the only motive for an artist/artiste. Also, the monetary compensation received by the artist/artiste, in most cases, is no comparison to the tremendous sums raked in by the financier. The dissemination of her work, the possibility of influencing further creativity, the Keatsian desire to live beyond the work and in the case of ideologically motivated artists/artistes, the desire to change the world are extremely palpable reasons to engage in creative labour. For most of us in academics it is not the awareness that the journal article or the book chapter which we will produce would earn us substantial profit, which excites us, but the possibility of intervening in current debates, or the bettering of our academic profile is what motivates us. Moral and ideological motives are, therefore, sufficient motives for human action. While saying this I am aware that for many artists/artistes monetary gain is the chief motive, but that is precisely my point — among all available motives for creative production, the way artistic production is predominantly organized today encourages and legitimizes monetary motivation.

Unfortunately, in the case of artists/artistes and intellectual workers in the modern period, there has been a need for financiers who would take up cost of bringing the work to the public domain. Other than the role of financiers there is also the role of the gatekeepers — those who would decide which piece of work deserves to be financed. The gatekeepers' role was important for the audience to be able to decide which work to spend their time and money on. Historically, the high costs of production caused the gatekeeper's job to be amalgamated to that of the financier. So capital has always had control over what or who gets seen and heard.

The advent of print technology revolutionized the dissemination of knowledge and made mass learning and readership possible. But the high input costs put a limit to the extent of democratization. In an effort to guarantee the

financier's right to profit, the intellectual property regime violates others' rights like right of subsistence, livelihood, community knowledge (Chandra 2009, 88). Beyond modern society, knowledge once produced was always considered to belong to the public domain by default. Though a certain text may have been attributed to Vyaas or Kalidas or Namdev, it never prevented others from reciting the verses. The possible user was not obliged to hunt out Namdev's publishers to seek permission to sing his songs. If copyright had been as pan-optical as threatens to be today, many of Rabindranath's songs would have a different tune, including the Indian national anthem. Today, with virtual publishing and online distribution of intellectual goods we stand at the threshold of another revolution. With digital technology and the internet, a possibility has been created where the traditional hiatus between the author and producer can be bridged, with the artist becoming the producer and distributor of her own works. The role of the gatekeeper need no longer be amalgamated to that of the financier. No longer is a copy imperfect. In the digital world the copy and the original are one and the same. Established media and software giants have sought to limit the liberating potential of this development. Software and hardware monopolies, like Microsoft have created nexus through which hardware comes preloaded with a certain software — and we all thought capitalism is about choice! They talk of Windows and Gates while all they develop are walls and fences!

But the era of our frustrations is over. With the ideas developed by the Free Software movement and the Creative Commons licensing, putting one's creative output into the public domain by default is now a reality. The experience of the Free Software movement shows that collaborative production and gatekeeping is a reality.

Here I should point out that the "free" in "Free Software" refers to not the "free" in "free lunch" but to the "free" in "free speech". That is, it is creativity unhindered by the limitations

of profit. Linux-based software which is available for free download are 'Open-Source', that is the creators of the software do not hold its programming code secret. This allows programmers from all over the world to write their own bits of innovations, which if accepted by the community of software users becomes the standard till the next innovation. Developers of Open-Source software are not motivated by the idea of profit, but by the original enlightenment ideal of free speech. The software is distributed under the Creative Commons licence under which the user can access the source code of the software, modify it, but is obligated to place the modified work under the Creative Commons licence. Creative Commons licences do not prevent content creators from earning a living. Some versions of Creative Commons licences allow authors to grant for-profit companies permission to publish the work after requisite agreement (Liang 2004). These licences make use of a creative innovation to existing copyright laws which allow copyright holders set terms and conditions to subsequent users. These licences makes Creative Commons a perfectly legal mechanism for sharing.

Creativity and Ideas Beyond Copyright

Chinks in the Armour

Though the progressive broadening of scope and effectiveness of the copyright regime appears to have a consistency in granting greater incentive for production and dissemination of knowledge and ideas through protecting those involved in creation and dissemination, the basic contradiction has remained that between the enlightenment ideals of unbridled spread of knowledge and ideas and the desire of profit which followed. Because of the capital investment involved, the relation between the author and the reader remained mediated by the publisher, producer and art dealer. The contradictions which are apparently ironed out in the legislations are visible through the numerous case studies where copyright laws are interpreted.

In 1888, when George Eastman developed the first Kodak camera, the handy alternative threatened to run over the cumbersome “daguerreotype” cameras. Photography could now be practiced by individuals outside the studio. This revolutionized photography as a social practice, as it was now possible for people to photograph moments and places and carry them back many miles. Certain litigations related to privacy had threatened to block the spread of the new invention as legally the photographer ought to seek permission from the subject or the owner of the subject before capturing a photograph. Had this objection been upheld the history of the development of photography would have been rather different (Lessig 2004, 31-35). What was in the early nineteenth century considered to be a privacy-related litigation, would today have been more effectively labelled as a copyright litigation. An

enthusiast photographing a performance or even tourists photographing a building without securing requisite permission gate could be a potential violation of intellectual property rights.

Lawrence Lessig recounts the court battle between the Radio Corporation of America (RCA) and FM radio stations in the 1930s that caused the crippling of the potential of the powerful technology. In this case, the courts ruled in favour of the RCA's AM radio empire (Lessig 2004, 3-7). Yet more recently in 1984 in the case of *Sony Corp. v Universal Studios Inc.*, where the latter tried to prevent the entry of the household Video Tape Recorders, the US Supreme Court ruled that business interests could stop technological development by quoting the Article 1.8 of the US Constitution: "ultimate aim of copyright law is the achievement of a public purpose: to stimulate creative activity for the general public good and to ensure public access to the products of such activity" (Nawn 2009, 6).

Needless to say the interpretation of laws have been inconsistent with respect to copyright and intellectual property. I would argue that this has been due to the contradiction between the aims of protecting both public good and private interests.

Beyond the law, corporate holders of copyright have used other methods to protect their interests. I have already talked of the use of the threat of litigation against financially vulnerable violators as a strategy of deterrence. Software firms today use another strategy of almost compulsive obsolescence of their products beyond a certain time period or number of uses. Music distributors use innovative packaging along with inlay cards and lyrics to give a feel of originality to optical discs which otherwise have the same content as a non-factory copy (Nawn 2009, 3).

Creative artists have, on certain occasions, expressed their frustration at the attitude of the corporate media giants. One of the most famous case concerns Marx - I mean the Marx Brothers. The Marx Brothers planned *A Night in Casablanca* (1946) as parody to the Hollywood hit *Casablanca* (1946). The producers

of the latter film, Warner Brothers, served a notice to the Marx Brothers warning them of the legal consequences of their proposed movie. Their argument was that the Marx Brothers' film would violate the copyright of the Warner Brothers to use the word 'casablanca' in the title of the film (Vaidyanathan 2001, 1). Taken aback by this argument as they were the Marx Brothers did not take recourse to legal cover. Instead they wrote back to the studio raising the issue of the title of incorporation of the two warring parties. They mentioned that "Professionally we were brothers long before you were". They also argued that there were other 'brothers' much before the Marx Brothers as well such as the Smith Brothers, the Brothers Karamazov, Detroit Tigers outfielder Dan Brothers. To take the jest further, Groucho Marx questioned if Jack Warner, one of the Warner Brothers, was the first Jack to exist in the face of the earth? For there was the existence of Jack the Ripper and that he knew of many Harrys before he ever heard of Harry Warner. Therefore, by principle of prior use, the Marx Brothers held copyright over the word "brothers" to refer to a partnership, and certainly the Warner Brothers did not hold any copyright over their own first names!! So if the Warner Brothers insisted in litigating over 'Casablanca', they would insist on control over 'brothers' (Lessig 2004, 147-148)!

Publisher > Writer

The Recording Industry Association of America (RIAA) which is a conglomerate of various media corporations in America works to protect the interests of its constituents. According to the Occupational Employment Survey published by the U.S. Department of Labour in 2001, the President of the RIAA made more than \$1 million in a year, while the average earnings of a recording artist stood at \$45,900 a year (Lessig 2004, 66). Though the explicit justification of copyright protection is to ensure the livelihood and stature of the artist, a study of relative

earnings clearly reveal that it is the secondary producers of art - the middlemen between the artist and the audience - who are the principal monetary beneficiaries of copyright protection. The term of copyright protection has grown manifold since its first inception, but if the author desires a broader distribution of her creative expression, she is required to enter into an agreement with the publisher, which declares "The Author hereby assigns to the Publisher during the legal term of copyright including any renewals thereof the entire copyright in the Work". Thereafter, the author is entitled only to a small fraction of the proceeds of the book and publishers are known to under-report the sales figures to authors to avoid payment of royalty. Not only do the publishers and recording studios exert their control over existing creative produce, they often also add clauses which exert control over the future creative produce of the artist. The artist then stands in the danger of having her creativity short-shifted by the profit-making strategies of the corporate publisher. When Sony Broadcasting Corporation acquired CBS Broadcasting in 1988-89, there was a change in the overall marketing goals of the company. Sony, which was till then a hardware manufacturer, now wanted a 'Synergy' between hard and software to boost profits. The singer George Michael, who had a contract with CBS, issued a public statement dissociating himself from this development for he found that for the new management artistes had become a 'become a small part of the production line for a giant electronics corporation, who quite frankly, have no understanding of the creative process' (Gay 1997, 68).

Such reactions are not only to be found among modern-day artists. In *Areopagitica*, Milton charged against the monopoly of printers describing them to be "old patentees and monopolizers in the trade of book-selling" who "do not ... labour in an honest profession to which learning is indebted" (Milton 2009). He argued that the commercial interests of printers had limited the goal of the enlightenment to free knowledge from

the closed walls of ecclesiastical control. In his autobiographical work *Dichtung und Wahrheit* (Poetry and Truth, 1811-13), Goethe described that the “beautiful equilibrium” that existed between the respected but poor poet and the rich book dealer became unstable in the rapidly expanding market. The poets began to compare “their own very modest, if not downright meager condition with the wealth of the affluent book dealers” (Woodmanse, 1984, 435). In the eighteenth century Venice, the trading of paintings was under the complete control of merchants and art dealers who acquired originals from painters and sold them at prices which were much higher. As a reaction, the College of Art in Venice stopped art dealers from enrolling as members suggesting to them that they should join the guild of furniture painters for they scarcely knew how to hold a brush! (De Marchi and Miegroet 2006, 101) Touché!

Music studios have cried hoarse claiming that the introduction of MP3 music format and the emergence of P2P (peer-to-peer sharing) have lead to severe loss of revenue. They have done so on the argument that it is the artists/artistes who lose out earnings due to online piracy. While many observers have doubted this claim - for it is not clear that all who download music from P2P networks would have bought them off the shelf otherwise - the fact remains that record sales contribute only a fraction of the earnings. Their major income comes from additional labour in the form of live music performances and endorsements (Liang 2004, 714). If anything the increased exposure of an artist/artiste on the peer-sharing network can actually lead to higher value in endorsements and live shows.

Not only does copyright not deliver on its promise of enriching the artist/artiste, super-earnings by an artist/artiste may actually dip her creative performance. No, here I am not talking of the megabuck-earning Indian cricket team. Marie Connolly, in a study of the economics of popular music, cited the case of Italian composer Giuseppe Verdi to suggest that security of increased earning may tend to reduce the creative output. Verdi

used the copyright protection on his compositions to augment his income and as his fortunes increased the pace of his opera-writing efforts slackened (Connolly 2006, 138).

