

ETHNOGRAPHIC EXPLORATIONS OF INTELLECTUAL PROPERTY CLAIMS TO YOGA

A Series of Unexpected Events

Allison E. Fish

Ethnography is perhaps one of the most widely used qualitative modes of inquiry into social conditions not only in the academy, but also increasingly outside of the university as well. There is no single definition or practice of ethnography, nor should there necessarily be a uniform interpretation. As Marilyn Strathern has written, ethnography, through participant-observation, interviewing, and other qualitative techniques is a "deliberate attempt to generate more data than the researcher is aware of at the time of collection" (Strathern 2003). This makes ethnographic methods eminently suited to the study of unpredictable events, complex emerging social formations, and technological and market change. Given the disposition of ethnography for documenting the unforeseen, it therefore goes without saying that this methodology often takes a researcher in unexpected directions. In doing so, this leads the ethnographer to new places, encounters, investments, and – perhaps most importantly – novel discoveries that could not have been predicted at the outset of a project.

My own entry into anthropological research proved no exception to this unspoken rule. However, despite a series of seemingly strange twists and turns, I've found the underlying research questions and political investments that draw my attention have remained consistent. Thus, while my formal graduate training has been in the fields of cultural anthropology, law, and public administration, I consider myself to be an interdisciplinary scholar using ethnographic methodologies to investigate questions of social, legal, and economic justice. In this regard I have primarily focused on how law is used by different parties to secure and regulate access to important basic resources such as agricultural commodities, jobs, health care, land, and, most recently, intellectual property. In investigating this topic I have found that anthropological ethnography is capable of providing the nuanced detail necessary to understand the complex, and often opaque, factors underpinning the lived experience of disparity.

Leaving Mexico: How Leads Me to India

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It was through this after first setting foot in waiting for an evening Indira Gandhi National chocolate from the Co southern California chain in the airport's food court terminal was posh – rich which I had regularly from the slightly worn, into earlier that summer airport's transformation experienced since my traveled around the world South Africa, and Japan expanding reach of international panchayats in remote villages high-ranking members graphic research project reactions were constant the topic I had chosen to was trained both to critical varied perspectives in

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Leaving Mexico: How a Complication in Early Fieldwork Leads Me to India

My early fieldwork focused on the use of new information technologies in the regulation of international agricultural commodity chains along the US–Mexico border. However, in the summer of 2005 unanticipated political events and violence along the border made it difficult for me to return to my research site in Arizona (US) and Sonora (Mexico) for fieldwork. Taking this as an opportunity to travel and experiment with a second project I purchased an around-the-world ticket to study the development of the global yoga industry and attempts to control this emerging market through the use of intellectual property claims. As part of this trip, I planned to spend two months in India, the “birthplace” of yoga, to study how the growing global market and the related assertion of property claims was impacting the practice in South Asia. I assumed that after my summer travels this project on yoga, organized primarily as a diversion and around my desire to travel outside of North America for the first time in my life, would fall apart and I would return to my work on a more “serious” topic. However, that was not to be the case as the next twelve weeks, most of which involved spending time with a legal research and activist team in southern India on their “Intellectual Property and the Knowledge/Culture Commons” project, opened the door to scholarly and applied research opportunities that I could not have anticipated.

It was through this series of unexpected events that I found myself, five years after first setting foot in India and at the close of my fieldwork in August of 2010, waiting for an evening flight out of the brand new international terminal at the Indira Gandhi National Airport in New Delhi. While waiting I purchased a hot chocolate from the Coffee Bean and Tea Leaf Company shop, a franchise of the southern California chain that had recently been allowed access to Indian markets, in the airport’s food court and chatted on the phone with a friend. Put simply, the terminal was posh – rivaling the airports of Singapore and Hong Kong through which I had regularly transited en route from California to India – and a far cry from the slightly worn, linoleum tiled and chaotic older terminal that I had flown into earlier that summer. Taking in the difference, I contemplated not only the airport’s transformation, but also how much had changed and how much I had experienced since my first arrival to India. In the intervening five years I had: traveled around the world several times; participated in meetings in Bangalore, South Africa, and Japan with Creative Commons organizations concerned with the expanding reach of intellectual property; spent time in ashrams and listening to panchyats in remote village India; and interviewed elite South Asian scholars and high-ranking members of the Indian government – all as part of a single ethnographic research project. During this process my instincts, assumptions, and initial reactions were constantly challenged as events unfolded and I learned more about the topic I had chosen to follow. This learning, I argue, was only possible because I was trained both to critically listen to and sympathetically question my informants’ varied perspectives in a manner intended to bridge cultural gaps and foster

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understanding – an openness that the ethnographic disposition afforded to me as a researcher.

