

Videodisc Piracy as an Instance of Resistance

Abstract

Until the emergence of the internet as the primary means of film distribution, the video piracy situation in Southeast Asia acquired a renewed degree of urgency when the DVD format was unilaterally adopted by American distribution companies. Concerns regarding the proliferation of illegitimate material were expressed not just at the level of the usual policing agencies but also at the more globally involved levels of governments and the US embassy, representing the International Intellectual Property Alliance, with local academicians and artists contributing to the debates. In the case of the Philippines, a former US colony, the involvement of the Muslim community was central to the controversy, as the group primarily responsible for “pirated” products. This article will attempt to track the various interests represented by the groups of players in the controversy as well as the means by which the issue played itself out.

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Keywords

International Intellectual Property Alliance; postcoloniality; RP-US special relations; Muslim presence; Quiapo cinematheque

1. A Recent Historical Peculiarity

No one had expected the internet-era copyright wars to result in an actual fatality, despite content producers’ excessive escalations: millions of dollars in penalties, decades in prison, even for teen offenders who never even intended to profit from the material they downloaded. These were presumably scare tactics meant to provide examples to netizens tempted by the ease of engaging in the practice, regardless of whether they intended to profit from it or not. One of the most politically charged areas was that of journal-article publications, since the ideal of providing new knowledge for the betterment of scholarship conflicted with several outlets’ insistence on exorbitant prices, intended to skim off the considerable profits of top global universities.

One such self-identified “hactivist,” Aaron Swartz, attempted to test the contradiction between academic journals’ progressive editorial ideals and aggressive profiteering by surreptitiously downloading articles from the JSTOR digital library. In 2011, he was arrested by the Massachusetts Institute of Technology for using its guest account in his successful hacking activity. Faced with the prospect of \$1 million in fines and a prison term of 35 years, he committed suicide in early 2013 and ushered in a possibly still-continuing period of reflection on the costs and methods of prosecuting copyright-piracy cases. The digital open-access movement gained ground among scholarly practitioners, and far

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more careful (though just as insistent) attempts to block the release of the National Security Agency's classified documents by Edward Snowden, as well as continuation of Swartz's hacking of paywalled articles by Alexandra Elbakyan via her *Sci-Hub* internet service; both Snowden and Elbakyan have been eluding United States security officials by residing in countries that provide them with protection.

This contemporary state of affairs – at best a stand-off, at worst a triumph of capitalist forces with resisters forced to go underground, as it were – replicates itself in territories obliged to observe the principles of the same country, the US, where the conflicts play themselves out. The Philippines affords a particularly privileged national scenario, as the US's first (and so-far only) formal colonial territory, and arguably a neocolony that functions not much differently from Latin American banana republics, particularly in economic terms (Krugman, Alm, Collins, & Remolina 1992: 1–78). The turning point was 1898, described by Columbia law professor Christina Duffy Ponsa as the USA's "Imperial Moment," with the annexation of Hawai'i and claims to Puerto Rico, Guam, and the Philippines as spoils of the Spanish-American War, with American Samoa added by 1900 (Mack 2017, Chapter 2). The Philippines responded by waging an anticolonial war, transmuting its Revolution against Spain into the Philippine-American War (described in official American reports as instances of banditry but with the last major resistance leader, General Macario Sakay, captured and executed by the colonial government in 1907, five years after the US declared the war over). The Philippine trajectory underwent dramatic shifts, with the country classified as part of the US Commonwealth and securing the support of the US against Japanese occupation in World War

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II. It was finally granted nominal independence in 1946, with Americans ensuring their unilateral economic exploitation via the Bell Trade Act and rent-free maintenance of an extensive network of military and naval bases in the country.

The practice of piracy in Southeast Asia can be traced to as far back as the precolonial period, or before the 16th century, inasmuch as the region's archipelagic nature enabled seaborne opportunities for raids and invasions on coastal and riverside settlements. European colonial incursions, initially unsuccessful, were waged by seafaring Spaniards (led by a Portuguese, Ferdinand Magellan, who perished in a naval battle against the rival chieftain of a local leader that the Spaniards allied with). Upon setting up Manila as the colonial capital, the Spaniards had to contend with attacks by merchant-pirates, the fiercest of which were led by Limahong, a Chinese warlord. The territorial lens used by colonial chroniclers regarded these incursions as attempts at supplanting the occupying forces, similar to attacks by the Dutch and British, despite the fact that local polities (misrecognized by the Spaniards as preorganized and therefore in need of administration – see Abinales and Amoroso 2017, Chapter 2) were more attuned to demographic fluctuations, since labor was always in short supply.

2. Politicalized Raids

The US acquisition of the Philippines from Spain was demonstrated by a mock naval battle in Manila Bay, intended to display to the native population that the defeat of the Spaniards was due



to American

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intervention rather than anticolonial revolutionary efforts. Unsurprisingly, the act of piracy was accorded political value premised on the US's hegemonic position as exponent of free-market democracy vis-à-vis its rivals in Soviet-led and Chinese-supported Marxist socialism. This view intensified after the Philippines's independence, when the Cold War resulted in the production of propaganda materials that warned against the purported smuggling of contraband by enemy agents from the People's Republic of China, culminating in the capture of the ships M/V *Karagatan* and M/V *Doña Andrea II*, designated to deliver firearms (allegedly from North Korea) to the Communist New People's Army in the mid-1970s, a few years after the declaration of martial law by Ferdinand E. Marcos (Verzola 2017).

In contrast, the question of media piracy may appear to be more an issue of commerce rather than of politics. One of the developments in the attempt by the US to control media piracy, however, draws directly from its Cold War approach in using capitalist privilege as a means of political persuasion. This paper will attempt to track the "introduction" and "development" of internet-era copyright enforcement in the Philippines via the US's International Intellectual Property Alliance, from its initial report in 2001 to the height of its concern over so-called DVD piracy, through most of the 2000s. In the process, it will provide a metacritical reading of studies of video piracy in the country, as well as in other applicable national contexts, with the aim of arriving at a more workable resolution of the conflict between copyright ownership and the prerogatives of the public domain.