Copyright protection creates access costs, not only for consumers of the artistic work, but also for creators of subsequent works. In fact, the entire intellectual property rights regime creates conditions in which innovation is stifled rather than promoted. Rajshree Chandra has argued that there has been a significant increase of the R&D in lifestyle drugs in the last few decades which allow drug companies to register super and easy profits. Private funded drug research has neglected the diseases which affect the less developed countries and the poor (Chandra 2009, 92).

Copyright law incorporates in its purview, the principle of “fair use” - which is the possibility of quoting a certain extent from a published work for in another work without that constituting a copyright violation. But within the world of the corporate media the “fair use” principle is a chimera for copyright holders seek to extract rent even from minor uses of copyrighted material.

Lessig recounts an amazing anecdote of how copyright can ridiculously hinder creation. He narrates the tale of a filmmaker John Else who made a documentary film, *Sing Faster: The Stagehands' Ring Cycle* (1999), on the stagehands of a theatre company, his film contained a particular shot in which he interviews the stagehands as they play checkers. For about 4.5 seconds of the shot, there appeared on screen a distant view of a television set playing the television series *The Simpsons*. The usage constituted what is legally defined as “fair use”, but to be safe Else sought permission from both the series' creator and producer. Both were willing to grant permission without hesitation. However, Fox Studios, the parent controller of the series, was not so accommodating - the Fox representative demanded “\$10,000 to use the clip of *The Simpsons*”. The representative further threatened “And if you quote me, I'll turn

you over to our attorneys” (Lessig 2004, 95-99).

The big guys in the media and publishing do not care for the law - they go about the protection of copyright or what they purport to be copyright with the same gung ho as George Bush when he declared that he intended to “smoke out” the terrorists from Afghanistan.

A game-theory based model developed by certain economists have shown that within the artist/artiste-financier relationship, there needs to be a sufficient number of conservative artists/artistes who would be willing to produce easily marketable art to be able to sustain the presence of innovative artists/artistes who would produce experimental work (Bryant and Thorsby 2006, 515-522). The discussion so far reveals that copyright is more effective as a protection for publishers' appropriation of surplus value from authors, than it is for the protecting the rights of authors. Copyright and other established models of Intellectual Property Rights are regimented to protect this exploitative relationship and the ever-increasing political and economic clout of the media conglomerates are used to maintain this hegemony. If the publisher-author/ artist-financier relationship is non-conducive to artistic experimentation the attitude to innovative arts being neutral at best, then if such innovation veers on the political and is developed as a challenge to the rule of capital, the attitude is one of outright rejection. Such a system can never support or tolerate dissident art forms. The nature of copyright as a system which stems the flow of knowledge, discourages innovation, and prevents free exchange of ideas.

Creativity through Copying

The primary justification of copyright is to create a well-entrenched system of incentives to encourage creativity and the creation of knowledge and encourage the creator to bring her work to the public domain. However, creativity continued

to thrive even outside the system of protection offered by copyright and thus, in art forms unaffected by technologies of mechanical reproduction of art. Unlike in the copyright regime, which requires a close identification between the author and the work, in these traditions of creativity often attributions of authorship are doubtful. Also, unlike the assumptions on which the copyright system is based, it is often impossible to clearly locate originality in a particular piece of art as stemming from the originator or the author.

Speaking in the context of pre-modern Sanskrit texts, Sheldon Pollock noted that it is anachronistic to speak of authorship and authorial intentions. Debates on religious and philosophical matters continued across generations with reference points being the expressions of ideas rather than a lineage of authors (Pollock 2001, 7). In his study of the tradition of kirtan in Maharashtra since the fourteenth century, Christian Lee Novetzke describes the songs of Namdev (1270-1350) as having been composed and transmitted orally. While later poets associated with the Varkari kirtan tradition who were associated with the actual act of writing acknowledge Namdev's legacy. While the Varkari tradition requires the kirtan to be attributed to the canonical saints, even in the Naradiya tradition where innovation is more explicit, tradition requires the kirtan to be ascribed to Narada. Novetzke locates the kirtatankar as the ultimate author of a kirtan performance with the multifarious references to and borrowing from various sources and interpretations. Even when the songs are noted in the bada or the notebook, the singers have the freedom to change a line for better sense, and the noting remains without any attribution to a composer (Novetzke 2003).

Similar is the story of other traditional forms which are oral in dissemination and use scripture for purposes of record. Within the Sufi tradition of poetry, proper unit of creation is to be ascribed to a sect, a network comprising God, the Prophet, saints and the shaykhs of the sect. Attribution patterns could vary

where all poems produced within a diwan or collection could be attributed to shaykh at the helm of the diwan, or could be anonymous in attribution and even have plural attribution. A certain composition may have been revised and re-revised by various members of a sect. The munshid, or the performer of the poetic text would be free to respond to interjections from the audience, practice intertextuality and was allowed space for interpretation. There existed a fluidity between the oral and the written, with the written text forming a tool for memory, thus re-entering the oral space almost immediately after being scripted. Whereas the metaphors in use were finite, creativity was exuded in the particular combination of images, the wit and interpretation. While certain acts of reinterpretation and poetic articulation may have been conducted individually, the practice of Sufi poetry required a spiritual guide, for the motivation of the poetry was not an aesthetic but a spiritual end (Frishkopf 2003). In his study of fourteenth century Sufi texts, Pankaj Jha describes in detail the process through which a Malfuz or the record of a conversation among Sufi saints or a discourse involving Sufi saints:

first there would be a gathering of a small or large mass of generally male individuals including the saint and the compiler. The composition of this gathering could vary and within limits all the individuals were free to ask any questions pertaining to Islamic beliefs and practices. The queries would be addressed to the master, who in response would offer answers and explanations. There would be cross-questions and further clarifications. (Jha 2008, 7)

The compiler-disciple's position was crucial in the composition of the Malfuz for it was he who would make the choices of which portions of the discourse to record and which were the queries which were to be highlighted. The compiler-disciple was not exactly an objective observer-recorder of the proceedings and would also participate in the conversations in his own right. The compiler also contextualised and prefaced the discussions. Thus, though the Malfuz was a written record

of an oral discourse there many authors of the text - the Shaykh who would hold the reigns of the discourse, make the initial points and answer the questions put to him in a manner he chose; the saints and other learned men in the assembly who would interject in the discourse and the compiler who would use the privileges of his narratorial position to weave the text.

The tradition of Persian miniature paintings, so beautifully illustrated by Orhan Pamuk in *My Name is Red* (1998), abjured innovation. The mark of greatness in a miniaturist would be to make exact copies of the paintings of the master painters of old, and to master the art of remaking the paintings to the extent that his painting hand would memorize the drawings and no longer needed the support of vision. In fact, the greatest achievement of a painter would be to go blind painting! (Çiçekoglu 2003)

The norms of authorship, incentives for creativity and the relationship between authors and texts are diverse not only in non-print cultures but in print cultures as well. Margaret Ezell has argued persuasively that even after the coming of print to England, manuscript culture continued to be the chosen alternative for writers and poets till almost the early decades of the nineteenth century. In fact, it was only after texts had enjoyed a successful script circulation that they saw the light of print. Ezell attributes this preference to the post-Restoration coterie culture and the lack of printing machines outside London (Ezell 1999). Other literary historians have ascribed the virulent attacks of well established writers against the Stationer's Company and the act of writing for print - such as that of John Dryden in *Mac Fleknoe* (1678) and Alexander Pope in *Epistle to Dr. Arbuthnot* (1734) - as aristocratic remnants. Whatever the case all these examples certainly demonstrate that the desire to be in print and earn money was not the sole motivation for creativity that drove these authors.

Closer home, master film-maker Satyajit Ray described in his memoirs, how the widow of Bibhuti Bhushan Banerji, the

author of *Pather Panchali*, turned down a lucrative offer made by another producer to produce the film version of the book because she wanted Ray to direct the film (Ray 1994, 33-34). Though Ray did not offer reasons for Banerji's choice it could be either of two - that she had given her word to Ray or that she felt Ray could do greater justice to her husband's narrative. Either way, profit was not the motive that drove her decision.

Non-conformity with assumptions behind copyright legislations are not only to be found with systems that exist outside or at the fringes of the capitalist system. One would presume that the present day Japanese economy to be a success story of capitalist development. Yet the functioning of one of Japan's most obsessive pastimes - Manga comics - defies the dominant notion of how intellectual property needs to be regulated. About forty percent of all Japanese publications consist of comics and their sales amount to 30 percent of all publication revenue. In the publication ethics of Japanese comics is the phenomenon of 'doujinshi' by which one comic strip can copy from another. But 'doujinshi' is not a mere copy of manga comics but requires the copier to add a element to the comic. Exact copies are not accepted as 'doujinshi'. Though the 'doujinshi' consists of a very significant portion of the commercial manga market no attempt is made by the publishers of the manga comics to to regulate the 'doujinshi' through copyright legislation. In fact, 'doujinshi' artists do not even seek permission from the publishers of the manga comics whom they derive their work from (Lessig 2004, 25-26).

The Salad Days of Capital

In the Long revolution in England, where the balance of power shifted gradually from the monarchy to the parliament, information played a key role. The violent conflict of the mid-seventeenth century Civil War gave way to party politics in the lead up to the Glorious Revolution of 1688. As we have seen

the church and the monarchy was always suspicious of the growth of secular literature and the freedom assumed by laymen in the pursuit of such literature. In various instances during the sixteenth and seventeenth centuries the crown tried to quell the voices of opposition by invoking direct censorship or through the Stationers' monopoly. But the bourgeoisie in its ascendancy devised ways of overcoming the challenges it faced, and ensuring a free distribution of ideas within its fraternity. While the monarchy placed restrictions on print, the bourgeois writers made use of script. Scribal culture which had registered a decline by 1640, revived after the restoration of the monarchy to circumvent censorship. This was particularly true of the dissemination of anti-Cromwellian and anti-Caroline satirical writings (Ezell 1999, 23). While circulating the texts the authors were not perturbed by the possibility of their false appropriation but were motivated to dismantle what they felt a oppressive rule.

The Coffee House became an important arena for the spread of democratic ideas and the strengthening of the public sphere. Coffee being cheaper than ale, Coffee Houses were more sociable than ale houses. These formed arena for political debates and exchange of pamphlets and satire. So threatened did the Charles II feel by the pressure generated by Coffee Houses that he issued a proclamation banning the "selling or Retailing of any Coffee, Chocolet, Sherbett or Tea" for "the Multitude of Coffee-Houses ... had become "the great resort of idle and disaffected persons ... [and] have produced very evil and dangerous effects; as well for that many Tradesmen and others, do therein mis-spend much of their time" (Charles 2009). But the public sphere had gathered much strength by then and the proclamation had to be withdrawn. Matters related to England's involvement in the Dutch Wars, the convening of the Parliament and the relationship of the monarch with the King of France were openly discussed in pamphlets and aloud. In an effort to garner support of the larger population in the Popish Plot against

the crown, The Earl of Shaftesbury is known to have distributed "A Letter From a person of Quality" at the Coffee Houses. Even Papists distributed their pamphlets at the Coffee Houses (Pincus 1995). Similar distribution of literature is known to have proceeded the French Revolution. Print and the free exchange of opinion were closely associated with political freedom and desire of systemic change in Europe in the revolutionary phase of bourgeois ascendancy.