In this chapter, I draw upon my fieldwork experience in India to show the insights and new directions that sensitive ethnographic questioning and listening, keystones of the research methodology, are capable of providing. In doing so, I highlight the value in the seemingly trite anthropological refrain of making the strange appear familiar and the familiar appear strange – a process of defamiliarization that allows the researcher an opportunity to critically assess his or her own inherent biases (see Miner 1956). I also show the benefits that arise in following the classical fieldwork methodology outlined by David Schneider of “listening carefully to the natives,” your informants, as “the ones engaged directly in the processes in which you are interested,” while also keeping in mind that the “natives” might not always be right (Schneider 1980 as cited in Hakken 2003). I argue that it is through careful listening and questioning that an ethnographer is able to triangulate a research space and, within that framework, develop new ideas both capable of contributing to the scholarly record and that offer significant insights into the lived experience of real people in the world.

Beginning with a Question or Two

In 2005, at about the time that my research at the US–Mexico border was stalling and I was looking for a new project to occupy my summer, I read an article about a Los-Angeles-based yoga franchise engaged in a bizarre lawsuit involving intellectual property claims to a specific form of practice. What particularly drew me to this case was that it involved a popular variant of yoga, the Bikram “hot” style of yoga, which I first came across in 1999 and have, myself, practiced since, albeit irregularly. Like many others with whom I later interacted during my fieldwork, my initial visceral reaction to the story of ownership claims to yoga was a combination spanning surprise, disbelief, unease, shock, and even humor.

This mixed sentiment, sparked by the intersection of familiar, but ostensibly separate worlds colliding in strange ways, drew me to research the case, which I describe below. As my knowledge of both intellectual property and yoga expanded, a series of linked questions emerged and developed into a more concrete research agenda. The primary query, and the one that corresponded to my own initial emotional reaction, was, “How have we, as a society, come to fashion a world where it is possible to conceive of traditional cultural knowledge forms, like yoga, as property?” My legal training encouraged me, however, to look at both sides of the argument. Therefore, upon reflection, and through my growing understanding of intellectual property, I challenged my own inherent assumptions by asking, if other types of information and knowledge-making activities, such as writing or scientific invention, can become the subject of ownership, what is it about yoga and its connection to South Asia that makes so many people, including myself, think it cannot be treated in a similar manner?

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In addressing these questions I found I was constantly surprised and challenged by the realization that different parties had their own unique answers and that these responses did not correspond to mine. Moreover, the response of each interested party was supported by unique logics that drew from their own situated world-views and corresponded to distinct sets of values. I also found that investigating these responses constantly led me in unexpected and new directions.

The 2005 article initially prompting my interest in intellectual property and yoga evoked in me a sense of surprise because while both topics were familiar to me, I had not thought of them as belonging to the same space or in relation to one another. In a sense what was at stake here was my own understanding of both yoga and property (more specifically, intellectual property). On the one hand, my initial assumptions about yoga were informed by taking classes at local California studios and gyms and by my own imagination regarding spirituality in South Asia, a topic about which I knew nothing at the time. From this basis I thought about yoga as either a light form of exercise practiced mostly by women in the US and Europe or an esoteric practice belonging to orange-robed spiritual ascetics living halfway around the world and adopted by local New Age communities. As I learned more about the history and supposed origins of yoga, I came to view it as a dynamic and evolving body of practical knowledge capable of accommodating and being incorporated into novel social conditions.

In contrast, I assumed that the introduction of private property rights would always lead to increased social, economic, and political disparity. In this simplistic model, I assumed that denial of private property claims to yoga would ensure its placement in the public knowledge commons, resulting in a benefit to all and a respectful treatment of the practice. However, as I explored the topic I realized that it was not the *determination* of yoga's proprietary status that was of primary importance. Instead, the key was that the question of property could be formulated and that, for many, the answer to this question clearly turned on (1) the imagined association of the practice to a specific ethnic, national, and racial community, and (2) the ability of that community to intentionally produce and create something the rest of world would find valuable and beneficial. Thus, in order to understand how inequality was produced I had to understand how the different parties reconciled their understandings of yoga as a practice that existed prior to its encounter with intellectual property, and how perceptions of both changed after their intersection.