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3. Overseas Battle Front

The Philippines is rapidly becoming a central battlefield in the increasingly intense campaign against optical media piracy in Southeast Asia; but the country remains ill-prepared to fight this battle. Pirate production capacity in the Philippines continues to increase, as pirate syndicates flee less hospitable jurisdictions; both imports and exports of unauthorized digital copies move freely across the country's porous borders; and the Philippine domestic market remains heavily infiltrated by pirate product in all segments, from software to audio-visual, music to books. (IIPA 2001, *Special 301 Report*: 175)

On an inspection visit to the Philippines in January 2003, William Lash III declared that he had witnessed "the most open violation" of the US's stance against video piracy. At least one publication indulged in the inevitable pun: "[Republic of the Philippines] Lashed for Rampant Piracy," the *Metropolitan Computer Times* headline stated (Villafania 2003). Spared from commentary was Lash's official title: the United States' Assistant Secretary of Commerce for Market Access and Compliance – a position that exists in no other country in the world, alongside another exclusive title: Under Secretary of Commerce for Intellectual Property.

The narrative of video piracy in the Philippines underwent a dramatic upsurge during the



present millennium's global transition to optical video production, particularly with DVD technology. As is common knowledge, and as documented by the IIPA, the Philippines was not

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the only country where this confluence of optical video production and video piracy intensified (IIPA 2004, "Milestones of the International Intellectual Property Alliance": 1). Although it enjoyed a "happy ending" after the mid-2000s, in the sense that the Philippines was no longer listed by the IIPA among problematic intellectual-property cases, the country's conflicted history of relations with the US, spanning the full range of colonial, neocolonial, and postcolonial tensions and negotiations, will enable interested observers to redirect focus on how the US has spearheaded its fairly recent campaign to eradicate media piracy worldwide, and why it has remained the strongest, and in many ways the only, dominant player in this game.

This section of the paper will begin by recounting the narrative of the Philippines' intellectual-property (IP) performance as narrated in the IIPA's reports. It will then consider arguments for and against video piracy in the Philippines, with a view to speculating whether this admittedly exceptional perspective may have been applicable to similar predicaments that might succeed the IIPA's interventions. The author admits to having patronized pirated material strictly for academic purposes, and may have also unknowingly bought pirated videos from sellers claiming to be legitimate. Notwithstanding the significant temporal distance from the period of conduct of the study, names of individuals and establishments vulnerable to police action have been changed for the parties' protection.

Coverage of the IIPA's major concern, the proliferation of pirated DVDs, has been both extensive yet rarely scholarly. It would be possible to find provisional causes for this state of affairs. The phenomenon arrived during the period when social-network activity (specifically

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internet blogging and fora or message boards) became accessible to middle-class citizens via home desktops, personal computers, or PC-rental parlors; the larger impetus for netizens' blogging activity was to engage in film commentary – a practice that continues to the present, either in the now-older blogging format or as posts on *Facebook* personal accounts or pages. Unfortunately, this borderline-academic regimen rarely progressed beyond occasional feature articles, in specialized blogs or more traditional print-media outlets.¹

In fact, one may count only one journal article, Jasmine Nadua Trice's "The Quiapo Cinémathèque," published in 2010, as directly dealing with the issue of pirated DVDs in the Philippines. However, if one were to include published conference papers, two proceedings articles also deal with the same topic, and in fact precede Trice's contribution. The first, Joel David's "Cutthroat Archipelago," was published in 2005, while the second, Tilman Baumgärtel's "The Culture of Piracy in the Philippines," came out in 2006. David's paper is a polemic defense of the practice of non-legally reproducing foreign DVDs for sale to local purchasers, while Baumgärtel's denounces the practice and exposes some of the practitioners' methods.² Trice's article provides a historical and cultural context for video piracy and, like David's, problematizes



the IIPA's interventionist approach. All three make use of anecdotal material

¹ For an example of a blog, see the now-inactive Pirates of Carriedo's *Pirata 101*.

² In a later article, introducing a book he edited on global piracy, Baumgärtel maintained that the project was not "in defence or versus piracy. [The book] takes piracy as a phenomenon that is a given in current net culture, and looks at some of the peculiarities that other recent studies of piracy ... have not paid attention to" ("Media Piracy" 19).

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(as does the present article), with the first two detailing interviews that the authors engaged in with on-the-ground personalities involved in the controversy. Their significance to the current copyright situation will be detailed alongside an explication of the IIPA's role in local DVD piracy.

Book-length works on video piracy are similarly as rare – none on the Philippine experience, in fact, although the number of articles and blog postings would suffice to constitute a volume unto itself. Part of the reason why intellectual-property (IP) enforcement generates heated discussion is that it is a fairly recent feature of IP treaties, to be discussed more extensively in the next section. In fact, the world's successful prosecution of copyright violation using file-sharing software occurred only as recently as 2005, in Hong Kong ("Man Jailed in 1st Copyright Violation Case," *BizReport* 07/11/2005). Not surprisingly, the most extensive and useful study of video piracy, Laikwan Pang's *Cultural Control and Globalization in Asia*, provides an extensive analysis of the pre-DVD format, Compact Disc digital videos or VCDs, which served as the format for the supposedly rampant piracy of Hollywood film products.

In a later volume, *Creativity and Its Discontents*, Pang built on the observation that in the contemporary era, a new system, called the creative economy, centered on the production of original creative material, has effectively supplanted the knowledge economy (*Creativity and Its Discontents* Introduction). She mentions the two emerging approaches to the study of the creative economy, both of which are in potential conflict with each other: one based on policy studies focused on

the fortification of industrial structure, product diversity, and reception democracy ... [as] the work not of a single genius but of a network of

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people with related skills"; the other "is motivated not so much by the desire to advance the new economy but by the economy's effects of hegemony and exploitation ... [with the belief that] there is a need to articulate a new counter-rhetoric to expose and fight against this new social structure, whose neoliberal outlook hides new, more severe forms of exploitation. (Pang 2012, *Creativity and Its Discontents*: Introduction).