Thus, we see that the sense of copyright being an inalienable right is a contested one. Certainly human creativity can do without copyright protection.



The State and the Theatre

The primary justification for copyright and other forms of intellectual property is to ensure that the creator of a literary or artistic work has enough incentive to bring the work to the public domain and to continue producing more works of art and literature to satisfy the cultural needs of the society. The copyright regime is the mediation through which a work of art enters the market — into a relationship of manufacturer and consumer. The work of art, thus, dons the mantle of ‘property’ and following the rules of the capitalist system the most efficient mode of property ownership is ‘private property’ for this symbolises the hallmark of the *laissez faire* doctrine. Working on the assumption of ‘profit motive’ it looks upon material or monetary compensation as the only possible form of ‘incentive’ that would satisfy the creative urges of an artist. However, artistic property or intellectual property differs from other forms of property existing in capitalist society in that artistic work is what economists define as ‘public good’, that is, the consumption of one unit of the ‘product’ does not prevent its further consumption by other consumers. Thus, a piece of music once recorded can be heard by any number of listeners. Or a particular design once put in concrete form, either as an embroidery or block prints on cloth, can be further used on a greeting card or a curtain. The increasing ease of reproducing and distributing works of art through means of mechanical reproduction and lately, through digital reproduction means that not only is marginal cost of every subsequent usage of the work of art negligible compared to its first instance, but also that with the development of technology such subsequent use is often unauthorized and difficult to control. In such a scenario,

ensuring the transfer of the incentives of creation to the creator of the work of art proves to be difficult. The history of the development of copyright and other laws related to intellectual property reveal that with the progress of technology, the laws have grown stronger and more far reaching. However, it is possible to trace two dichotomies in the development and implementation of copyright and intellectual property laws.

First, though the need for adequate protection of copyright is defended on the grounds of the need to provide adequate incentives and compensation to the artist/artiste, the reality is that the law recognises the 'owner of the copyright' and not the artist/artiste as the fit candidate to receive material compensation from the sales or distribution of the work of art. In most cases, the huge capital investment involved in the reproduction and commercial distribution of the work of art means that the artist has to enter into an agreement with the owner of the means of distribution — the publisher, the recording company or the television station — an agreement by virtue of which she has to give up her 'commercial' rights over the work she created. Subsequently, it is the buyer of the 'copyright' who enjoys all privileges of the copyright, even that which is attributed posthumously to the artist! This, therefore, results in a de facto authorial control through the power of capital. In the case of the electronic media, the arrangement between the actual creators and the investor is restricted to a one time payment and there after it is the producer of the piece of music or the motion picture or the television shows who reaps most of the credits, both monetary and attributional — when music television channels broadcast music videos the only credit they provide is to the company which produced the piece of music. The names of the lyricist, composer or the singers do not receive a mention! Though the letter of the law protects the artist by granting to her a portion of earnings from the sale and distribution of the work of art, the reality is that it is the investor of capital who reaps the greatest benefits

— commercial, legal and hegemonic — of such a system.

Secondly, the laws of copyright and intellectual property define the 'creator' or 'artist' in a restricted sense. According to the extract in the previous chapter from a 1753 German description of the process of bookmaking the 'many people [who] work on this ware' include the 'scholar and the writer, the papermaker, the type founder, the typesetter and the printer, the proofreader, the publisher, the bookbinder, sometimes even the gilder and the brass-worker'. However, modern copyright law does not treat all contributors to deserve equal rights. It privileges the contribution of 'the scholar and the writer' to be of higher value than those of the type founder, the typesetter, the printer or the gilder and the brass-worker. It imparts to the artist or the author a greater 'authority' than the non-intellectual contributors, by virtue of the idea of 'genius'. It is the artist whose contribution is recognized as 'original', it being a product of her intellect while the binder or the gilder's contribution is merely that of manual labour. In an economic system which treats intellectual labour to be superior to manual labour, the binder and the gilder can only claim commercial rights paid for by wages for their efforts, thereafter, enjoying no rights on the literary work. Other than commercial rights, copyright law entitles the artist to moral rights to be called the creator of the work of art. Moral rights recognise the work of art to be an extension of the artist's personality, and the artist continues to enjoy them even after she has transferred the commercial rights to a publisher or producer. However, evidence of legal practice shows that even here the rights of the artist are limited by capital — often publishers or producers would include a waiver clause in the copyright agreement in which the artist is made to give up the moral rights to her work. Copyright law also stipulates that for artistic works produced 'on hire' it is the employer or investor of capital and not the artist who is entitled to moral rights. Further, in most cases the investor of capital is far more resourceful in taking recourse to legal methods to suppress any

objections that the artist may have. Thus, once again authorship by capital is ensured.

In both cases of commercial and moral rights, the law recognises the artist only in terms of original contribution. However, the 'originality' of works of art can be debated, for every work of art can be traced back to a myriad influences from previous works, artists and traditions. All art is dependent on a 'tissue of signs' for interpretation (Barthes 1995, 129). The 'tissue of signs' exists in the inter-individual space and its existence owes to generations of cultural practice. Though each work of art does modify the 'tissue of signs', even if ever so slightly, it can never mark a complete break from tradition. The attempt in copyright law to attribute 'originality' to the author of a particular text is unable to do justice to role of the community in the creation of a work of art. The impossibility of tracing the authorship of a work to all its contributors has resulted in attributing authorship only to the 'last' definable contributor. However, unlike other forms of property, right to intellectual property is not recognised in perpetuity. The Statute of Queen Anne of 1709, regarded as the first step towards legal guarantee of intellectual property, had granted the exclusive right of printer to a particular text only to fourteen years. The history of copyright law is witness to a gradual extension of protection to fifty to sixty years after the demise of the author. Though the period of copyright protection has tended to extend towards perpetuity it has fallen short of perpetual copyright. Copyright law has always included within it the promise of returning the work of art to the public domain someday. It was recognised as a limited period incentive for encouraging printers to undertake the task of distributing a text to a larger circulation. The capital input required to initiate this mechanised distribution of knowledge and ideas, led to the adoption the capitalist production structure. Profit of the investor had to be guaranteed (Interesting, though capitalism celebrates the values of risk-taking it survives by legal guarantees to profit!). So the text or

work of art, which benefited and emerged from hither to existing works in the public domain, as well as traditions, language and idioms existing in the community, was closeted in the restriction of copyright guarantee to ensure profit for the investor of capital. Over the centuries, this promise has been rendered bleak by the increasing legal guarantees to the rent earning investor of capital. Thus, the printer, publisher, producer merely enters into an agreement with the last contributor to the work of art, recognising such person to be the 'author' or 'creator' of an 'original' work and thereafter appropriate the rights of the creator for several generations.

Though the privileging role of the writer or artist/artiste over the bookbinder, papermaker or the proofreader exists in the assumptions behind the laws protecting copyright, does help evade any claims of authorship and share in 'profits' from such contributors, the situation is further murkier in the case of works of art which are the result of artistic collaboration. For instance, theatre is a form of art where practitioners of diverse talent are required to synchronise their creative efforts to bring into being the action on the stage. Who should then be the rightful owner of the copyright over a theatrical performance? In the case of cinema and as we have seen in the case of recorded music, it is the producer who is recognized as the sole copyright holder. But theatre is different in nature from cinema and recorded music in that its distribution is not through means of mechanical reproduction. Theatre is a performance form and requires the coming together of various artistes for each performance. Though the script of the play may remain the same, performance inputs such as direction, acting, music, lighting and even the setting for each performance can differ. Same script can form the basis for completely different interpretations in different productions. Unlike in the cinema, it is not possible to see the back of artists and technicians till the final performance of a particular production.

I want to take a close look at instances of disputes in the

theatre and other performance forms — disputes on issues related to copyright and interpretation of — and expressions of discomfort and disagreement with regard to unauthorised use of creative ideas. Through this I shall attempt to reach an understanding of the way a theatre practitioner relates to her contribution to the theatrical or artistic effort. In my analysis I shall try to explore the close relationship between the granting of copyright privileges by the state for the benefit of printers publishers and the state's own need to control dissemination of knowledge and information. The state, in different contexts, has always exhibited a distrust of the theatre. The variable nature of the theatre makes it difficult for the state to pin it to a script or a final definitive version which could be subjected to censorship. It was, therefore, theatrical activity as a whole that was subjected to restrictions at various points in history. On the other hand, the ability of the theatre to escape the prying eyes of the state and its adaptability to different contexts beyond the fixities of the script has caused theatre to be the hotbed for political dissent. I shall try to identify a reverse linkage between the logic of capital, guarantees of profit and the control over dissent. On the one hand, in its attempt to exercise its power by restricting the access to information and ideas critical of it, the state has sought to trade off advantages to the investors of capital. On the other hand, forces which wish to take on the rule of the state do not only lack access to capital and other resources that are controlled by the dominant sections of the society, the opponents of capital also eschew the need to control the messages of dissent. They desire that such messages be spread uncontrollably. Like various methods adopted by political dissenters such as free distribution of pamphlets, organised political theatre has survived on unrestricted borrowings — both acknowledged and unacknowledged — and allowed other practitioners to borrow.

Licensing Theatre

Performances by travelling troupes of medieval and early modern Europe relied on stock characters and innovations on well-known stories. Other forms of performance included the bardic tales and troubadour poets whose texts were not fixed and could vary across performances with the artist responding to particular audiences. Control of the state and the ruling class over these forms of performances was exercised through structures of patronage and persecution of the itinerant troupes. With the advent of secular education in the universities written drama began to replace the art of forms such as the *Commedia Dell'arte*. But the experience of performances based on fixed written scripts evolved over a period of few centuries. Though the advent of the written text led gradually to the loss in position of the human voice as the chief repository of meaning in European society it was only towards the end of the sixteenth century that theatre managers expected performers to play 'by the book' (Zarrilli et al. 2006, 158). Yet the term 'playwright' or 'author' was a misnomer till then. Audiences were not concerned about who had written a play as long as it managed to entertain them. In fact, collaboration in playwriting was a common practice with modern scholars still baffled by the questions of authorship of many plays written in England during the Elizabethan period. The search for the 'playwright' of Elizabethan plays is an anachronistic exercise, an imposition of a concept that developed over in the later centuries. In any case the ownership of the play — not merely the script — lay with the theatre company with the writers paid an average of six pounds for each play in 1603 and ten to twelve pounds in 1613 (Zarrilli et al. 2006, 158). When print culture emerged, more and more theatre companies took to printing their plays, especially after 1600. By the seventeenth century, the predominance of dramatic theatre came hand in hand with the

emergence of the commercial stage. Till the mid-sixteenth century acting companies attached themselves to noble families and were tied to patronage structures. The text of the play did not determine fortunes of the performers. But on the commercial stage, where the drama had begun to mark a break from traditional plot lines, theatre managers had begun to look to playwrights for the commercial success. The pressing need to cater to the popular taste leads companies to experiment with play scripts veering away from the traditional. Coupled with the gradual movement away from the protective control of patronage meant that the stage could be a potential arena for subversion. At the same time the logic of profit caused theatre companies to be wary of competition. So they bid for trade guarantees from the monarchy to like other guilds and artisans. By 1600 Elizabeth I had instituted royal patents in favour of certain companies. The intention behind the move may have also included the strategy to discourage the Catholic cycle of plays which threatened to undermine the Anglican authority. Since the 1580s, the Master of the Revels was empowered to issue licences to theatre companies. With the ascension of James I to the throne in 1603 this office was also entrusted to license the publication of plays. These laws served the dual purpose of protecting the commercial interests of loyal theatre companies as well as censorship. This caused English dramatists to avoid direct references to politically and religiously sensitive issues (Zarrilli et al. 2006, 188).

