

The United States of Piracy

Keynote speech for the conference “Asian Edition. A conference on media piracy and intellectual property in the Philippines”

www.asian-edition.org

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Good Morning!

Before I start with my presentation, I would like to show the trailer of a film, that opened in Malaysia yesterday .The title is “Ciplak” and it deals with the very topic of this conference – media piracy.

Khairil M. Bahar: Ciplak – Trailer
(from: <http://www.ciplakmovie.com>)

According to the website and the press material, this film was made with almost no budget, yet it is opening in regular cinemas all over Malaysia. It seems that in Malaysia there is a development not too different from what we see in the Philippines right now: that a number of young film are directing their debuts with digital cameras, and it seems that the audience accepts the cooperatively low productions values in exchange for fresh stories.

Before I introduce the topic of today’s conference I would like to thank the sponsors of this event. This is not your ordinary academic event, and I am grateful that my sponsors were brave enough to support me with this conference despite its slightly unusual topic. So my thanks goes to Anne De Guzman, the head of the Film Institute, and everybody else who let me get away with a conference on media piracy in the Philippines, and to Mr. Avenmarg from the Goethe Institut, Manila, for sponsoring this event. Both will address the audience for just a second.

I am very grateful for the support of Anne, Libay Cantor and all the rest of the faculty that helped me out with this conference. But I am also particularly grateful for the support that our staff has extended to me, especially in the last couple of rather hectic days. I am thinking in particular of Ate Beng, Ate Fortune, Kuya Ric and Mang C.V., without this conference would not have been possible. Since I started to work here in 2005, I was again and again impressed how they never lost their patience and their good humour, despite my many wishes and the extra work that for example like this conference means for them. I would like to take this opportunity to thank them for that.

Since some students apparently have never heard about the “Asian Editions”, that gave this conference its names, I’d like to briefly bring to mind what this was all about: The “Asian Edition” that gave this conference its title was a scheme under Marcos, a scheme during the Marcos years, when American textbooks were reprinted locally and without paying royalties to the original publishers. Marcos himself gave permission to do so with the famous Presidential Decree 1203. This decree has been eradicated in 1997, but pirated versions of books are still around, and this university would cease to function if they would disappear.

Let me start introduce the topic of this conference by bringing to mind a great Filipino businessman. Many see him as one of the most important figures in the economic history of the Philippines, and he is considered to be responsible for creating a whole industry here.

I am talking about Don Laureano Guevarra, who is probably better known under his nick name Kapitan Moy. Kapitan Moy, as you all of course know, almost single-handedly created the Marikina shoe industry, that was such an important manufacturing business in the Philippines before its decline in the 1980s and 1990s. For the better part of the 20. Century, Marikina was the Philippines' shoe capital. And Kapitan Moy was the one who started this success story in the late 19. Century.

What is interesting in the context of this conference is how Don Laureano arrived at the first shoe designs that made him successful. Let me quote from the municipal archives of Marikina. I quote: "Marikina's shoe industry started one afternoon in 1887, at the home of Don Laureano Guevarra. Slippers and wooden clogs were already being made in his basement shop, but one day Tiburcio Eustaquio, assisted by Amobrocio Sta. Ines and Gervacio Carlos, started working on the town's first pair of men's shoes while Kapitan Moy watched expectantly. Kapitan Moy, highborn and a community leader, had bought himself a pair of imported shoes during one of his trips to Manila, and he used this same pair as an example for his workers to study and duplicate. They dissected its various parts and, by trial and error, learned how to put them back together." ¹

What the shoemakers did with the shoes that Kapitan Moy had bought in a in Quiapo, has a name today. It is called "reverse engineering".

Reverse engineering means that you take a finished product and take it apart to see how it was made. It is "reverse engineering" when you disassemble a Swiss watch to see how it was constructed. It is "reverse engineering" when you take a drug such as Cialis and try to figure out its ingredients'. And it is "reverse engineering" when you "decompile" a computer program to understand how its code functions.