Pang orients her study to the second approach, which conforms more definitively to Marxist



ideals than the auteurist-canonical methods usually appropriated in film-studies programs and enthusiastically adopted by film critics and commentators, including those in the Philippines. Needless to add, the present paper will turn whenever possible to the anti-exploitative option, while simultaneously acknowledging the usefulness of auteurism and canonization for upholding an otherwise condemned realm of practice.

4. New Bully on the Block

Pang's position resonates with that of Roland V. Bettig, who similarly maintained that the standard opposition between cultural content creators and the producers who finance them is only apparently revolutionary at best, and overlooks the interests of audiences and cultural workers. Bettig tracks the origin of copyright concerns to the proliferation of literary material in the decades after the introduction of movable-type printing in Europe; he points out the same Enlightenment-era impulse in the remarks of Thomas Jefferson regarding the need for a mechanism

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to compensate for the distractions of artistic and literary activity from the practitioners' need to earn a living. From an account of how media conglomerates have taken on the cudgels for copyright claimants, Bettig arrives at the digital-era dilemma of filmed entertainment: that the cost of reproducing creative content is virtually negligible compared to the cost of producing it.³ As Pang does, he configures the IIPA as US producers' means of strong-arming foreign governments into allowing American media corporations to continue maximizing their profits from creative-content production.

The 34-year-old IIPA, a US private-sector coalition, is a relative newcomer in copyright-enforcement (IIPA 2004, "Milestones of the International Intellectual Property Alliance": 5). Its formation coincided with the growing concern of copyright-based industries over the emergence of technological advancements that enable consumers to appropriate, process, and reproduce pristine content that had formerly been accessible only through direct purchases from producers and their authorized distributors. As a so-far effective strategy for pursuing its objective of stringent policing of copyright-related acts, the IIPA held entire nations responsible for copyright violations within their territories, and enforced its will through the US Trade Representative. In effect, a country's economic performance can be affected by the presence of so-called pirates, and anti-piracy measures become part of the preconditions for unimpeded trade relations with the US.

³ See Bettig 1996: 239 for the comparison between content creators and producers; 15 for the early years of copyright; 79 for his reference to Jefferson; 40 for media conglomerations' claims to copyright; and 93 for the shift in cost of reproducing content.

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This tit-for-tat arrangement, where the conduct of trade with the US became predicated on a country's observation of IP rights (IPRs), was made explicit in the 1994 Uruguay Round of



the negotiations over the General Agreement on Tariffs and Trade or GATT, during which the World Trade Organization and its agreement on trade-related aspects of intellectual property rights (TRIPS) were organized. The TRIPS agreement, scheduled to be fully implemented by the year 2006, managed to “build IP protection into the fabric of GATT itself [as well as] established the highest level of IP protection in an international agreement.” Although IP issues had been the concern of US and European lawmakers since the 18th century, TRIPS actually holds the distinction of being the first effective enforcement agreement, credited for the successful prosecution of the Hong Kong file sharing violator mentioned earlier.⁴

Per the IIPA’s account, optical media piracy first “took root in the Philippines in 1999, [then] flourished and grew in 2000” (IIPA 2001, *Special 301 Report*: 176). In an ominous doomsday tone first heard in the Philippines during the turn of the 20th century, when American colonial officers (many of whose commanders were veterans of the “pacification campaigns” waged against Indigenous American peoples) threatened the extermination of the native population if anti-colonial revolutionaries refused to surrender, the IIPA warned that

This increasingly serious problem ... damages the legitimate

⁴ See Wang 2003: 26, for TRIPS and IP protection; and Scotchmer 2004: 4–6, for TRIPS’s function as agreement enforcer.

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market for every segment of the copyright industries. It dims the prospects of success for authors, musicians, and other creators, both Filipino and foreign; it distorts the Philippines’ domestic market for copyrighted materials, damaging legitimate retailers, exhibitors and other distributors; and it denigrates the country’s reputation among its neighbors, as the Philippines increasingly becomes identified as a source of pirate product sold in other Southeast Asian markets. (IIPA 2001, *Special 301 Report*: 176)

The IIPA further clarified that neighboring countries were moving, “however slowly, toward more effective enforcement against pirate optical media production.” It cited the operations of technicians from Hong Kong, Singapore, Malaysia, and China, and foreign financing from Malaysia and Macau as responsible for the instances of piracy. Not content with mentioning Malaysia twice, it also referred to the involvement of “Muslim extremist groups [who] appear to be involved in the distribution of pirate product imported from nearby Malaysia” (IIPA 2001, *Special 301 Report*: 177).

For this apparent worsening of its piracy situation, the Philippines’s status was downgraded by the IIPA from “Watch List” to “Priority Watch List,” a condition it maintained from 2001 to 2004, and a status it shared during the same period with Argentina, India, Indonesia, Lebanon, the Russian Federation, and Taiwan. As of the IIPA’s 2006 “Special 301” Recommendations, Taiwan had been promoted to “Watch List” status, Russia had been listed as “Priority Foreign Country” (a more urgent designation than “Priority Watch List”), while Chile, Colombia, Costa Rica, the Dominican Republic, Egypt, Israel, the People’s Republic of



China, Thailand, Turkey, the Ukraine, and Venezuela had joined the “Priority Watch List” club (IIPA 2006, “Appendix A”: 1).