During the rule of the Commonwealth between 1648 and 1660, theatre activities were brought to a halt, primarily for the distrust of profanities of the stage. When the theatres were restored after the Restoration of the monarchy the conditions of the stage had changed. The theatre had now moved from the open-air theatre arenas to closed-door auditoria. No longer did the groundlings and the aristocracy watch the same performance. The audience for the mainstream theatre was now predominantly elite. Among other changes seen in the theatre

there was an alteration in the attitude of the monarchy towards the theatre. During his exile in the French court Charles II had witnessed Louis XIV's mechanism of controlling the French theatre, opera and ballet. Even before he returned to ascend the English throne he had awarded a monopoly patent to Thomas Killigrew for producing theatre at Drury Lane. Later, impressed by William Dovenant's plans for a new playhouse at Dorset Garden, he extended the monopoly (Ong 1977, 189). In France too through a 1641 decree, under the ministership of Cardinal Richelieu, the throne held the prerogative of granting monopoly licences to certain companies for particular genres of performances — spoken dramatic dialogue, musical drama and opera. This licensing coupled with the subsidies provided by the crown proved to be an efficient mechanism for censorship. But there did exist subversive performances in the form of the shows of the fairground booth. The owners of the fairground booth theatres attempted to bypass the Comedie Francaise's monopoly in spoken dramatic dialogue by taking recourse to miming and silent action. In England too, similar genres had emerged after the Licensing Act of 1737 — unauthorised acting companies took to pantomime, gags and spectacles. Though the monopoly owners, by their very position of dependence and alliance with the rulers of the day, practiced self-censorship, the theatre of the booth and pantomime included subversive humour (Ong 1977, 191). It was with the intervention of the Comedie Francaise in 1706 that on the strength of a court ruling the French police tore down the booth theatres at the fairground. The state intervened in favour of the Commedia Francaise who were its allies.

In fact, the conflict between the theatre of the ordinary people, Commedia dell'arte and the theatre of the elite, Commedia Erudita, was a larger European phenomenon. Commedia dell'arte was an actors' theatre. The *arte* referred to the guild of craftsmen in medieval Europe. The guilds were aimed at reducing the differences between various craftsmen involved

in the same profession and also enabled them to stand with each other against the might of the powerful, the big merchants, the princes, bishops or cardinals. Unlike the *Commedia dell'arte* which was a peripatetic theatre and performed in open spaces and fair grounds among the common fold, the theatre of the elite, the *Commedia Erudita*, was restricted to the courts and later in the enclosed auditoria where entry was restricted (Kenneth Richards and Laura Richards 1990, xv). Characters in the *Commedia dell'arte* were known to invert social hierarchies, with characters of servants often cocking a snook at their masters. Records of civil and ecclesiastical authorities speak of the constant persecution that the *Commedia dell'arte* troupes had to undergo. According to a diary entry of an Italian official, Tommaso Garzoni, in the 1580s:

lords have banished them from their lands, the law holds them in contempt, different nations scorn them in a variety of ways and the whole world, as if punish them for their improper conduct, rightly rejects them. [...] licenses and permits have to be sought on every side if they wish to act and earn their living, because everyone is sickened by their vile race that spreads disarray everywhere and introduces a thousand scandals where ever it goes (quoted in Rudin 1994, 8).

The Jesuits enforced control on the content of the *Commedia dell'arte* – the comic, the drunk, the meddling female, or any character which threatened to create a controversy or a challenge to ecclesiastical authority were banished from the stage. There were, therefore, reasons other than profit and the desire to reward creativity behind the licensing of the theatre.

Irked by the personal ridicule in John Gay's *The Beggar's Opera* (1728), British Prime Minister Robert Walpole pushed through the legislation of the Licensing Act of 1737. The Act made prior approval of scripts mandatory and were effective in silencing jabs aimed at the royal family or the executive. The censorship model was simple as there were only two licensed theatres who had to pay hefty royalties to maintain

their monopolies. But fairground managers continued to utilise loopholes in the law to produce plays for the downtrodden classes and continued to encourage anti-social behaviour. It was then that the Disorderly Houses Act of 1751 was passed. This new Act sought to pass on the burden of maintaining decorum in the playhouses onto the theatre managers (Zarrilli et al. 2006, 190). This Act shifted the focus away from the text of the play onto the performance. While censorship of Licensing Act put the focus of the censor's prying eyes on the playwright, the Disorderly Houses Act turned to the other agents who function beyond the script of the play.

But with the forays made by print, the text of the play continued to increase in importance. The printed texts of plays fell within the ambit of the increasingly stringent copyright laws and prioritised the role of the author, in this case the playwright. Playwrights too looked upon publication of play scripts as a source of earning and they would write the script as much for the reader as for the performance. By 1900, playwrights in the West had been granted national and international guarantees of remuneration not only from publication of scripts but also from all future productions of their plays (Zarrilli et al. 2006, 175).

Such legislations are based on the false premise that the playwright is an authority on the text. As I have already discussed in all forms of art there are contributors beyond the author or the artist. Such contribution can be pre facto in the form of influences, tradition, borrowings, language and inter-textuality, as well as post facto in the form of editorial inputs, feedback from reception or interpretation. In the theatre this is far more conspicuous than in other forms of art and is a continuous process. The play once written is subjected to directorial interpretation. In certain cases, the director may directly intervene in the process of scripting. Further the cast, the music, the lighting and the stage designing play an important role. Copyright law vests the rights of a particular performance

in the producer of the performance. Unlike for literary texts, to enjoy copyright over a performance the producer does not need to claim originality, merely that she is the producer of the event and prove the authenticity of the performance. The conditions which govern the rights of performances are:

(1) the performance must be of a type in which performers' rights are capable of subsisting (2) which is a live performance (3) given by one or more individuals in such circumstances that (4) the statutory qualification requirements are satisfied. For recording rights to subsist, there is an additional condition, namely that (5) the performance is the subject of an exclusive recording contract (Arnold 2008, 58).

The law does not make any provision for copyright to be enjoyed severally by each contributor. Further, in terms of recognition of theatrical achievement it is the director who is granted the honour of being the 'author' of the performance. In theatre festivals, it is the director of a performance who is called upon to receive the honours on behalf of the performing unit. It is to the director that such an arrangement ascribes control of all aspects of the performance. Thus, we find that the prevailing systems of ascribing credit in the theatre and other performance form which require collaboration between various artists, are designed to single out individuals who are the fountains of the genius of the production. This leads to two kinds of dissatisfactions among the other contributors. As was evident in the recent spat between lyricist Javed Akhtar and Hindi film-actor Aamir Khan, musicians have repeatedly expressed their dismay over the commercial arrangement of ascribing copyright to the producer (Anon. 2010b). Though the producer pays the singer, music composer and musicians only once, the song continues to fill the producer's coffers through multiple exposures such as music promotions, advertisement jingles, mobile phone ringtones, and radio broadcasts. Musicians, lyricists, singers and musicians have claimed a share in the future earnings of a piece of recorded

music.¹ Beyond the commercial fallout, there also exists a moral fallout, of the failure to recognise the collective nature of the performance — creating hierarchies among the various collaborators of a performance. Such hirearchisation acts in favour of the status quo and is inimical to change. But for now let us dwell further into some instances of copyright disputes in the theatre and the arts.

Disputed Copying

In May 1995, the playwright Manu Bhandari sought the intervention of the court to stay the performance of the play *Mahabhoj* by the theatre group Astha as the later had not sought her permission before embarking on the performance.

"... I got to know of it only last Friday," says the writer, "Let alone pay any royalty, director Deepak Thakur had not even taken formal permission or even verbally informed me that he was staging the play," she said.

The royalty fixed by convention, at Rs 100 per show, "is not what I am concerned about" states the writer. What she is most peeved about is that "directors seem to have come to consider it their right to stage a play without informing the writer" (Sengupta 1995).

In his defence the director of the errant group (note here that the onus of the copyright infringement has been placed on the director more than any other member of the group!), Deepak Thakur, stated, "I admit I am at fault small town people are not so aware of copyright laws. In their enthusiasm for good plays which in any case are difficult to come by, they ignore the seriousness of copyright regulations."

In another controversy the singer Subha Mudgal was engaged in a legal battle with the Shriram Bhartiya Kala Kendra over

¹ The Copyright Amendment Act (2012) passed by the Indian parliament has now guaranteed rights of royalties for use of musical recordings used in cinematographic works even when they are used outside the screening of the work in a cinema hall.

the latter's appropriation of a song sung by the artiste. Mudgal claimed that she agreed to the Shriram Bhartiya Kala Kendra recording her song for use during live performances of the ballet *Meera*. But without seeking her permission, the Kendra released a music cassette of the music of the play, including Mudgal's song in it. Furthermore, the Kendra in turn slapped a case against Mudgal for using her own composition in her music album *Ali More Angana* (Kanungo 1998)!

Smita Nirula reports an incident in which the name of a play was altered by the organisers of a performance in the lust for brisk ticket sales. The actors of Bombay Rage Productions were invited by Showmakers to perform *I Ought to be in the Pictures*, a play by Neil Simon. When the actors arrived for the performance they discovered that Showmakers had altered the title of the play to *Up Yours*, with a highly suggestive middle finger illustrating the poster (Nirula 1995). The troupe refused to proceed with the performance. Showmakers tried to shift the blame onto the sponsors but the actors were not prepared to perform before an audience who had been sold tickets with the false promise of titillation.

The three cases show that for the artiste commerce is not the only issue, perhaps not even the foremost issue that bothers the aggrieved creators. Even for Mudgal who battled with the Shriram Bhartiya Kala Kendra for rights over a song that she had sung, the principle issue is of the artist's right to authorship over her own creative input. It shows how producers seek to utilise the relative weakness of artists in relation to capital to deny their moral rights of being called the creators of their work. This is extremely apparent in Manu Bhanadari's objection to Astha's production of her play. The plight of the actors of the Bombay Rage Productions, however, presents an interesting situation in which it were the performers and not the playwright who was the aggrieved party. Yet the performers related to the original title of the play enough to quit from the performance in protest against its mutilation. The cast had rehearsed the show

and in the process they had assumed an 'author-like' position in relation to the play. They may not have been the author of the play but were certainly authors of the production. If the intervention of the organisers in changing the title of the play can be regarded as another contribution in the process of performance, the actors were not willing to participate in that collaboration, for the organisers had asserted their position as investors of capital and had disregarded the selfhood of the actors. Had it been the cinema or any other form of mechanically reproducible form of art the actors could not have had the opportunity to make their dissent effective – as is evident from Manisha Koirala's battle with the producer of *Ek Choti Si Love Story*, that the actor does not even have the right over her moral self once she has agreed to participate in the making of the film (Anon. 2009c) ².