Taking things apart is one of the most elementary activities of mankind, and one that comes quite naturally. Children love to dismantle all kinds of things, be it toys, old clocks, radios, what have you. In many instances, the best way to understand how something works is to take it apart. It is instructive and edifying, and it can augment creativity, as in the case of Kapitan Moy.

Yet, many people would consider what Kapitan Moy did a blatant theft of trade and manufacturing secrets - as an outrageous violation of Intellectual Property (IP) rights. ² And

¹ Entrepreneur Philippines 2003

² The legal situation regarding reverse engineering is ambivalent and very different in different countries. While the act of reverse engineering is generally not considered illegal, it is often a crime to make use of the insights one had into the technical functioning of the object one reversed engineered. In the US, for example, reverse engineering is generally protected as

that is why the anecdote about Kapitan Moy and the emergence of the Marikina shoe industry takes us to the very heart of the subject matter of this conference.

On one level this conference is on media piracy in the Philippines, as the title of this conference indicates. Yet, on a more fundamental level it is about how Intellectual Property rights have to be redefined in a time, when an increasing quantity of information, of music, of films and other media materials are digital. And when they can therefore be reproduced and distributed quickly, effortlessly and with almost no cost. Eventually, the question that this conference wants to raise is: how can we ensure that the new Intellectual Property Regime that is currently established in regard to digital media can enhance, not hinder creativity. We will discuss new concepts of addressing ownership of Intellectual Property in the digital age, that contribute to creativity, not to prevent creativity. Access to information is of vital importance to any country and any economy, but especially – as the example of the Asian Edition shows – in an emerging country like the Philippines. We will pay special attention to the particular economic situation in this country that plays an important role in facilitating piracy.

As all of you are aware, digitally stored information is very different from physical, scarce goods such as rice or crude oil, With such materials, supply is limited and not as easily duplicated as a computer file. You cannot store another copy of your Pork Adobo in a different cooking pot. You cannot *copy & paste* your Pan-de-Sal from one breadbasket to another breadbasket.

Digital information, on the other hand, invites unlimited reproduction. It can be transmitted globally via the Internet and reproduced indefinitely. You can put your essays on a homepage or send them around by email to your friends. You can upload your picture and other bio data to your “MySpace”-page - without having them disappear from your computer. You can download the latest release of the Linux-kernel and perfect the code of the program. And you can burn the result on a CD-Rom and give the copy to your friends who have no access to the Internet. All this is very beneficial for you and the rest of the world. All this is possible because of the very ontological nature of digital data - the possibility to copy with little effort and without any loss.

So, you can do all that. Or you can obtain a Hollywood blockbuster production – such as “Pirates of the Caribbean”, for example - one month before the film is released. You can press up 10.000 copies of the movie on DVDs. And you can sell it all over the Philippines for 70 peso *na lang*.

That is what the media pirates are doing. And that is, of course, illegal. Yet it is completely in line with the ontology of digital data, that I described earlier. Just like you can copy the Linux operating system for a friend - which is completely legal - you can use the same equipment to make an illegal copy of the latest James Bond movie. And it is one of the most fascinating processes one can observe today - how the results of these qualities of digital data play out and what kind of results the lead to.

“fair use”, but in a number of court cases, companies and individuals who did it and made use of their discoveries were sentenced because of patent violations.

The kind of media piracy that we are seeing now in the Philippines was not possible even five years ago. It has as much to do with new digital technologies such as more powerful computers, affordable, fast DVD burners, speedy Internet connections and scanners. But is also to do with recent breakthroughs in distribution methods, new loading and unloading tools, better port management, satellite navigation and tracking, new packing materials, just-in-time inventory management and sophisticated encryption methods.

So, in a sense, the very same tools that enables the globalization of capitalism also facilitates the pirates. In many respects, piracy is the illicit *underbelly of globalization*. It is a *globalization from below*, where the participants are not multi-national corporations, but criminal gangs and small-time crooks. It is a fascinating collaboration between American undergraduates and Chinese triads, Filipino fisherman and Malaysian criminals, disgruntled employees in disk pressing plants in Canada and Muslim traders in Quiapo.