The Philippines’s continued inclusion was not for want of trying. In 2005, the US Trade Representative recommended an “Out-of-Cycle Review” for the Philippines inasmuch as the latter had made “significant progress” in 2004. Martin Schlesinger, the trade official, cited

the passage of the Optical Media Act..., the creation of the Optical Media Board, accession to the [World Intellectual Property Organization] Internet Treaties, improved coordination of the groups responsible for IPR enforcement, and an increased number of raids of production facilities and retail establishments. The Philippines also implemented the Optical Media Act in early 2005, which should enable Philippine authorities to take decisive action against pirate optical media production facilities. (Schlesinger 2006: 2)

The report also mentioned that counterfeit goods were this time being brought in from China, Malaysia, Hong Kong, and Thailand. The upshot of the exercise, however, was the IIPA’s insistence that the Philippines be nevertheless maintained on the “Priority Watch List,” listing nine “key reasons” ranging from institutional weaknesses to poor coordination between government agencies, “leaks and loss of evidence” in retail raids, and delays in court processes. First on its list was what it termed the “Solid Laguna” case, wherein the Supreme Court quashed a search warrant because “none of those requesting the search had ‘seen any pirated product actually being produced,’” thus “setting the proof standard so high for obtaining search warrants” (Schlesinger 2006: 3–4).

Ultimately the OMB was credited by the IIPA for solving the DVD-piracy problem. Formed in 1987 and originally known as the Videogram Regulatory Board until it was renamed in 2004, the OMB took the extra measure of appointing high-profile movie stars such as Edu Manzano, Ronnie Ricketts, and Ramon Revilla Jr. – who was jailed for corruption while serving a term as senator; Manzano, concerned for the local industry, negotiated with the so-called pirates to desist from copying entries to the then-ongoing Metro Manila Film Festival, a well-received gesture that understandably did not impress the Hollywood-invested IIPA (Trice 2010: 534–535). For all their political differences, the elected mayors of Manila (Alfredo S. Lim from 1992 to 1998, and from 2007 to 2013; José L. Atienza Jr. from 1998 to 2007; desposed president Joseph Estrada from 2013 to 2019) were similarly enthusiastic about displaying their obeisance to the IIPA (Figure 1).





Figure 1. Alfredo Lim, former Manila mayor, with shredder in background, demonstrating compliance with the IIPA's demand to rid the country of "pirated" materials. (Source: GMA News.)

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5. Yen for Pleasure

What was elided in the IIPA reports' insistence on IPR violations was the implicit inflexibility of its assumptions about product prices. In fact, as if to acknowledge the inequity of its acceptance of existing prices, the costs of consumer products were never provided individually, but were instead aggregated as "losses." This helps explain why most of the violators on its annual lists were rarely European and almost never Western European, and why the less-developed countries tended to fall under the more severe categories. In the case of the Philippines, the "Estimated Trade Losses Due to Copyright Piracy" was US\$28 million in 2001, yet one would have no way of knowing from this figure how much a legitimate videocopy would cost (IIPA 2006, *Special 301 Report*: 129). As it turns out, the average consumer price of an individual DVD increased from 1000 Philippine pesos to ₱1125, during a period when a pirated disc would fetch way below ₱100 (as it did for the duration of piracy activity, roughly until the early 2010s – see Fisher et al. 2003: 150). By the end of the DVD-piracy phenomenon, where the sales of illegal copies have become negligible enough to be largely overlooked by authorities, "legitimate" DVDs have tended to cost almost the same as their "pirated" counterparts – i.e., ₱100 and below, with ₱200 as the "high-end" ceiling. The parallel example would be the legal opinion expressed by 9th District Court Judge Marilyn Hall Patel, in the copyright infringement case against Napster. In 2002, after upholding five US major record labels' complaint against the file-trading service, Patel called both sides "dirty" and ruled that the labels had to prove their ownership of thousands of copyrights "and prove those copyrights

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weren't used to monopolize and stifle the distribution of digital music," inasmuch as "Napster's misguided attempts to build a business using illegally obtained music paled in comparison to what could be massive misuse and heavy-handed tactics by the recording industry."⁵

A set of hidden motives lurked behind this summative presentation of figures. Upon tallying the IIPA's claims during the five-year period 1998–2002, Shujen Wang averred that

While the copyright industries have indeed suffered huge profit losses due to piracy, the accuracy and validity of the above estimates are questionable. Because illegal sales and distribution are private acts, the data are extrapolated from very limited information. Furthermore, it is problematic to assume that each illegal copy would displace a sale at standard market prices. Finally, the estimates are based on reduction in “gross revenues” rather than on net loss to the industries. (Wang 2003: 28–29)

What Wang described on a macro level, local consumers understood on a nitty-gritty basis. Undoubtedly because of the competition provided by video pirates, the average sale price of a “legitimate” DVD dropped by 2006 to half of the 2001 level, or about ₱500. Nevertheless, this remained unconscionably exorbitant when set during the time beside the pirated counterpart's fixed ₱60 selling price. Should the IIPA venture to tell an individual consumer that each time she patronized a video pirate with her

⁵ See King 2002 for a cogent summary of the exchanges in court.

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₱60, the US was in a position to demand about ten times what she paid for the same product, the only recourse available to her would not be the shelling out of the price differential, even at a later time. The consumer would simply have to do without the product, unless it were made available once more one way or another at the video pirate's affordable rate.

This much was admitted by a local group, the Intellectual Property Coalition of the Philippines (hereafter IPCP), in its report titled *Copyright in the Philippines 2004*. Generally echoing the demands of the IIPA in surrendering all political, economic, and moral rights to the foreign owner, the report occasionally seemed intended to mollify the IIPA's accusations – in explaining, for example, that IPR cases do not normally result in formal court hearings because, following rational economic logic, the parties involved would usually prefer to agree on a settlement (IPCP 2004: 29). More interestingly, the report managed to mention the kind of aporia, however severely truncated, that the IIPA would not be caught expressing:

In considering the demand of consumers, we enter into the area of market prices. We must admit that the primary cause of the continuous proliferation of piracy is the wide price gap between the legitimate and pirate goods. Though it is impossible for legitimate products to have a price competitive with that of the pirate goods', producers must acknowledge this factor, and address the concern in the best possible way. (IPCP 2004: 38)