Can the playwright claim the right to approve of or at least be informed of the performance of her play? N.K. Sharma of the Act One theatre group of Delhi opines: "It is an actor who owns a production, not the director or a producer. I have seen the best of scripts ruined by bad performances and the worse of scripts uplifted by good acting" (Khushlani 1994). The difference between a dramatic text and other forms of literature is that its success lies in performance. Performance of a text is impossible without the creative inputs of all artists involved, and in certain cases also the spectators. So it is possible that theatre groups would argue that they are obliging the playwright by producing her play. But the playwright Mahesh Elkunchwar articulates that 'whichever way you cut it, the playwright has the raw end of the stick. Actors have a tendency to change lines, directors slash scenes, producers do not even extend to the playwrights the courtesy of informing them of them about the fact that they are performing their plays' (Nirula 1995).

² Manisha Koirala had alleged that the edited film used a body double to depict her in an obscene manner.

However, the playwright Indranath Bandopadhyay's reaction to the modification made to his play *Mosari* [Mosquito Net] was different. When he wrote *Mosari*, Indranath Bandopadhyay was the General Secretary of the West Bengal Writers' and Artists' Association, an organisation affiliated to the Communist Party of India (Marxist) [CPI(M)]. The play centres around the determination of a young couple against a variety of adversities. In the final scene of the play, as the couple gets ready for a well-deserved rest, they discover holes in the mosquito net. So they now work together to mend the net before they can rest in happiness. When a theatre group, owning ideological allegiance to the CPI(M), performed the play, they added a commentary at the end suggesting that it was imperative for all toilers to work unitedly to fix the inequities in a class divided society. Bandopadhyay expressed his dissatisfaction at the alteration. His disappointment was not for being not consulted about the interpolation, but by the nature of it. He felt that the alteration reflected a distrust within the political cadre of aesthetic methods which appeal to non-intellectual sensibilities of audiences (Personal Interview 2003). Though he was dissatisfied with the intrusive interpretation in performance, Bandopadhyay did not drag the theatre group to a court of law. The difference in the attitude of Bandopadhyay and the playwrights in the earlier mentioned cases is ideological. Bandopadhyay shared an ideological and organisational bond with the theatre group.

Theatre, Sharing, Change

In this chapter I shall discuss the practice of organised political theatre. For this purpose, I shall describe the manner in which the Jana Natya Manch [People's Theatre Forum; 'Janam' or 'Birth' for short], a left-wing political theatre group operating in Delhi. Formed in 1973 by a group of college students who were inspired by the legacy of the Indian Peoples' Theatre Association (IPTA), the Jana Natya Manch is one of India's foremost street theatre groups. The Jana Natya Manch continues to be an extremely active group with an average of 150 to 300 performances each year all over Delhi as also in various parts of India. Factory gates, working class slums, busy street corners and market places, schools, colleges and offices have provided incidental performance spaces for the group. With a list of almost seventy plays performed so far, the Jana Natya Manch has regularly participated in campaigns undertaken by the CPI(M) and its affiliate organisations, as well as prepared plays on various pressing issues before the ordinary people of Delhi. The actors of the Jana Natya Manch do not receive any wage from the group. They are engaged in other activities in their regular careers either as students, employees of the government or as professionals. The Jana Natya Manch does not accept any funding from government institutions, from corporate sources or from non-government funding agencies. This is done in order to maintain both financial and editorial independence. Also, it does not normally perform ticketed shows. Needless to say most of its theatrical activity being of the street theatre variety to expect impromptu audiences to pay gate money before a show would be unthinkable. Also, when the performances themselves take place in open-spaces it would not be possible

to restrict the entry of any one who may wish to watch a performance. Moreover, charging gate money would place access restrictions on the audience a consequence not desirable for a group which performs its plays to create greater awareness among the spectators and encourage them to join an organised politics. Instead the Jana Natya Manch funds its activities through post-performance collections with audience members paying or not-paying according to their ability and desire to contribute to the group's activities. The Jana Natya Manch also accepts donations from sympathisers, well-wishers and host organisations.

Scripting Together

Being a theatre collective the Jana Natya Manch performs self-scripted plays which are prepared through an elaborate mechanism of collaboration between various members of the group. The production of the plays is further democratised through widespread consultations with mass organisations, activists, academicians, audience feedback and a method of constant revision of the plays. Being so, the Jana Natya Manch's theatre, like most other Street Theatre groups of the Left in India, endeavour to shape a truly popular theatre in which, not only the distribution, but also the production of theatre allows a meaningful participation of the larger community. Once the group decides to produce a play on a particular theme, all the active members discuss the theme and various ideas are exchanged on the ensuing play. The improvisation sessions also allow all participants to express their opinion in the playmaking process. It is at a later stage that the director asserts greater control in order to shape the play, but at all stages the play is open to criticism from the rest of the group, from mass organisation representatives and from the spectators. At various stages of the play-making process, the Jana Natya Manch invites academicians, experts and activists to share their perspectives on the theme and the play, with the group.

Till the mid-1990s, the play scripts were not produced through individual effort. The method that was followed was combination of repeated discussions and scripting. Since the Jana Natya Manch performed its first recognised street play *Machine* in 1978, the group was an extremely close knit one. It was composed of students and young professionals who spent nearly their entire spare time together. They met every day of the week and worked together from afternoon till evening and in certain circumstances even after dinner late into the night. With such camaraderie the young actors not only shared a very intimate friendship but also knew each other's strengths and weaknesses. When there was a demand for a play from the allied mass organisations on a particular theme or the actors themselves felt the necessity to take up a campaign on a particular theme they would sit together and discuss the various possibilities of play, the various characters, the incidents and a brief idea of the various scenes. Then they would all divide the work of writing the different portions of the play – dividing the work either in terms of the various characters or scenes. They would often write together, sitting around the same room, thus being able to exchange ideas among themselves even as they wrote. Once the various portions were written, the draft would be read to the entire group and the suggested changes were redrafted before the next day's rehearsal. Usually one or two of the actors would be entrusted the task of threading together the various portions for not everybody was equally skilled in language. At appropriate junctures within the play songs would be written and included. The songs would be set to tune either by the actors or by a friend of the Jana Natya Manch. The scripting process was, however, not complete with the writing of the text of the play. The performance text was yet to be formulated. The actors would improvise the various scenes of the play and share their ideas on how a particular scene could be best portrayed. In the process the written script could undergo several changes. Costumes and properties to be used were also

to be decided upon. It is not to be suggested that each member of the group had equal contribution to the creation of the play. Certainly certain actors had greater experience and talent than the rest in some skills or in most skills. But the collective inputs and scrutiny were essential for the shaping of the plays. In fact, the group never mentioned the names of individual writers or directors while performing or publicising their plays. Such a process of drafting and redrafting through collective criticism is more difficult than it seems. It requires an ability from the skilled playwright to look at his/her own work critically and be willing to discard entire portions of his/her work, over which (s)he may have spent a lot of time and effort.

Guided Improvisations

In the mid-1990s the group devised a method of Guided Improvisations. In this form the group begins rehearsals without a single line of written script. At the beginning of the improvisations, the director shares his/her ideas with the actors. At this stage (s)he does not have any well-worked ideas about the various scenes or the characters. Ideas are extremely rough. Certain ideas may be seminal, which provide the axis around which the improvisations revolve. These ideas are axial primarily because of the political thrust which they contain within them. For instance, in *Bush ka Matlab Jhadi* [Bush means a bush, 2004] the idea of George Bush wearing a giant mask which is hollow from inside was the one idea that survived in its original form in the final production. The other idea which went along with it was the idea that Tony Blair should wear a mask shaped like a dog, and should have a tail' tied to his back. Other than playing to the element of slapstick on the media reports on the dumb' acts of the US President, it also offers the opportunity to put things in and out of Bush's head' to dramatize the dependence of the Bush administration on the military-industrial complex of the United States. Blair with his

tail is a commentary on the British government's willingness to go along with the US war effort even in the face of stiff European opposition and world opinion, and particularly Tony Blair's readiness to stand in defence of the US President in the face of international attack. John Bull as a pet-dog to Uncle Sam was an idea which had earlier been developed in *POTA Mera Naam* [My name is POTA, 2002]. At the initial meeting the other actors, and as well as invitees pitch in ideas.

With the sum total of all these ideas improvisations begin. At the beginning of a particular session the director suggests a controlling idea before the actors — a take-off point. This take-off point may be the embryonic idea of a scene. For instance, the improvisations leading up to *Andhera Aftaab Mangega* [When darkness will ask for the dawn, 1996] began with an exercise to create a scene where a worker had died in an accident at work' — What happens in the factory? What happens in the *basti* [slum]?' In the improvisation which ensues, the actors create characters and actions and pieces. In certain cases the improvisations may be based on an abstract idea. For *Bush ka Matlab Jhadi*, the director, Sudhanva Deshpande wanted to portray the Military-Industrial complex — Bush's bosses. This was to be portrayed through the characters of Mr. Dollar and Mr. Missile, two of America's most widespread exports. Sudhanva Deshpande asked the actors, individually, to act out the gait of these two characters.

While the process is on, the director maintains a track of the various ideas that the actors bring into the improvisations. Sudhanva Deshpande maintains a diary to note down his ideas and goes over them repeatedly till the end of the production. He explains the process:

The director has to see which ideas are workable. This can be difficult, though sometimes it is not, and all the director has is his instinct, honed over years of practice.... In these free improvisations actors create characters, and the director has to weed out the false characters and, often, pick out elements from various characters that can be

combined in one. ... mostly, his job is that of a silent observer and quiet critic.... Above all, the director has to be alert, *very* alert, and pick up even a *hint* of a good idea in improvisation; something that actually happens quite often, and often without the actors even knowing that they have thrown up a good idea. (Deshpande 1996, 7-10)

Improvisation is not a director centric process. The actors bring in their experience, creativity and political acumen to develop a scene. And improvisation is also a uniquely collective process where an understanding and mutual respect between actors is a key factor. When the director presents a 'take off point' before the actors, the actors may not have scope for discussion prior to the action. Each actor enters the improvisation with an idea of how (s)he envisages the improvisation to proceed. But the intervention of his/her fellow actor may propel the action in a different direction, in which case (s)he has to assist the growth of the scene in that direction. For if (s)he sticks to his/her original idea the scene will not progress in any logical direction.

From the material, thus, produced the director formulates an idea of a scene. (S)he then explains the scene to the actors and asks them to enact it. The actors begin with a certain enactment of the scene. The director makes changes as and when (s)he deems it necessary. In this manner the scene is run through several times till the director, and indeed the actors are satisfied. At this stage the play enters into a phase where the director takes greater charge of the improvisations. The actors have limited freedom to innovate — only to the tune of the gestures and tone of delivery, although the director may finalize even those. It is not that the director uses all the things that he originally suggests. The process has been aptly described by the title of Sudhanva Deshpande's article on improvisations — 'sculpting' — only the sculpture is created out of human enactment. The director creates a certain part of the scene, but not satisfied with it, tries out another option. For instance, during the improvisations before *Bush ka Matlab Jhadi*, the actors were asked to lift each other in groups and thus develop different

formations. Sudhanva Deshpande was trying to figure out a way in which the actors' bodies could be elevated. In one such effort, an actor climbed on the out stretched arms of two of his co-actors with his arms spread horizontally like wings. This gave Sudhanva Deshpande the idea that the actor's bodies, with suitable reinforcements, could be used as fighter planes which are used by the US Air Force to bomb the Iraqi people. This idea was tried out at the guided improvisations stage. But the time available for the actors transform themselves into human planes' was too less. After several efforts it turned out that this was not feasible as the formation of the human planes' required the actors to go off stage. The idea was discarded.