They have never met. Some of them operate exclusively online, some do not even own a computer. They might come from very different cultures they might be in very different parts of the world. Yet, all of them together are part of the long supply chain that feeds the pirate markets in the Philippines and the rest of the world, a supply chain that makes sure that the latest Superman-movie will be available in Quiapo two weeks before the film opens in the US. Their networks are flexible, increasingly non-hierarchical, speedy, highly efficient and organized beyond national boundaries. This is what I call the “United States of Piracy”, a multinational, global economy, that is far from the nation states, to which they deliver their products.

These illegal traders are in many respects virtually identical to the corporate players in globalized businesses – apart from the fact, that what they are doing is illegal, of course.

That does not keep them from making use of the most advanced technologies at their disposal. They gleefully take advantage of the newly deregulated foreign exchange transactions, the financial offshore havens in obscure venues such as Tuvalu, Nauru or the Cook Islands, or the benefits of the Internet – from the anonymity and convenience of free web mail accounts to running their own online shops.

I come from Germany, and I have not encountered the type of piracy there that I am witnessing here in the Philippines. And that’s why I started to do some research into it, and that’s why I organized this conference. The piracy we have in Germany takes place mostly online, in the p2p networks. This is obviously very different from the situation here in the Philippines, where the “last mile” for delivering data into people’s homes, i.e. a broadband Internet connection, simply is not available to the majority of the public. Therefore piracy has found its way into the public space.

Everybody here has seen the vendors that sell DVDs with the latest movies on parking lots, at street corners, and in the *Tiangge*. If you look around a bit more, you will find more specialized places such as Cinema Square in Makati, in the Virra Mall in Greenhills, Metr Walk, Quiapo and even in the University Shopping Mall. There you will find a much more diverse and much bigger selection of movie DVDs and CDs with music, computer software, and all kinds of games for PC, Playstation and Xbox. And not only that, of course, but also

faked Prada and Gucci handbags, illicit copies of Rolex watches and pills that supposedly have the same effect as Viagra. In some shops, the sales ladies will even ask you what “degree of fake“ you want – whether you want just a regular shirt with the Lacoste crocodile on it or a full-fledged, virtually identical copy of a Lacoste shirt.

The pirates and the vendors of pirated material have created another part of the city. It is part of an illegal city, that is intertwined with the legal city and that exists in most other big cities in South East Asia. The movie pirates are just as much part of this illegal city as are the squatters who pay a rent to the local policeman or the illegal slum resident that steals electricity from the next electricity pole.

Piracy has transformed the way the city of Manila looks and operates. Especially the district of Quiapo, once one of the chicest neighbourhoods in Old Manila, now run-down and dilapidated, has changed dramatically due to the activities of the movie pirates. Today, it is not only the most visible locus of media piracy in the Philippines, but one of the biggest markets of pirated material in all of South East Asia. And this type of market has a notable economic impact.

According to the lobby group International Intellectual Property Alliance (IIPA), the estimates losses to the U.S. copyright industries (that’s how the media industry of the USA calls itself these days) in the Philippines were US\$ 139 million in 2004. (These are the latest statistics available.) According to this source, the level of movie piracy was in the Philippines was 85 percent, the level of business software piracy was 70 percent, and the level of entertainment piracy was an impressive 90 percent.

According to the Business Software Alliance (BSA), software piracy in the Asia-Pacific region costs manufacturers close to US\$ 8 billion in 2004. Losses due to piracy of U.S. copyrighted materials around the world are estimated to reach \$30-\$35 billion annually (not including internet piracy) (Source: IIPA). These are highly questionable numbers, to be sure. Groups like the IIPA and the BSA are financed by the media and software industry, and therefore have a vested interest in making the losses due to piracy seem as big as possible.

From their publications it is often difficult to assess how they arrived at these numbers. So it is safe to assume that their numbers are not only estimates, but also exaggerated estimates. And they are only covering US-American products... Yet, even if the actual numbers are lower than the numbers quoted, they are still quite remarkable and suggest that the subject of piracy deserves closer examination both as an economic and cultural phenomenon.