The aforementioned consumerist logic helped explain the presence of a thriving market in pirated videos in Quiapo, Manila's downscale



commercial district, site of occasional populist demonstrations and acts of criminality both political and personal. Its best-known landmark is the 16th-century Catholic Church that enshrines the Black Nazarene, one of a few major Filipino icons that make a case for the Africanness of the historical Christ. The Black Nazarene inspires hysterical devotion among lower-class religious males, particularly during its annual procession in January, because of its reputedly miraculous properties, including the ability to completely cleanse the devotee of his sins. On the other hand, movie theaters in Quiapo and the surrounding districts of Sampaloc and Sta. Cruz were known as cruising spots for gay males; in a now-deleted scene of the most internationally celebrated Filipino film, Lino Brocka's *Maynila: Sa mga Kuko ng Liwanag* (*Manila: In the Claws of Light*), the main character goes to nearby Ideal Theater where he acts as bait for his fellow hustlers to entrap and shake down closeted gay men.⁶

Quiapo has become central to the Philippine imaginary in many other respects. Plaza Miranda, to which the Black Nazarene church opens out, is the traditional site of the *miting de avance*, the rally where political parties declare their high-level electoral candidates.⁷ During one such occasion, on August 21, 1971, the opposition to Ferdinand Marcos's bid for reelection was ambushed by two hand grenades tossed onstage. The bombing was attributed to the Communist Party of the Philippines

⁶ For an account of still-operating theaters in the Quiapo district, see Pascual 2016; for a recollection of the now-missing scenes from the Brocka film, see David 2017: 60-67.

⁷ An expression associated with the landmark was made famous by President Ramon Magsaysay, who supposedly would ask any proponent of a controversial program: "Can we defend this [in a debate] at Plaza Miranda?" (Malacañan Palace Presidential Museum & Library).

by Marcos (and, subsequently, by some prominent survivors), while the CPP in turn blamed Marcos as well (Nemenzo 2006).

During an earlier period, future Philippine President Joseph Estrada produced the movie that would embody his most iconic persona, Cesar Gallardo's *Geron Busabos: Ang Batang Quiapo* (*Geron the Tramp: The Quiapo Kid*), where the title character, a slum dweller, assists the less-privileged members of his community and protects them from the depredations of predatory gang members. The populist loyalty that Estrada earned from these types of roles motivated another presidential aspirant, Fernando Poe Jr., to have his own Quiapo-set narrative, titled *Batang Quiapo* (*Quiapo Kid*) and directed by Pablo Santiago, who was responsible for one of Estrada's true-to-life bad-boy films, *Asiong Salonga* (Figure 2).



Figure 2. Scenes from Quiapo (left to right): the Black Nazarene on public display; mayhem during the Plaza Miranda bombing; “Erap” Estrada in *Geron Busabos*. Sources: *GMA News* (left and center photos), *Video 48* (right photo).

6. The Outside Within

But one phenomenon that could be affirmed during this period was the fact that the pirated DVD stalls lay just outside the sphere of Catholicity,

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in the Muslim ghetto on the other side of Quezon Boulevard, the district’s main vehicular and pedestrian artery. For starters, the vendors had all the popular mainstream titles offered by the so-called legitimate outlets – and much more, several times over in fact. A description of the possible categories of available products posted online by a self-described voracious consumer (De la Cruz 2005) was as follows:

1. Unreleased Hollywood films
 - a. copied from a promotional disc
 - b. copied inside a theater
2. Released Hollywood films (copied from the original DVD)
3. Classics ([Alfred] Hitchcock, [Akira] Kurosawa, war movies, etc.)
4. Arthouse films (infrequent, scarce supply, rare titles, for example Criterion collection releases)
5. Asian foreign films (Korean, Japanese)
6. Concerts
 - a. mainstream
 - b. classical

To provide ourselves with a handle into the availability of products in this mecca (so to speak), I and a few faculty colleagues once listed the titles we thought would fit the collection of a garden-variety film enthusiast. Every other week or so, over a two-year period, we would tally our findings and, unfortunately for the completists among us, eliminate those titles we felt would be available in most “average” households anyway. As of 2004, we had over 700 “preferred” titles, still an impressive number, dwarfing the individual wish lists we had

compiled using presumably legitimate online sources (Table 1).

Table 1. Preferred “Pirated” DVDs, by Type

Type	Number
Feature	465
TV Series	95
Concert	53
Animation	41
Musical	36
Documentary	10
X-Rated	4

Source: Present author.

These discoveries were not ours alone to claim. Several major personalities from media and academe (notably Martin Scorsese), some of them foreign-based, could be seen scouring the stalls for possible additions to their collections. When a local television program sent out feelers for any of them to come forward, one of those who responded was Joey Reyes, the person who may be the most prominent prestige filmmaker in the country. He said, in Filipino, “I need them for my own growth as a director. Anyway, it’s the big foreign films that are killing the local movie industry. I’m just helping our people slay these giants by buying their films from video pirates” (Diones 2004; the sentiment was echoed fifteen years later by Werner Herzog – see Brown 2019).

Moreover, Reyes continued, “The system of piracy can be considered a ‘great equalizer’ because everyone is equal when it comes to purchasing power – even the poor can afford to buy the copies” (Diones 2004). Reyes’s assertion matched with our informal observations, done roughly on a weekly basis over the course of three years during the

heyday of the phenomenon (roughly 2004–2006).⁸ What might have sounded incredible anytime during the past millennium – say, a working-class consumer inquiring about widescreen, subtitling, and extra features – became commonplace enough to appear as images in local pop culture.

As a corollary, the vendors themselves did their own upgrading. Some of the stalls were housed in air-conditioned buildings, and the personnel stepped up to the challenge of helping buyers sort through the wide variety of products on display. Ronnie (not his real name), a physically disabled man who operated the biggest stall in one of the buildings, said that he had taken a film course just to be able to familiarize himself with the more exotic or antique samples available (interview with author, Quiapo, Manila, 29/01/2005).