The level of the political consciousness of the actors may or may not affect the process of improvisations depending on the demands of the play. In some scenes of *Andhera Aftaab Mangega*, which dealt with situations of daily life, all the actors were able to work in tandem. But in *Yeh Dil Mange More, Guruji* [This heart desires more, Guruji, 2002], where the situation required a conversation between the Rashtriya Swayamsevak Sangh (RSS) and the Bajrang Dal, the actors who did not have a developed knowledge of politics failed to participate effectively. *Yeh Dil Mange More, Guruji* was primarily a pre-scripted play. During the improvisation Deshpande asked the actors to improvise, first singly and then in teams of two, their own idea of "Sapno ka Rashtra" (Nation of your Dreams). Here Deshpande was linking the improvisations to a repeated theme in the Sangh Parivar's propaganda¹—to transform India into an ideal Hindu state. The actors, however, let their imagination wild and improvised nations with ice cream hanging from the sky or kebabs hanging from trees! Following this Deshpande asked them to improvise the "BJP's sapno ka rashtra" (the nations of the BJP's dreams)

¹ The RSS and its affiliated organisations, like the Bajrang Dal, are collectively known as the 'Sangh Parivar' or the Sangh Family.

(Sharma 2010). Though the actors came up with imaginative responses the improvisations were far from satisfactory. In fact, this was a difficulty with improvisations for this play. It required the actors to approach the issues politically, and young and inexperienced actors who had never engaged with the concerned issues critically found it difficult to suggest the next turn in the journey of Bahubali — the character which signified the belligerent wing of the Sangh Parivar. In such a situation, the experienced Brijesh Sharma, was asked to prepare working drafts of scenes, which were then tested through guided improvisations and rewritten. Brijesh Sharma wrote the scenes, devoted to specific issues, in no particular order.

The guided improvisations also help in the process of casting. The director tries out the same scene with different sets of characters allowing each a certain limited freedom to portray the characters. But (s)he has to exercise cautions. Sudhanva Deshpande writes of *Andhera Aftaab Mangega*:

If the director does not intervene during improvisations, actors tend to pick up roles they are *naturally* most comfortable with, and they start playing those roles with their older, tried and tested methods. The director has to ensure against this, asking the actors during improvisations to take up specific roles, or not to. This is how Bhanu got cast as the employer's son – his baby face and frail figure seemed incongruous with the verbal and physical abuse he hurls at Badal (played by Shakeel, not at all frail), underlining that he can do so only because of his *class* position.... (Deshpande 1996, 9-10).

Andhera Aaftab Mangega was a play which explored the lives and anxieties of the new worker of the 1990s, after the pro-capitalist economic liberalisation had been unleashed on the country. Labour laws had been tinkered with to weaken the labour unions considerably. There had been increased casualisation of labour which had led to greater insecurity and exploitation of the workers. Yet, the fundamental analysis of the mode of exploitation within a capitalist framework remained the same – that of the appropriation of surplus value. Since one

of the principal objectives of agit prop theatre is to equip the working class to analyse their everyday experiences. It was by tying up the immediate experiences of the workers of the present with a theoretical analysis. The director Sudhanva Deshpande wrote that he was tempted to re-read Bertolt Brecht's famous scene in which Pavel and his friends explain the concept of surplus value to Plagea Vlassova in *Mother*. But he decided that the scene had to be done differently according to the needs of the play in the making. So the rehearsal was the space where this scene had to be shaped. Initially the concept of surplus value was explained to those uninitiated among the actors. But the improvisations did not yield any satisfactory result beyond verbose and preachy content devoid any dramatic ideas. As spirits sagged the director decided to push the actors for one more try:

I looked each actor in the eye. It happens, I said. Sometimes things do not work. I am keen to have this scene because it would add to the play. (Truth). But if it doesn't work I have two or three alternatives. (Lie). Let's try again.

Then Mala [Moloyashree Hashmi] suggested that we actually make something right here, in front of the audience, and get to the surplus value that thing contains.... Suddenly the scene was transformed. Theatre itself has this quality of the marvellous, the fantastic, about it, but nothing rivals the marvel of *creating* something, conjuring something, right in full view of the audience. So we decided to make a window in this scene, the same window through which workers see a fellow-worker being beaten up by the supervisor and the guards in the next scene. The window was created using two sticks and cloth bands, it doesn't look like a real window, but this never matters. (Deshpande 1996, 11)

As the workers put together the window one of them exclaim to claim that they have managed to make a window for so little where as it would have been a lot more expensive — at least (currency?)600 had they wanted to purchase one from the

market. A co-worker enumerates the various costs involved — 200 for the rods, 40 for the bricks and 10 for renting the stool to work upon. Added to that is the two hours of labour cost of 100. It totals to 350. So where did the remaining money disappear? It is pocketed by the factory owner, purely as a cost of his investments. Thus, through a dramatic presentation the concept of surplus value is explained to the spectators. And all this was achieved through a process of collective improvisations.

Along with the improvisation the director keeps contact with his technical team — the costume designer, the song writer and the music composer, and in the case of *Bush ka Matlab Jhadi* the film makers and the set designers as well. As the costumes or the songs are readied necessary changes are made to the play through improvisation to make it ready for the incorporation of the additional inputs. For instance, while the improvisations for *Bush ka Matlab Jhadi* continued with the assumption of a video footage which would be projected on the screen, not all desired footage could be obtained. Once there was a clear idea of what would be the exact content of the video Sudhanva Deshpande brought in the necessary changes to the play. Songs, though, are not created through improvisations. The director discusses the song with the song writer who then produces a draft. This is then discussed and finalized. The songs in Janam's plays mostly stand out of the actions, and serve as commentaries to the action of the play. Certain sections of the dialogue, too, are scripted based on the improvisations. This is done to enhance the language of those speeches which need a poetic or rhyming touch, a quality which does not emerge from the improvisations.

There exists a misconception among those less informed about street theatre, that street theatre is an impromptu form and does not require much rehearsals or preparations. The process of improvisations which I have described should not be read as confirmation of this misconception. Improvisation

collective scripting

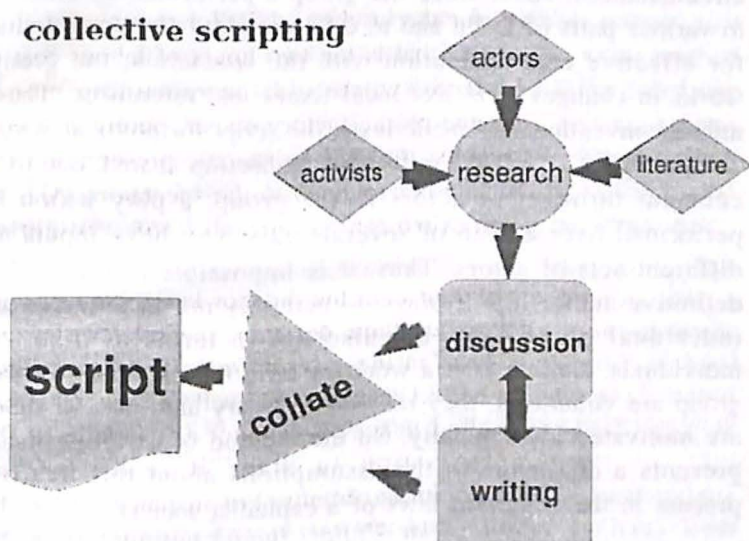


Illustration 1: Collective Scripting

is a carefully practiced skill which enables collective creation. Improvisation is not an unending process. Once the director and the rest of the group are satisfied the scene is finalized with the blocking and the dialogues. No further improvisation is carried out, though it may take a long time before the script of a play produced through improvisation is written down.

The script thus created is, however, not the final script. The play goes through a process of constant revision throughout its performance life. Often the first revision takes place at a specially arranged preview show to which activists and friends of the group are invited. Subsequently, after each show the spectators are invited to share their opinion about the play and suggest changes. Since, the Jana Natya Manch is a political group it has to keep pace with constantly changing circumstances. The plays, often being topical need to incorporate changes to respond to the changing political

circumstances. Also, since the group's performances takes it to various parts of Delhi and to different places in North India, for effective communication with the spectators, the group works in changes to reflect local issues and references. Thus, unlike conventional dramatic texts, the script for political Street Theatre is not fixed. Not only is its authorship shared, due to a constant turnover of actors in the group, a play which is performed over a span of several years may have inputs of different sets of actors. Thus, it is impossible to think of a definitive authorship of plays — certainly not in terms of an individual playwright, but also not in terms of a set of individuals. Neither is it a work on hire, for the actors of the group are volunteers, they receive no salary and most of them are motivated ideologically. So the method of scripting itself presents a challenge to the assumptions about the creative process in the copyright laws of a capitalist society.

guided improvisations

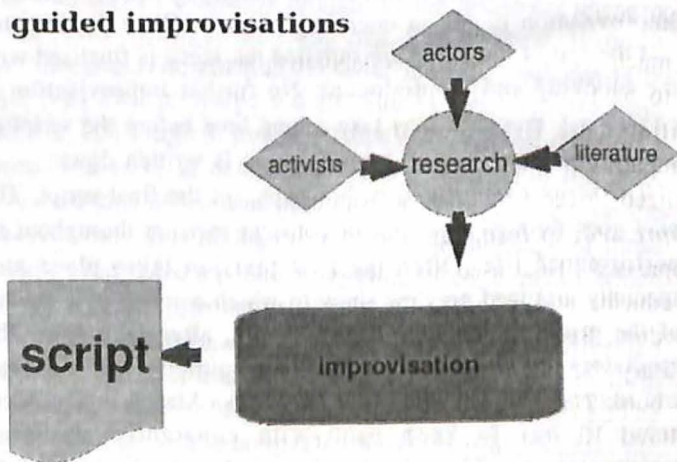


Illustration 2: Guided Improvisations

The Jana Natya Manch is not unique in the collective creation of plays. This is a method which recurs in various political agit prop theatre groups across the world. Though the exact method of collective scripting and improvisations may differ from one group to another the spirit remains the same. Ariane Mnouchkine founder of the French avant-garde theatre group Le Théâtre du Soleil, and a greater advocate of collaborative theatre, explained the working of the group in an interview:

We are all ignorant, all amateurs; we didn't know anything at the start, not even what the commercial theatre knows. The actors have various origins; some are students, some from poor families, some bourgeois. Most of them had acted just once or twice before or not at all. It's hard to say what they have in common. But I think they are all conscious that they are strong as a group and would lose if they were forced to have individualistic careers....

We don't gather together to decide to put in a nail here or there; the person who decides is the person who knows where to put it.... With our way of working, talent is easily shared, so there's no talent hierarchy; we're equal, but not identical... rehearsals were so enthusiastic that there were no decisions to be made. Everyone knew what was good and what was bad, so there was no conflict. (Wardle 1999, 26-27)

A much wider practice of collaborative scripting in the theatre is to be found in the Theatre of the Oppressed techniques initiated by Brazilian theatre person Augusto Boal. A compatriot of the revolutionary educationist Paulo Friere, Boal utilized Friere's theories, as espoused in his *Pedagogy of the Oppressed*, to formulate the theories of the 'Theatre of the Oppressed'. Boal used his Theatre of the Oppressed techniques to educate and mobilize the masses towards greater political freedom. Because of his efforts he fell out of favour with the military dictatorship. In 1971, shortly after the publication of his book *The Theatre of the Oppressed*, he was arrested and tortured. He managed to flee to Argentina and then to Europe where he remained in exile for over a decade. Other than

teaching and touring with his Theatre of the Oppressed techniques and the Arena Theatre, Boal has continued to be closely involved in his country's politics and been associated with the Brazilian Workers' Party (PT).