Understanding Yoga: Both the Strange and the Familiar

Traditionally, yoga is a several thousand years old South Asian philosophy that trains the embodied mind to accept truth through a combination of physical and mental practices. The term yoga derives from the Sanskrit word *yuj*, meaning to yoke, to join together, or union. Yoga and related ascetic practices are linked to several religious traditions originating in the South Asian sub-continent including Hinduism, Jainism, Buddhism, and Sikhism. Specifically, yoga is one of six major philosophies of religious orthopraxy known as *darsanas*. Approximately 2,000 years

ago, local expressions of yoga were grouped into eight separate limbs of practice by the sage Patanjali who described his classificatory scheme in *The Yoga Sutras of Patanjali*. These limbs are *yama* (abstentions), *niyama* (observances), *asana* (postures), *pranayama* (breath control), *dharana* (concentration), *dhyana* (meditation), *pratyahara* (control of the senses), and *samadhi* (enlightenment) (Flood 1996). Each school of yoga, whether contemporary or traditional, has a distinctive style of practice that consists of a unique interpretation and blending of a particular subset of these eight limbs. Thus, even in South Asia there has never been a singular style of practice, with multiple interpretations of yoga existing at any point in time.

Perceived as an esoteric Orientalized spirituality, elite European and American social circles first expressed an interest in yoga towards the end of the 19th century when Swami Vivekenanda toured the world. However, it wasn't until the last few decades of the 20th century that a noticeable and global market demand for what I term "transnational commercial yoga" emerged. A demand that was largely driven by affluent and cosmopolitan consumers located mostly in Europe, the US, Japan, and Australia. This market for transnational commercial yoga draws largely from contemporary Hatha Yoga, a derivative of the 15th century *Hathayogapradipika* text, which departs from the rigor of Patanjali in that it emphasizes the physical limbs of practice (*asanas* and *pranayamas*) over the others. The objective of contemporary Hatha Yoga is to prepare the practitioner to quiet the body so that the mind might engage in the more advanced steps of meditation and sensory withdrawal. Specifically, this transnational commercial variant focuses on the gymnastic processes of the practice, the production of a thin and flexible "yoga body," and the physical effects of weight loss, stress reduction, and muscle toning (Fish 2006; Jain 2014).

In 2012 the transnational commercial yoga market generated, in the US alone, more than \$11 billion, was practiced by more than 20 million people, and was expected to grow at approximately 25% per year in the future. Recently this industry, in part because of its rising value, has seen increasing attempts by both state agencies and private parties to control this growing market. One of the most startling of the regulatory attempts was the use of intellectual property claims, primarily trademark and copyright, by private yoga corporations and individual yoga teachers to carve out and secure a niche in this valuable market. By the late 1990s more than 2,000 yoga-related intellectual property claims had been registered at either the US Copyright Office or the US Patent and Trademark Office. Despite the proliferation of these intellectual property claims in yoga, public attention to the trend to propertize the practice, and a consequent public outcry, did not erupt until around 2001 when Bikram Choudhury, the notoriously aggressive founder of the Los Angeles-based Bikram Yoga College of India (BYCI), filed suit against Kim and Mark Schreiber-Morrison (*Bikram Choudhury v. Kim Schreiber-Morrison* 2002; Fish 2006). In his suit Bikram alleged that the Schreiber-Morrison, his former students and owners of a California yoga studio, had violated the copyright and trademarks held by Bikram over his unique twenty-six-posture "hot" yoga choreography, the "Bikram Beginning Yoga Series," and requested nearly \$1,000,000 in damages.

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separate limbs of practice by name in *The Yoga Sūtras of Patañjali* (observances), *asana* (postures), *pranayama* (meditation), *pratyahara* (withdrawal) (Flood 1996). Each school of yoga represents a distinctive style of practice that is a particular subset of these eight limbs. There is no singular style of practice, but rather a variety of styles, each with its own history and tradition.

In the late European and American colonial period, at the end of the 19th century and the beginning of the 20th century, it wasn't until the last few decades that there was a real market demand for what is now called yoga. This demand was largely driven by a growing interest in yoga in Europe, the US, Japan, and elsewhere. Modern yoga draws largely from the 19th-century *Hathayogapradipika* text, which emphasizes the physical limbs of yoga as a means to the objective of contemporary yoga: to control the body so that the mind might be free from sensory withdrawal. Specifically, it focuses on the gymnastic processes of asana, "yoga body," and the physical practice of pranayama (Fish 2006; Jain 2014).