Because it is not just the cityscape of Manila that has been changed by piracy. It is very fundamental economic and cultural facts, which have been transformed by piracy. When I arrived in the Philippines more than two years ago, new DVDs cost something between 700 and 1000 peso. Now you can get many recent films for 500 pesos and less – that is result of the cutthroat competition of the pirates with the regular stores.

By now, I think it is safe to assume that media piracy has changed the way movies and other media products in the Philippines are distributed and consumed. Today, you will find films that were simply not available five years ago, no matter how much money and effort you were prepared to spend. The pirates discovered a market that nobody assumed existed in the Philippines: a market for independent films, for classic and art house films, for experimental films. Film classics such as *Citizen Kane* were never officially released in the Philippines, and to obtain them you had to go to great length. The pirate market has therefore greatly affected

the availability of movies in the Philippines and therefore might even have a positive impact on the media literacy of the country.

Yet, the purpose of this conference is not to extol the benefits of piracy or anything like that. This conference is not about making moral judgements or legal arguments about piracy at all, to argue whether piracy is bad or good, justified or plain wrong. This is a somewhat tired discussion, and I feel that it will not produce many new insights at this point. At this conference, we will look at piracy as something that exists, plain and simple, and draw our conclusions from there. And we will talk about piracy in the larger framework of Intellectual Property.

We also will not romanticize media piracy. What the movie pirates are doing is illegal in the Philippines. They are also not doing what they are doing because they want to spread film culture to the masses or circumvent censorship or create a truly open, international access to culture. They are doing it for one reason, and one reason only – to make money, nothing else. They are far from being the resistance movement against the international information capitalism, that some would like them to be. On the contrary, they might be the most aggressive and most developed – illegal – version of capitalism.

Today we will analyse what the type of piracy we encounter in the Philippines says about the country. Rolando Tolentino will look at figure of the Moro in the discourse on piracy in the Philippines. And Roberto Verzola will outline what he sees as a fundamental antagonism between the concept of Intellectual Property in the West and in Asian countries such as the Philippines.

We will hear of some examples of how artists who use other people's material in their art, deal with questions of Intellectual Property. Cornelia Sollfrank, an artist from Germany, will talk about her work with images she appropriated from the Internet. *I would also like to take this opportunity to point out that Cornelia has a show of some of these works here in Manila, at Magnet Kaptipunan. It will open tomorrow at 6 pm, and will be on view until November 31. Please come.*

Then we have three film makers from the Philippines, two of the most prolific and successful actually, who both have used found footage in their work: Raymond Red, Khavn de la Cruz and John Torres will take about their experiences when working with found footage.

We have Volker Grassmuck with us, a sociologist from Germany, who has worked extensively on Open Source Software and Linux. He will introduce a number of recent developments in the arts in very different parts of the world, that would not be possible if they would respect the current copyright regime. And finally JJ Disini will inform us about the situation in the Philippines and about what can happen if creativity is not constrained by restrictive copyright regulations.

Creativity is, finally, what this conference all about. Many of us, especially in the West, think of the creative act as a solitary act. We have all these clichés in mind of the tormented genius who writes his poems or philosophical musings in complete isolation in a tiny room in some basement. Or we think of the brilliant inventor who comes up with the solution for a particular problem in one of the famous “Heureka moments” at midnight in the loneliness of his laboratory.

Most scientists will readily admit that most of the time, scientific progress is not the result of such one-man-endeavours, but rather of a collective process. We can look at creative acts as singular moments of brilliance of individuals, yet in many instances it is actually a group effort. While some arts such as writing might be a rather solitary process, it never takes place in complete isolation, but rather in a framework of references, influences and inspiration from others. Other art forms are not even individual activities, but collective ones. We are at the Film Institute here, so let's just consider the collective art form of film: *Himala* was directed by Ishmael Bernal, but the script was by Ricky Lee. William Faulkner might have written the script for *The Big Sleep*, yet we think of it as a film by Howard Hawks.

Again, the anecdote about Kapitan Moy is instructive if we look at the connection between collective efforts and creativity. Did you note that he himself actually did not take the shoes apart - but rather his employees, the Señores Eustaquio, Sta. Ines and Carlos? Kapitan Moy might have been the owner of the shoes and the one who came up with the idea to take them apart. Yet when that was actually done, he was only an onlooker in a collective process.