The Theatre of the Oppressed seeks to use drama as medium of mass political education. It is more of a facilitation whereby the people can learn from their own experiences. Non-Aristotelian and Brechtian in origin, the Theatre of the Oppressed uses community based theatre squads to work intensively among the urban and rural poor. The Theatre of the Oppressed has two aspects — the workshop and the performance. When a leading group chooses to or is invited to work in a particular community, it first conducts a week long or a month long workshop. The aim of this workshop is not merely to train the members of the community for theatre, it is also to enable them to gain confidence in themselves and to provide them with a form in which they can express their problems, analyse them and look for solutions. In the process the new actors also rehearse and put together a play based on some problem faced by their community.

On the performance aspect, the Theatre of the Oppressed can take different forms. The most prevalently used form is the Forum Theatre. In the Forum Theatre technique, a play is generally one which portrays a situation of oppression in which the victim attempts unsuccessfully to fight the oppression. The performers perform a play once before a particular audience. The group then commences a second performance of the play. This time the 'Joker' — a narrator figure who conducts the interactive portion of the performance — steps in and asks a member of the audience to suggest what should a particular character, which could be both oppressor and oppressed do. The intervening member of the audience is asked to give her/his suggestions by enacting it in the play, with the other actors playing along their roles. Since, in this form of theatre the spectator cannot remain passive and has to intervene in the

performance through action, Boal terms the audience of the Theatre of the Oppressed as the 'Spectator'. Of course, solutions to the problems cannot be easy to find, for the performers have an alternative rehearsed for every situation. At any point, at the instance of the audience, the particular character explains her/his position from within the character's consciousness. In this way the performers and the spectators try to understand and confront their reality and look for possible solutions. The same play can be repeatedly performed before a particular community for greater exploration of ideas.

Another important component of Boal's Theatre of the Oppressed is the Invisible Theatre. This is a technique where the performer performs a rehearsed show in a non-rehearsed space, such as a shopping mall, a city bus, a restaurant, without the audience being aware of the performance. The action is usually a staged dialogue on a particular issue which is designed to trigger off a discussion among the 'audience'. The success of this form of theatre lies in its 'invisibility'. The Theatre of the Oppressed also uses a variation of the Forum Theatre technique as Legislative Theatre where a community can discuss a matter for legislation and suggest necessary alterations in the law.

Thus, in the Theatre of the Oppressed techniques there can be no fixed text at all. The difference between one performance and another can differ vastly depending on the audience, the locality. Even a performance in the same locality with a similar audience can differ a lot from a previous performance of the same play for the spectators may have had the opportunity to discuss the matter highlighted in the play among themselves and others in the community in between two performances. In fact, if such a change of position does occur a Theatre for the Oppressed group would consider it to be a very successful intervention as the primary objective of the group is to encourage the community to reflect critically at their social circumstances. It is for this reason that Theatre for the Oppressed

groups regularly go back to perform before the same community with the same play repeatedly so as to allow them to reflect on the chosen issue in a sustained manner. The play, therefore, becomes a tool through which the actors can converse with the community in course of a social movement. Needless to say in the course of the many performances, not only does it become futile to pin point authorship of the play, but to conceive the play in terms of established norms governing intellectual property would be to prevent the emulation and distortion of the play which would render the Theatre of the Oppressed meaningless.

Encouraging Emulation

The other challenge to the assumptions of copyright legislations is presented in the form attitude of agit prop theatre groups towards their plays. Though it is difficult to pin point a final script for a particular play, the group does publish its scripts regularly. The Jana Natya Manch publishes its scripts in its quarterly journal *Nukkad Janam Samvaad*. *Nukkad Janam Samvaad* is a non-profit journal with a small subscriber base and most of the issues are sold to spectators after performances. The group had taken the decision to publish its scripts to respond to the lack of good and effective street plays in Hindi. By publishing its scripts the group desires to intervene effectively in the cultural activism for social and political change and to enrich the Street Theatre movement. Ever since the group started to rely on the method of Guided Improvisations for scripting, a play may have gone through scores of shows before the script is actually recorded. Scripts of some of these plays do not exist at all as the group may have got involved in the creation of another play and had not had the occasion to transcribe the script! What is published is a script that has a reasonable degree of stability. Often, if the play has undergone major revisions, the group republishes it. The Jana Natya Manch's plays are

regularly performed all over the Hindi-speaking region by street theatre activists, college theatre teams and other enthusiasts. The group does not seek to enforce any copyright over its plays, nor does it demand that its permission be sought before someone performs them. Recently, the Jana Natya Manch has decided to upload all the available scripts of its plays to its website under the Creative Commons Attribution Non-Commercial Share Alike License.

This process of free distribution of its plays started from the very inception of the group. The group performed its first recognisable instance of a street play – *Machine* – in 1978 in a trade union rally in Boat Club in Delhi. Safdar Hashmi, one of the founder members of the group recounted:

we performed at the Boat Club for about 160,000 workers [...] A lot of people recorded the play. We performed on a twenty-foot high rostrum. [...] A month after the rally we started getting reports from all around the country that people were performing *Machine* there. They had taken the tape recordings back to their people and reconstructed it in their own languages (Hashmi 1989, 162).

After 1 January 1989, when the Jana Natya Manch's then Convenor, Safdar Hashmi was brutally murdered during a performance of *Halla Bol*, groups all across the country performed *Halla Bol*. It was also translated in various languages. Reports indicate that on Safdar's birthday on 12 April 1989 there were over 3,000 performances of the play. The number of unreported performances could have been many.

But are all the instances of such copying desirable? There are often cases where groups who are at variance with the ideological views of the Jana Natya Manch use the plays after altering them significantly. In 1995, the Department of Family Welfare under the Ministry of Health invited 'sealed quotations' from 'reputed parties in the profession' for performing street plays during India International Trade Fair. Many of the applications were from groups which rigged themselves together to make a quick buck. But the group which was finally

given the contract was one which had been performing proscenium theatre of some quality for several years in Delhi. It was a group which had battled many odds and needed money desperately. This group decided to perform *Aurat* [Woman, 1979], but only after making certain alterations. The play, which was first performed by the Jana Natya Manch in 1979, was a play which analyzed the issues of the exploitation of women in a patriarchal society from the angle of class politics and made the radical suggestion that women should join the organised movement. The alterations were not of the kind which are required for adapting the play to the local context. The alterations were to delete the radical content of *Aurat*. However, it was not that the group made these deletions out of any official guideline or dictate – it was an exercise in self-censorship which anticipated any official directive (Deshpande 1997, 3). At another instance I have witnessed one of the Jana Natya Manch's plays being performed by a group put together by the Congress Party, a political opponent of the Left. In it the revolutionary characters were replaced by the mascots of the Congress Party.

Yet the group is not perturbed by such otherwise undesirable borrowings. The experience of the Jana Natya Manch is not very much different from those of other organised political theatre groups across the world. Boal's ideas of the 'Theatre of the Oppressed' have inspired community theatre movements across the globe and has helped transform theatre into an effective tool for empowerment of the disadvantaged peoples.

Even in the examples quoted earlier, in which playwrights have expressed dissatisfaction about the discourtesy shown by those performing their plays, the playwrights seem to be more concerned about the moral rather than the commercial aspects of the copyright statutes. Theatre by its very nature brings in a different set of attitudes from the other arts. It is a collaborative art and requires the cooperation of artists of diverse talents and temperaments. The practice of theatre also makes great demands on discipline — for rehearsals and performances cannot take

place without the entire team working together. It also requires each artist to value the contribution of the others. Theatre, especially amateur theatre, thus has a great democratising influence on all involved in it. In a country like India, where the theatre is not a viable source of livelihood for most, it is amateur theatre fuelled by some moral or ideological goal that lets this art form thrive. At least, the theatre artists who continue for long in this form do so out of a deep commitment to the theatre, for they forsake the glitz, glamour and mega money of the electronic media. For those, who are motivated by ideological goals and who choose to make their theatrical practice as a mechanism to counter the dominance of the capitalist and increasingly monopolist media, the theatre forms a seed of dissent. Among such artists we see an urge to share and exchange freely, disregarding the arguments that form the basic assumptions of the copyright regime.



Conclusion: Knowledge before Profit

Today, the possibilities of Creative Commons have extended beyond software. The media wikis, like wikipedia and wikimapia, work on the collaborative Creative Commons model for open-access encyclopedias and maps. The platform has also been used by scientists for drug-research for life-threatening diseases like cancer. The free distribution of pamphlets in the seventeenth century London Coffee Houses, is emulated by the Web 2.0 platforms like blogs, video-sharing, online communities have fuelled an entire method to challenge the powers that be. The web-sharing platform has been used to coordinate activities of various groups during the protests against imperialist globalization and the unjust war on Iraq. Free sharing of posters, pictures, videos, case studies have strengthened the understanding of activists from various parts of the world and equipped them to confront their immediate realities. Certain governments have reacted in the manner of Charles II in restricting the internet, others do it more surreptitiously. While media houses decry it, peer-to-peer sharing has opened up newer efficiencies, making available to the online community material which had been shelved from the public domain which publishers had deemed unfit for further rent earning. It is today possible to think of using the internet-sharing mechanisms to overcome the control that traditional gatekeepers have used to isolate literature and art which challenge the establishment.

Mechanical to Digital

As we have seen, as there was a shift in technology from the oral, scribal or non-mechanical methods of reproduction of art to mechanical reproduction and distribution of art there was a

corresponding shift in the artists' relationship to their creation. And there was a similar shift in the legislative means by which the work of art was henceforth to be regulated and administered. In an age where capitalist production and values were the dominant set of norms in society, artistic production too gradually adopted and bolstered the ideas of individualism and the right to individual property. With the growth of colonialism these norms and regimes of copyright entered the colonies, where a subsequent change of the artists' relation to their creation was almost imposed through the intervention of the colonial authority. However, such shifts were not complete and absolute. There always existed pockets in which copyright legislation was disregarded, either as a direct contravention of the law as in the case of pirated books and movies, or as an activity legitimised by the community — as in the case of the publication of Manga comics in Japan. Large media corporations and other beneficiaries of the copyright regime have sought to use legal and coercive methods to obliterate these pockets. The judiciary has a major role to play in complementing copyright legislation with interpretations of the law. But as we have seen the judicial interpretations have been far from uniform. In many situations judicial interpretations and assumptions have been contradictory. Each legislation and judicial intervention justifies itself on the assumption that intellectual property is a natural right and the creative worker deserves the protection of the law and that the chief motive for creative initiatives and indeed all human activity is the earning of profit and personal aggrandisement. However, the many contradictions that have arisen in the administering of the copyright legislations speak of faultlines — an attempt to couch in legal and philosophical terms the attempt to imprison knowledge and art to the service of profit.