7. A Crusade of Their Own

The vendors were more than aware of the historical and political implications of their situation. As lamented by the IIPA, they had a system of alerts when raids were scheduled by the police force. Because of their minority status, they were usually ready to stand their ground, even meeting force with force when necessary. In fact, the revised guidelines controlling optical media in the country stipulate additional penalties for

⁸ Another Filipino filmmaker, Lav Diaz, who won top prizes at the international film festivals of Venice, Berlin, and Locarno, made similar statements: “Pirates are granting masses access to films.... That's why I love the pirates: they are more into cultural revolution than the people in the academy or the status quo critics in the country” (Guarneri 2013).

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“violators who employ armed resistance against agents of the [Optical Media Board],” a reference to the exchange of gunfire reported in 2003 between the vendors and the raiding team of the now-defunct Video Regulatory Board (Congress of the Philippines, 2004).

In fact, as a matter of personal disclosure, in 2007, I was in one of the bigger (multistorey and air-conditioned) stores when the OMB conducted one of its raids. The vendors appear to have been prepared, considering the ease with which they managed to hide their goods and shut their stalls. They also directed nervous buyers to a “secret” exit that would have been exposed from the outside. In a quarter hour, with no operatives entering the store, the stalls reopened and resumed business. The owner from whom I was purchasing a hefty load of discs admitted that they had advanced warning of the raid, although the exact time was unknown. The fact that the biggest store was bypassed indicates that representations with the raiding team were made by the owner, either in advance or during the raid period. More sensitive “exposés” were presented in Tilman Baumgärtel’s “The Culture of Piracy in the Philippines” – from the dual-pronged sourcing of pirated material and the methods deployed by smugglers, hiding discs in airport luggage (for those coming from China) and in the belly of fish (from Malaysia) (2006: 378–379). Writing during the heyday of the DVD-piracy controversy, Baumgärtel proceeded from a dogmatic observation of public-domain advocate (and Aaron Swartz mentor) Lawrence Lessig’s problematic claim that copyright violations in the West were morally superior to those in Asia and Eastern Europe because the owner (intended to refer to the artist rather than the production company) does not grant the copiers her or his permission (Lessig 2004: 63). Piracy, Baumgärtel’s thesis

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asserts, “therefore is the illicit underbelly of globalization..., where the participants are not multinational corporations, but criminal gangs” (372).

The Philippine Muslim population suffers from the many contradictions brought about by modernist neoliberal development. The people, constituting less than five percent of the 92.4-million total population as of 2009, are credited by nationalist historians as consistent resisters of



foreign colonizers, so much so that the English word “amuck” was taken directly from the Malay original “amok” and distorted its meaning of righteous resistance to refer instead to “murderous frenzy.”⁹ Filipino Muslims also suffered some of the worst instances of maltreatment by the Christian majority, including massacres, militarization, land-grabbing, and religion-inspired vigilantism – not to mention the cultural stereotyping that invariably accompanies such dehumanizing treatment. An instance of linguistic counter-formation, in this respect, emerged in the case of the Quiapo Cinematheque via the coinage of the startling portmanteau *Abu-suki* (Trice 2010: 538).¹⁰

The word is derived from the Arabic *Abu* (father of) and the Tagalog *suki* (possibly from the Chinese 主客/*chu-khe*), recently added to the *Oxford English Dictionary* to mean “a buyer or seller involved in an arrangement whereby a customer regularly purchases products or services from the same provider in exchange for favourable treatment” (“Suki”). Since the term is apparently unknown in Mindanao and has not persisted outside of its

⁹ For the 2009 report on the Philippine Muslim population, see the Forum on Religion & Public Life 2009; for a discourse on “running amuck,” see Saint Martin 1999.

¹⁰ For a summary of conflicts between the Philippine government and its Muslim constituencies, see Dañguilan-Vitug and Gloria 2000.

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usage context, it would be safe to conclude that it was intended as Quiapo Cinematheque lingo, an apparent attempt at friendly familiarity combining an endearment, *suki* (normally used by housewives and wet-market vendors), with the less-formal usage of the honorific *Abu*, with a dose of the irreverent humor associated with Manileños.

In initiating, controlling, and most important, succeeding in the selling and possibly in the local production of pirated DVDs, Filipino Muslims forged for themselves a historical intervention unique in at least two significant ways, to wit:

6.1. Unable to afford during that period the interconnectivity facilitated by the World Wide Web, they instead opted to be familiar with what has been described by Aaron Barlow (in *The DVD Revolution*) as a similar access to information via the interactive features of the new format. This of course applied not just to Filipino Muslims, but to the impoverished majority as well.

6.2. Aware of the current trends toward scapegoating and guilt-by-association through the allegation of links of some members of their community with global terrorist networks, they responded with what was recognizably an entrepreneurial innovation (Figure 3), albeit with severe consequences for American corporations, yet with cultural benefits for the rest of the Filipino nation. During my term as national university faculty director, I openly enjoined colleagues and students to defer from calling the practice “DVD piracy” and proposed instead the term “anti-imperialist video-dubbing service,” to call attention to the positive effects of the exercise.





Figure 3. Street stalls in Quiapo selling “pirated” DVDs, whose novelty and inexpensive price attracted even foreign tourists. Source: Sidney Snoeck (used with permission).

Such a liminal position used to be associated with another racialized local group, the Chinese-Filipinos, also identified (though less seriously) as a possible source of pirated-DVD material. Suspected, accused, sometimes penalized, and at least at one point executed for an array of socioeconomic transgressions ranging from gun-running, drug-dealing, to pornography, the members of the Chinese-Filipino community also had to endure a number of flagrant and rampant human-rights violations, their economic potential circumscribed by retail-trade limits, and attacks on their presence being undertaken even by progressive authors as recently as the 1960s. Their politicization as a community arrived after they achieved economic clout – a trend which appears to be occurring in reverse in the case of Filipino Muslims (Hau 2004: 15–62). In relation to the issue under study, the last wave of active celluloid-era film production in the Philippines, from the late 1970s to the '90s, was also dominated by Chinese-Filipino producers, to the point where the

martial-law government felt compelled to set up its own production arm and covertly support the founding of a Filipino-owned studio to promote wholesome icons, reactionary narratives, and Hollywood-style aesthetics (David 2016: 172–187).