Yoga, which was generated, in the US alone, by a small group of 20 million people, and was growing rapidly in the future. Recently this has led to increasing attempts by both secular and religious groups to claim the yoga market. One of the most prominent is the intellectual property claims, which have been made by corporations and individual practitioners, claiming a valuable market. By the late 20th century, property claims had been registered with the Patent and Trademark Office. In the 21st century, property claims in yoga, publicized by the media, led to a consequent public outcry. In 2003, Bikram Choudhury, the notoriously controversial Bikram Yoga College of India founder, was sued by Morrison (*Bikram Choudhury v. Morrison*) (Bikram Choudhury *v.* Morrison). Morrison alleged that the Schreiber-Morrison yoga studio, had violated his unique twenty-six-posture "Bikram Yoga Series," and requested

Given the costs of litigation and the threat of such a large judgment, the Schreiber-Morrison quietly agreed to privately settle their dispute with Bikram that was pending in the US federal courts. Under the terms of the settlement, the Schreiber-Morrison agreed to pay Bikram substantial monetary compensation and to refrain from future infringements of the varied intellectual property rights he claimed in relation to the Bikram Beginning Yoga Series. Buoyed by this victory, Bikram began to threaten other yoga studios and teachers around the world that he believed were infringing his intellectual property rights.

In response to these threats, a group of yogis from around the world joined together to form "Open Source Yoga Unity" (OSYU), a nonprofit organization that was incorporated in 2003 in San Francisco. Leading members of the organization included the owners of a yoga studio threatened by Bikram and their student who was also an intellectual property lawyer representing Silicon Valley clients. In addition, OSYU received *pro bono* legal services from leading attorneys associated with Stanford University's Center for Internet and Society. The Center is an academic unit founded by Professor Lawrence Lessig who is considered father of the Creative Commons organization and a leading figure working to curb the unchecked expansion of copyright in the age of digital media. At the time of OSYU's formation, both the Center and Creative Commons were interested in expanding their reach to assess the impact of intellectual property claims to other cultural forms. The OSYU case and the possibility of investigating the application, or misapplication, of copyright to yoga quickly caught the interest of what was primarily a local legal activist community that had previously been concerned with questions pertaining to intellectual property and the creative products of information technology.

Shortly after forming, OSYU filed a motion for declaratory judgment in the US federal district court of Northern California. This lawsuit, which named both Bikram and BYCI as co-defendants, argued that the members of OSYU had unique and urgent standing to sue because Bikram's actions were intended to and did "create the reasonable apprehension in [OSYU] members that they [would] be sued if they continue[d] the activities that Bikram claims infringe his intellectual property rights" (Amended Complaint 2003). OSYU asked that the court find, as a matter of law, that Bikram did not have the right to control through trademark and copyright who could and could not teach the Bikram series of yoga. Additionally, OSYU requested that the court, should it find that Bikram did have a viable intellectual property claim, clarify what actions would constitute a violation of his property rights (Fish 2006).

Initially the lawsuit appeared to be moving in favor of OSYU and during an April 2004 ruling the court, in the person of Judge Phyllis J. Hamilton, openly expressed skepticism that Bikram could prove a valid claim on any type of yoga series. This victory, however, was short-lived as the judge reversed this statement later the next year when she denied OSYU's motion for summary judgment. As the basis for denial Judge Hamilton suggested that copyright and trademark rights might very well exist in a series of yoga postures and that Bikram's claims were a

question of fact and not law (*Open Source Yoga Unity v. Bikram Choudhury* 2005). The denial of summary judgment prompted the realization by both sides that the dispute would evolve into prolonged and complex litigation and that neither could guarantee that the outcome would be in their favor or best interest. Therefore, in mid-2005 both parties agreed to enter into a private settlement protected by a non-disclosure agreement (Fish 2006).

Because the *Open Source Yoga Unity v. Bikram* proceedings were for declaratory judgment and because the initial arguments relied on specific characterizations of the "nature" of yoga, the lawsuit had, in effect, requested the court to decide whether yoga, both generally and in specific performances, belonged to the public or private domain. Though the US courts never had the opportunity to fully answer this query the unusual case and the international attention that it has drawn over the past decade has prompted numerous unusual reactions from a diverse range of actors – including private individuals, international news venues, public officials, nation-states, private for-profit corporations, private not-for-profit organizations, and interest groups. Tracking this diverse array of reactions, as well as the implications that each had for our understanding of intellectual property rights, composed the primary focus of my ethnographic research.