Today, as we move from an era of the mechanical reproduction of art to the era of digital reproduction of art, we are once again witnessing a shift in the artists' relation to their

creation and the principles which form the basis for the regulation and, indeed, of encouragement for the creation of art and the dissemination of knowledge. Albeit the change is slow and is viciously resisted by the media corporations who have the most to lose from the impending freedom of knowledge. But the dramatic rise of technologies of digital reproduction are bound to create newer economies of scale where copying, sharing and reworking of works of art are likely to democratise the processes of artistic creation enormously. The diminishing costs of production and reproduction of art, is progressively rendering the role of the large media companies and finance capital irrelevant. Sure, there is still an important role to be played by the publisher-editor and other forms of gatekeepers — for in the huge arena of creative exchange, audiences would look for guidance and editorial recommendation of which work to spend their money and time on. However, thus far the almost prohibitive cost of printing, filming and other technologies of distribution meant an amalgamation of the roles of the investor with that of the editor. This has allowed the investor to wield a disproportionate say over the shape of the work of art and override the choices made by artists. This intervention of the investor of capital in matters related to artistic decision is legitimised as democratic with the assumption that the market is a democratic arena. Nothing can be further than the truth as media monopolies and market manipulations have continued to thwart creativity and undermine experimentation in art. With the fall in cost of reproduction and distribution of art, the role of the editor is likely to be freed from the need to mobilise a great amount of money to finance editorial inputs and printing. Independent editors with little financial backing would become the order of the day. Indeed, as the experiences of the Wikimedia show, it is possible to envisage a system where the editorial role would be performed by a community. Having realised the potential of this new form of editorialisation large media companies are making efforts to

school the community. Such as, the Google search engine seeks to prioritise the listings of websites which can earn greater revenues. Social networking sites like Facebook have tied up with Microsoft's new search engine Bing to force users on the site to be exposed to Microsoft's search engine. Certain computer manufacturers provide particular operating systems by default on their machines – forcing the user to cough up additional money for the software. Media conglomerates are engaged in a battle with the forces of community production and regulation of art to create economies of scale which would discourage users from choosing the route to freedom. To counter this, the community of artists/artistes and audiences too have to come together and they understand the full potential of the new possibilities of the digital era and develop viable networks and partnerships to edge out the vicious grip of the media companies. This is particularly pertinent for those artists/artistes and audiences who wish to develop greater partnerships in the desire to initiate and realise social and political change. In this respect, the experience of the agit prop theatre groups and networks can be particularly valuable. Initiatives to shape a more just, equitable and democratic world has to be democratic themselves.

Certainly, the advent of digital reproduction of art has given a fillip to the opponents of the copyright regime, reducing the dependence on the capacity to invest large sums of money. However, such opposition to existing copyright laws focuses on the severity and pervasiveness of copyright legislation and not on the underlying basis of copyright. As is clear from the statement made by one of the most articulate opponents of a strict copyright regime Siva Vaidyanathan in his book *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity* (2001):

The ... most important purpose of this book is to argue that American culture and politics would function better under a system that guarantees “thin” copyright protection – just enough protection to

encourage creativity, yet limited so that emerging artists, scholars, writers, and students can enjoy a rich public domain and broad “fair-use” of copyrighted material. While “thick” copyright has had a chilling effect on creativity, thin copyright would enrich American literature, music, art, and democratic culture. (Vaidyanathan 2001, 15-16)

Vaidyanathan's distinction between “thick” and “thin” copyright is an indicator of his agreement with the assumptions of copyright — that copyright protection is essential for encouraging creativity, rather copyright protection is essential to encourage artists and other intellectual workers to bring their work to the public domain; that the most important element that deserves protection in a work of intellectual nature is its originality, an argument which emanates from the acceptance of the notion of the ‘genius’ mind; that the primary reason an artist or intellectual worker undertakes the creation of a work is profit or material gain. Therefore, the only way creativity can be encouraged is to ensure profit against originality. This is a reformist point of view which locates its dissatisfaction with existing copyright legislation in the violation of the promise of returning a work of art to the public domain. Such a position, however, does not consider the possibility that originality in any work of art or intellectual effort would be very difficult to pin point if at all. The objection in such a case is a matter of degree not the nature of the protection provided by copyright legislation. It does not reflect a dissatisfaction at the level of policy, or about the function of art in society and the relationship between the artist or the intellectual worker and her work. Certainly, this is a position that reaffirms faith in the fundamentals of the capitalist system of production, in the certainty that the cycle of investment and profit is essential for the democratisation of society and in the inviolability right to private property. But those for whom this is not an acceptable position the attitude to copyright also differs drastically.

Needless to assert that those who do not accept the

fundamental tenets of capitalism as stated above are dissatisfied with the way the world is and seek to alter the social and political relations in the society. This is not the space to go into a detailed discussion of what would be the exact character of a non-capitalist world of the future. But from the discussion of the proceeding chapters it is safe to conclude that in moments when movements for social and political change are undertaken the agents of such change do not consider the product of their intellectual effort to be a piece of property to be jealously guarded and to be treated as an object of profit. They also do not maintain a strict record of the usage or reproduction of the said work by other people. For them profit is not the primary motive, the desire to shape a better world is. So at the first level it can be argued that in case of artists or intellectual workers who have devoted their efforts to the cause of an ideological nature, copyright protection is not a necessary condition for the practice of their art. At the second level, it can be argued that had such artists been concerned about the copyright protection of and profit earning capabilities of their art this would have been an attitude antithetical to their ideological position. If we draw a corollary to the two earlier stated arguments we can further argue that the doctrine of copyright is inimical to social change and is status quoist. An artist who desires to create works which help the cause of social change would want to reach out to a maximum number of people. However, even if a publisher or producer agrees to buy the rights to such work or to finance such a project, once the work is ready for mass distribution it is likely to be prohibitively priced. Unless in circumstances where such a financier herself concurs with the ideological position of the artist, or in the least is sympathetic to the artist's position, the work of art would remain inaccessible to those who are most likely to be inspired by it – the marginalised and the poorer section of the society. But in all likelihood such works of art which have a potential to inspire a rebellion or dissatisfaction with the existing social relations

would not receive a favourable response from the publishers, producers, financiers and if at all the artist would be asked to alter the work or it would be packaged in a manner which would blunt the radical edge of the work.

Freedom from Profit

If we carefully go over the attitudes to copyright and the objections that have arisen in the disputes concerning the theatre, we would be able to discover three layers of arguments. Those like Vaidyanathan and Lessig who argue that existing legislations on copyright betray the basic assumptions of copyright by thwarting the entry of the work of art to the public domain. Further, though it is claimed that copyright protection is essential to reward the artist/artiste or the intellectual worker for her efforts and originality, historically it is the printer, publisher, producer who have always accumulated the riches. Therefore, if a strict or 'thick' copyright regime is unable to bring to the artist/artiste the benefits that it promises, it should better be replaced by a 'thin' copyright regime, which would ensure a greater availability of the work to the public domain and thus allow greater creative interaction and varied creative output. On the other hand, there are those who question the very assumptions about originality. This strain of argument, to which I am party, treats works of art or intellectual effort as primarily collective, if only in the form of a culmination of long processes of borrowings and influences. Even in situations where the work is apparently a result of individual effort and has emanated from the 'mind' of an individual, it is impossible to judge exactly what has been the contribution of the individual and how far she has been 'inspired' by works around her or interaction with other people around her. Would it not be wrong to attribute all credit for the work to the individual artist because it difficult to trace the exact proportion of the influence which has gone into the making of the work in consideration? It would,

perhaps, be more just to assume community involvement and add the artists/artistes name not as the sole creator of the work but as the last in the series of all who have contributed to it and let the work in acknowledgement of the contribution of the community be returned to the public domain immediately.

At the second layer of the argument concerns the attitudes of theatre artists towards theatrical productions. In most of the copyright-related disputes in the theatre and other collective forms which have been cited here, we have found that artists in question accept that the individual artists contribute separately and that it is possible to settle the matter of attribution and monetary compensation in an objective and satisfactory manner. The sense of belonging to the work that they have put in and the art that they have created leads them to consider raising claims if they feel that their rights have been violated. Even when they are unable to go to court for it being a tedious or expensive exercise they do express their dismay in conversations with interviewers, public speeches or articles. But in the case of politically motivated theatre artistes such matters are not those fit for legal disputes or even to be raised in public platforms as violation of their rights as artists. If they do speak of the matter of distortion of their work by other performers or artists this is in the vein of ideological criticism. The ideologically motivated artists do not look upon their work as property to be profited from, but as an article of expression through which exploitation and injustice could be exposed and dissent could be propagated.

From this could be deduced the final level of my argument: a reformist attitude towards the copyright endorses the existence of intellectual property and therefore of private property. Such a position has no fundamental disagreement or discomfort with the capitalist system of production. A more radical approach on the other hand discards the existence of the intellectual property for it stems from a fundamental disagreement with the system of capitalist production. Those holding such position, and that includes me, advocate the abolition of copyright laws

as they exist today and work towards a wider acceptance of the philosophy behind Creative Commons Licenses. Though Creative Commons Licences are based on existing copyright laws, they are innovations which seek to create within the dominant, the possibility of an emergent system.

However, a question may be legitimately raised about the viability of such a system by questioning the possibility of the artist earning a living under the system that is being advocated. The current system, however, unjust and inequitable does provide the artist with the possibility to earn some upfront fees or royalties at the time of publication. Would bringing the work into the public domain be able to ensure remuneration for the artist? Certainly, I would argue depending upon the experiences of works which have been published under Creative Commons licences. For instance, as I have already stated, musicians today earn most of their money not through royalty proceeds from the sale of their records but from performance fees from live performances. If an artiste's work were released digitally on the internet into the public domain, it would be possible for the artiste to gather enough publicity, depending of course on the merit of the work. Such popularity is not likely to be stifled by the choices made by the producer or the recording company but by the community of music enthusiasts. With requisite popularity the musician is likely to earn a fair sum from live performances. Also, making music available online could serve as sampling, and it could mean that a buyer could be attracted to visit an online store and buy more of an artiste's music or more music of the similar genre or more music from a list of recommendations from another enthusiast located halfway across the globe. Both the artist and the buyer would benefit, for the artiste would be able to earn a greater share of the revenue available for spending in the market and the buyer would be able to get more music for her money. With the same amount of money being spent on music, there will be a far greater exchange of music than under the current system. If the cost of music is reasonably less, enthusiasts would prefer

to buy the music of her choice easily than wanting to pirate at almost a similar cost. Further, the distribution of the piece of music or the music album need not be free, but online distribution without the need for generating enormous profits for the music company, would keep the cost of music sufficiently low. This would lower the access costs for the listeners and allows the artistes to gather a greater share of the sales proceeds than they would have otherwise done. Several musicians have already started experimenting with online pre-booking of music albums at discounted prices to fund their recording expenses. It is possible that once the community of artists/artistes, intellectual workers and audiences recognise the possibilities of the emerging system, they would experiment with more innovative means of organising artistic and intellectual production. However, the development of sufficient network and reliability of community supported and community regulated artistic production cannot be realised till such time that community supported production replaces the profit-driven capitalist mode of production. Indeed, the movement to free works of art and intellectual effort from the prison-house of profit is only one aspect of the struggle to hasten the demise of the capitalist system. Yet, whenever it may be that the profit-driven machinery is replaced by the community-supported mechanism, the movement for change has to innovate and already put in practice the world of the future to whatever extent possible. Agit prop theatre and other forms of political art forms, which are in the forefront of the movement for change bear in them sufficient evidence that creativity without the profit motive, without the protection of copyright legislations are indeed possible.

The battle between Creative Commons and restrictive copyright is not merely one about the independence of the author and the artist. It is a much larger battle of ensuring the demise of capital, of ensuring the victory of democracy over profit.

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