8. Beheld, Not Beholden

In terms of relations with the regional body-politic, we can take a cue from Michel Foucault's brief foray into racial politics, originally delivered as a series of lectures at the Collège de France. In looking at European history during the Middle Ages, Foucault noted that what eventually became racist discourse was originally a discourse of class war, which had the useful function of operating as a counterhistory to the then-standard justification and reinforcement of the power of sovereigns (Foucault 1997: 51–84). Here we note – and it goes without saying, with a lot of caution – that three groups within the same nation-state interact diachronically: the Filipinos, who identify with the West, which in this case embraces both Washington and the Vatican; the Chinese, who were regarded as outsiders because of their association with East Asian culture; and the Muslims, whose allegiance supposedly extends to the Middle East by way of the larger Indo-Malayan archipelago comprising the two major Islamic republics of Southeast Asia. From the last reformulation, we can see that the Philippines, from one possible perspective, is really the outsider to Islam, with Christianized Filipinos constituting the minority in the larger regional archipelago.

Thus a basis for belligerence emerges: just as the West-identified

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Filipinos are really Westerners *manqué*, not white-skinned enough, not to mention wealthy enough, even in relation to East Asians, neither are they responsive to the predominant religion within the immediate region. The connection with Indonesia and Malaysia becomes more direct when we look up what the alleged sources of pirated discs were and find that it was these two countries pinpointed by both vendors and administrative officials (Inquirer News Service 2004). Although as of late 2004, the Optical Media Board claimed to have closed down DVD-burning equipment involved in “pirate” operations, the insistence on identifying the Philippines's neighboring countries as the primary source of illegal products resonated with the larger issue of global terrorism (Valera 2004). It were as if the Philippines' Islamic neighbors brought in the country's links to the current millennium's historical villains, and now this too.

On a level playing field, one in which the voices of the racialized Others can speak out, one difference stands out prominently enough to suggest a rupture. The nature of the Muslims' transgression this time is economic. It lays bare the contradiction in the claim of American distributors in their desire to police the market so that it would have no choice but pay through the nose for their overpriced products. Such global-scale ironies generated numerous local ones, and as an example, the Filipino legislator who first argued that US distributors should reduce their prices as the best way to combat piracy was none other than the daughter of Ferdinand E. Marcos, the dictator installed and supported by a series of American Presidents and business interests until he proved too unpopular to be profitable for them (Villafania 2003).

In order to frame this entire scheme of things with a possibly

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even more distant analogy than Foucault provided, in the landmark psychoanalytic study of the origin of perversions, Sigmund Freud's "A Child Is Being Beaten," the patient undergoes three phases in experiencing the same fantasy: first, the subject says "My father is beating a child, whom I hate" and concludes "My father loves me" as well as "I am making [him] beat the other child"; then, from the sadistic first phase, the masochistic though repressed second phase proceeds with "I am being beaten by my father," and therefore "My father does not love me"; finally, the return of the first statement, "My father is beating a child" is sadistic in form but masochistic in satisfaction, purportedly because of the recognition that "All the many unspecified children who are being beaten ... are, after all, nothing more than substitutes for the child itself" (Freud 1919: 191).

It is this final recognition that concerns us, that the children threatened with reprisal by a distant father are after all being beaten in turn – from our point of view, first the native Filipinos during the US war of colonization, then the East Asians in various configurations during the Second World War and the Cold War, and now a number of Arab populations in the so-called war on terror. As late as 2007 the IIPA recommended to the US Trade Representative that a list of sixteen countries remain on the priority watch list of IP violators, and twenty-eight others be included in the watch list. Almost all on the IIPA's priority watch were Third-World, including several from Latin America, a handful from the Middle East and Asia, two East European countries, and finally, one First-World country; recommended for Out-of-Cycle reviews were certain potentially problematic countries, including Korea and the Philippines (IIPA 2007, "Copyright Protection and Enforcement

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around the World": 2).

This scenario of the US beating up on the rest of the world, especially the weaker nations, resulted in a divide even in the area of copyright activism. The most celebrated pro-"piracy" voice in the US, Lawrence Lessig, qualifies his advocacy of expanding the public domain by drawing the line at video piracy, since according to him this provides profits only for illegitimate business interests but not the creative members of the public. On the other hand, several Southeast Asian scholars, Laikwan Pang for example, are arriving at the consensus that the US deceptively positions itself as the victim of video piracy, when in fact Hollywood producers use their country's clout to purchase original ideas from foreign products so they can prevent the products from entering and competing with their own remake (Pang 2006: 31–46; Lessig 2004). Further resistance may be configured along the lines of regional alliances (such as the Association of Southeast Asian Nations, in the case of Hong Kong and the Philippines), if any of the countries could be emboldened to articulate the logic of upholding the public domain as well as the right of citizens to affordable cultural and educational materials.

In effect the US gallantly manages to present itself as a victim twice over, when it claims to do the right thing by paying for the rights to remake foreign films, then complaining when the countries it bought the films from refuse to buy its over-priced video products. To close the polemics of this section, which as we all know still does not have a satisfactory resolution, all one can do then is pose one question: "Who is the condemned?"



9. Present Stage: Online Engagements

The increasing quietude in the conduct of businesses at the Quiapo Cinematheque since the start of the 2010s betokens a shift in concerns over copyright ownership and film piracy. In effect, the troubles within the US mentioned at the opening of this paper have proliferated elsewhere across the globe, and with a marked difference especially noticeable in the case of the Philippines: policing is no longer imposed by a global superpower, but by interested local groups recently awakened to the profit potential of products that they had long abandoned and neglected, sometimes to the point of rarity, and occasionally in violation of the principles of public-domain ownership (Boyle 2008: 54-82).