As I explored the lawsuits that had been dubbed "The California Yoga Wars" in the media, and the attendant fallout, I came to realize that the cases were significant for two reasons. On the one hand, these disputes were the first to test the validity of individual intellectual property claims to yoga. On the other hand, and perhaps most importantly, these fairly low-level disputes brought international attention to the question of whether or not yoga resides in the public or private domain. This second, apparently simple question, however, appears to have confounded the American federal courts and remains in active dispute in legacy cases, almost fifteen years after the first lawsuit was filed. Reflecting on the lawsuits, I realized that the question of the proprietary status of "hot" yoga provided a provocative example of intercultural exchange between more- and less-powerful players that would allow me, through ethnographic research, to engage equally with questions of capitalism and commodification, law and social order, and knowledge management and expertise. The cases also demonstrated the utility of the classical anthropological approach of questioning socially charged assumptions by making the strange appear familiar and the familiar appear strange.

In the following sections, I highlight three situations where my ethnographic fieldwork not only challenged and surprised me, but also continued to lead me in unexpected directions as I questioned my informants – yogic and intellectual property experts (both equally my "natives") – listened to their accounts, and critically analyzed their responses. In two cases the surprises came because I realized that the assumptions I had held about the yogic "natives" were wrong. In the other case, a growing realization that the intellectual property "natives," with whom I most strongly identified both culturally and politically, might be wrong led me to also question their accounts of certain key issues.

Listening to the "Native Intellectual Property"

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Listening to the “Natives”: Popular Confusion Regarding Intellectual Property

A major objective in undertaking fieldwork in India was to explore how, in the aftermath of the California Yoga Wars, four international yoga franchises headquartered in India, the purported “birthplace of yoga,” came to their respective conclusions that a certain type of intellectual property claim was appropriate for the management of the signature styles of practices associated with their organization. I had recruited participation from each organization because it seemingly represented the use of one of the “traditional” domains of intellectual property – copyright, trademark, patent, and a public sphere free of legal claims. Newspaper reports, preliminary fieldwork interviews, and internet research led me to the conclusion that each school had selected one of the above-mentioned traditional intellectual property claims as the tool to manage their style of practice. However, upon beginning research in India I was reminded that intellectual property is a technically complex domain and that its legally specific terms are commonly misused in everyday discourse, often resulting in further confusion regarding the practical ramifications of claims. This highlighted the fact that many people have inaccurate understanding of the laws which govern their everyday actions and to which they are held accountable, especially those areas of law that are rapidly changing. Thus, it was difficult for many of my informants to assess the impact of intellectual property rights when they were unsure of exactly what a claim required or implied.

Two examples of this confounding situation occurred early during fieldwork when I discovered that high-ranking members of two yoga schools, the Bihar School of Yoga (BSY) and the Art of Living (AoL), had either technically misused legal terms or misunderstood their organization’s proprietary claims. For example, during a conversation with me, the president of the BSY ashram in Bangalore unequivocally rejected the notion that the school made any sort of claims. In fact, the BSY organization headquartered in the northern Indian state of Bihar holds trademark and certification marks that are registered in several countries including India and the US and has attempted to enforce these claims through extra-legal channels, the use of social pressure, and appeals to morality. In the other case the president, guru, and founder of the Art of Living, Sri Sri Ravi Shankar, was quoted in multiple Indian newspapers as claiming patents to the *pranayama* technique *Sudarshan Kriya*. Initial discussions in 2006 with members of the community cast doubt upon this assertion and follow-up archival research at the patent recorder’s office in Chennai showed that, while the Art of Living had trademark claims on file, there was no evidence of application for patent rights. Whether the inaccurate newspaper articles were a product of a misunderstanding by S.S. Ravi Shankar or by the journalist is unknown and, to an extent, is unimportant to the analysis here.

The differentiation between technically legally accurate and popular usages of intellectual property terms and concepts significantly altered my research framework. First, and most importantly, this discovery undermined the neat comparative model at the center of the original research design that juxtaposed the use of

different legally defined types of intellectual property to manage valuable yogic practices. Secondly, it demonstrated the need for a more nuanced approach to the ways in which understandings of law, property, intellectual property, and knowledge management and exchange were actually articulated in the yoga schools studied.