And, more importantly: When they had unravelled the secrets of the European shoes, he did not keep them to himself. According to the website of the city of Marikina, "Kapitan Moy saw to it that other Marikeños were taught the new skill (of shoe-making - T.B.) at once, for he intended it to be a source of livelihood for a town that subsisted largely on fishing and farming."

It might cater to our desire for individual heroes and people to look up to - that we think of only one individual today, when we think of the birth of the Marikina shoe industry - not of Kapitan Moy's employees and subordinates who actually disassembled the shoes. Yet, they were arguably the most important contributors to this whole story.

I think it would be entirely possible to write the history of creativity and the arts not as the Grand Narrative of Geniuses and Masters as which it is often presented, but rather an ongoing, collective process, where everybody steals from everybody else. Or at least, where no man is an island when it comes to good ideas.

The diverse culture of the Philippines is actually one example how rich the outcome of such cultural cross-pollination can be. It is not just the shoe industry of Marikina that is a product of an amalgamation of Filipino ingenuity with foreign technology. Just think of the jeepney or the historical "Spanish House", that is not really Spanish, but rather a very unique combination of local and European elements. Some of the most popular icons of the Philippines are actually the result of this process of cultural hybridisation, of ideas crossing over from one culture to the other.

The benefits of intercultural exchange without the limitations of an over-bearing copyright regime are not limited to post-colonial countries such as the Philippines however. The high culture of my own mother country has made liberal use of the material from other sources, such as popular myths and foreign culture. This conference is sponsored by the Goethe institute - named of course, after German playwright and national poet Johann Wolfgang von Goethe. Goethe's best-known drama is *Faust* (1806 - 1832) about a scholar who sells his soul to the devil.

Goethe was inspired by a popular story from Northern Germany, when he wrote the play. So was Christoph Marlowe, when he wrote another play based on the same story. And so were to

some extend or another Klaus Mann, Thomas Mann, Clive Barker, Charles Gounod, Hector Berlioz, Oscar Wilde, Terry Pratchett, Mikhail Bulgakov, Fernando Pessoa, Anne Rice and Randy Newman, when they came up with their own variation of this story. Goethe's drama is considered to be among the masterpieces of German and even international literature. And can serve as a good example of what can happen if you let stories, ideas and concepts travel without any unnecessary restrictions.

The new digital media should facilitate this type of flow of ideas. Due to its very nature it allows for a flow of idea very similar to the one that we can observe in popular culture before the advent of copyright rules. Be in German Volkssongs such as "Oh Tannenbaum", or fairy tales such as "Ibong Adarna" - nobody owns those. They travelled from one generation to the next and one culture to another. But there is a real danger, that the exchange of ideas – paradoxically, given the nature of digital data - might actually become much harder or even impossible in the digital age. Be it copy-protection schemes, Digital Rights Management (DRM) systems, or simply restrictive legislation – there are a lot of ways of restricting and locking away free culture.

Therefore, the focus of the conference will lie on the question, whether the concept of Intellectual Property in the digital age can limit and restrict creativity. Or if it can support and amend creativity.

To return to Kapitan Moy for the last time: He may have taken some ideas and methods from European shoemakers, but he turned the results of his *reverse engineering* into creations of his own. And he shared these methods with others. Therefore the Marikina shoe industry might have started out with mere copies of European men's shoes. But based on the understanding of production and manufacturing methods that Moy & Company gathered from dismantling the expensive European shoes, the shoemakers of Marikina ultimately came up with their own highly original designs – designs that the world came to admire on the feet of Imelda Marcos.

A copyright regime that does not allow for this type of process does not serve its true purposes anymore. I am not alone with my impression, that what see right now in the realm of Intellectual Property has started to become an obstacle to creativity and development in many areas. Once copyright is used to make it impossible to make certain documentaries, write certain satires, create certain art works or write certain kind of computer programs, copyright has gone astray.

The purpose of this conference is to discuss these challenges in the context of an emerging country like the Philippines. So let's get it on without further ado.

Thank you for your attention and enjoy the conference...