Several instances of films with copyright claimants were uploaded online, with conflictive responses on the part of claimants. One such incident involved the film entries of the Cinemalaya Independent Film Festival, wherein entries from preceding years were uploaded in 2014: the Cinemalaya Foundation chair stated that he intended the public to watch the previous films in order to stir up interest in the current crop, while the festival itself apologized in response to an outcry from filmmakers, and shut down the *YouTube* account that hosted the uploads.¹¹

The next celebrated case of internet piracy was global in scope. *Magsine Tayo! (Let's Watch Films!)*, a website maintained by video collector Jojo Devera, attained enough acclaim from scholars and

¹¹ See Sabillo 2014 for the chairperson's statement and Chiu 2014 for the festival's apology and shutdown of the *YouTube* channel in question.

researchers to be cited in articles and books on Philippine cinema, for its uploading of rare or entirely unavailable movies; in certain instances, some titles would be the only copy available anywhere. Devera upgraded *Magsine Tayo!* from a *Tumblr* blog to an independent website, purchased video-remastering and subtitling software, and uploaded new features according to auteurs or stars (often timed to coincide with the week of the personalities' birthdays). The website was sufficiently influential to merit a special award for Devera from the Annual Filipino International Cine Festival of the Filipino Arts & Cinema International (FACINE).

A crisis stage was reached when the country's most successful production outfit, the still-active Regal Films, was deadlocked in its negotiations with the only available remastering service, ABS-CBN Film Restoration. This effectively made unavailable hundreds of Regal titles from the outfit's inception in the 1970s to the present. When the editors of Arsenal Pulp Press's well-received Queer Films Series expressed concern that the only Philippine title in the lineup, Ishmael Bernal's *Manila by Night*, also happened to be the only unavailable entry, the present author, as the monograph's writer, approached Devera and requested a subtitled copy be made available on *Magsine Tayo!* for the readers of *Manila by Night: A Queer Film Classic*. A



reasonably decent video copy of the film was uploaded on the website in April 2018, with David simultaneously publishing a “Statement on the Availability of Filipino Films during the Internet Era” upholding the *Magsine Tayo!* posting.

Three months later, Devera reported that the producer hired a lawyer to prosecute him for the Regal Films titles that he had uploaded (*Facebook Messenger* message, 25/07/2015). Refusing to provide further information, he stated that he had decided to shut down the website

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itself and lay low from all public activity – including declining the FACINE award. The severity of the legal threat can only be deduced from Devera’s response. The questions that this situation raises cannot be answered without further clarification from both sides in the conflict. However, a more basic and still-crucial query may be raised: where did these assumptions about internet-era copyright and its fraught relation with the public domain come from?

A recognition that income from claiming ownership of these works would actually be negligible, insufficient to cover any expense in reproducing and upgrading the films has resulted in opinion leaders (notably FACINE founding director Mauro Feria Tumbocon Jr.) calling for government subsidies from the Film Development Council of the Philippines as well as the National Commission for Culture and the Arts. With the severe drop-off in theater attendance induced by the Covid-19 global pandemic, the same copyright claimants that succeeded in shutting down *Magsine Tayo!* began uploading inferior and mostly

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untranslated copies of their film holdings, for free consumption, on their *YouTube* channels (Figure 4). The copyright claim implicit in this development is no longer a matter of earning from the screenings of audiovisual intellectual property, but from the more intangible assertion of being associated with any form of prestige or nostalgia generated by the filmographic titles in question. The drive to fully restore the public domain as the proper claimant to all forms of cultural expressions has proved more indomitable than the intellectual-property doctrine of the IIPA.



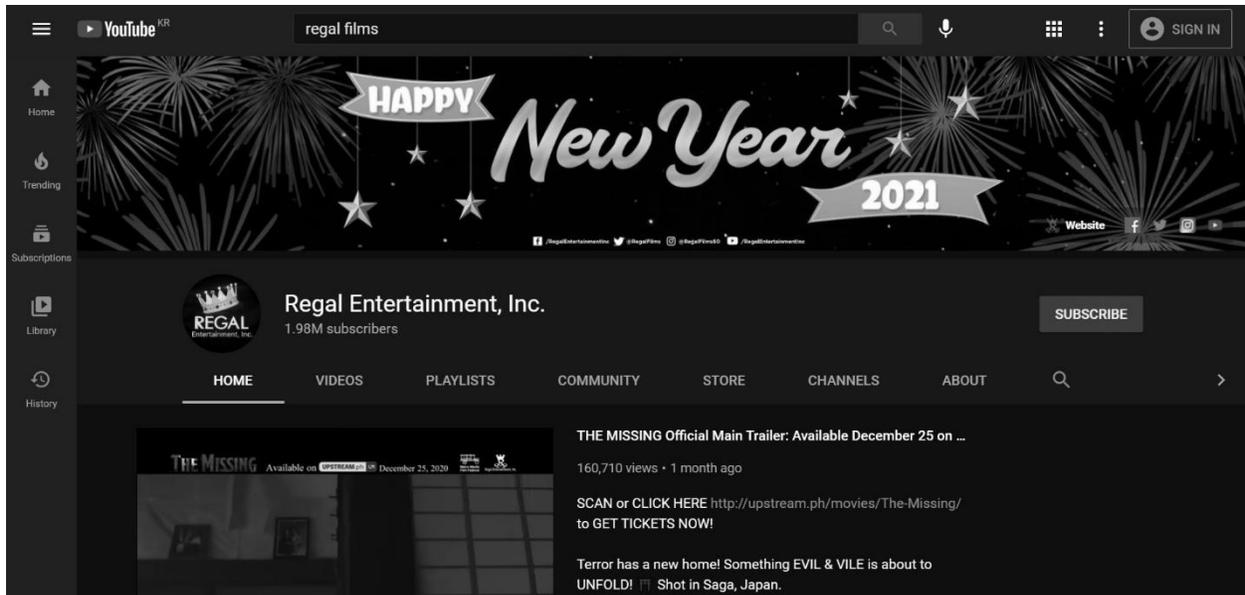


Figure 4. YouTube channel of Regal Films (founded 1962, films produced starting 1976), the Philippines's most prolific film studio.

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