It was particularly this latter realization that provided an important window of opportunity during the subsequent stages of research as it became increasingly apparent that most transnational commercial yoga organizations, especially those headquartered in India, did not primarily conceptualize the management of yogic knowledge in terms of market value, law, or property. Instead, in interviews with adept practitioners, I noted a deep connection to a different type of logic, one more in keeping with yoga as an embodied philosophical system. Specifically, most informants relied on notions of morality and obligation, formed through the spiritually based guru-disciple relationship, when speaking about the maintenance and management of yoga, a dangerous and esoteric knowledge to the uninitiated or unprepared.

To the extent they relied on legal claims and arguments, most members of the yoga schools that made intellectual property claims justified their use as a means to an end. For these individuals, intellectual property had the potential to ensure that obligations of care and duty between guru and disciple, or teacher and student, were fulfilled. In this sense, members of these franchised schools understood the organizations first and foremost as spiritual networks situated in specific social contexts. In some "cosmopolitan" environments, intellectual property claims were deemed to be one of several tools, techniques, or technologies that might be used to accomplish particular pedagogic objectives and reinforce social bonds predicated on the practice's underlying structures of orthopraxy and spirituality.

Listening to the "Natives": the Use of Intellectual Property Claims by Individual Yogis in India

Throughout my fieldwork I expected to find that expert yoga practitioners, especially those in India, would be opposed to the application of intellectual property claims to yoga. However, as research progressed I realized that this was an assumption based upon my own internalization of modern law and capitalist markets as universal paradigmatic structures. Initial evidence of this ethnocentric perspective became apparent when I had difficulty understanding my interlocutors' responses to questions of whether or not it was "appropriate" to treat yoga as intellectual property. In particular, two interviews with yogis in Bangalore in March 2007 highlighted my mistaken assumptions about the incommensurability of yoga and intellectual property. This realization left me struggling with the significance of what my informants were trying to tell me.

In the first of these two interviews, Swami SYS told me that she was unfamiliar with the intricacies of intellectual property, however, she was curious to know what copyright claims to yoga meant. I briefly explained the distinctions between trademarks, patents, and copyright and the types of claims that Bikram Choudhury

was making (i.e. trade choreographic sequence thought for a moment that might be fine." I on the surface, it appeared consciousness of intellectual property was obligated to answer her on the other hand, I felt that with the foundation for I was provoking the very both the principle of linear open access to knowledge

Later that month another surreal dimension. My Mahesh Ganapathy (a developed a yoga sequence for health and published a book on it. In addition to teaching, our interview took place in a yoga studio converted into a yoga-studio project and took note that I had not a legal pad and started practicing yoga for that time. Hearing this, I Tapping the legal pad, (Bikram case because he "[was] good business practitioner" (personal contact with phrases and images associated with the book – a creative work by him by his guru. A bit strange Choudhury of India! Not address the other question

These two interviews confirmed findings, namely, that the I had set out to find out myself whether or not I was. For, if the experts were unperturbed by and otherwise? It was not an relationship involved in the relationship, that I understood how yogic knowledge could even facilitate, the use of

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Actual Property

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was making (i.e. trademarks on his image and name and copyright in a yoga choreographic sequence). After asking questions to clarify a few points, Swami SYS thought for a moment and then said, "Well, I suppose I can understand that ... that might be fine." Her response triggered an uneasy feeling in me because, on the surface, it appeared that our interaction had triggered her emergent legal consciousness of intellectual property claims to yoga. On the one hand, I felt obligated to answer her questions about the subject matter of the research. On the other hand, I felt that my explanation had, in some way, provided Swami SYS with the foundation for justifying proprietary interests in yoga. In a way, I felt as if I was provoking the very process that I had set out to study, thereby, confounding both the principle of limiting my own influence and my own convictions regarding open access to knowledge.

Later that month an interview with another yoga teacher took on a similarly surreal dimension. My meeting that day was with a yoga teacher in Bangalore, Mahesh Ganapathy (a pseudonym). Ganapathy had, like Bikram Choudhury, developed a yoga sequence that would purportedly keep a practitioner in good health and published an instructional book, *The ABCD Method*, as to its performance. In addition to teaching yoga classes, Ganapathy was a practicing lawyer and our interview took place in an apartment in central Bangalore that had been converted into a yoga-studio-cum-law-office. As the interview began I explained my project and took note that, as I described the California lawsuits, Ganapathy took out a legal pad and started scribbling notes. Ganapathy then told me that he had been practicing yoga for two decades and intellectual property law for about half that time. Hearing this, I asked immediately how he felt about the Bikram lawsuits. Tapping the legal pad, Ganapathy responded that he wanted to follow up on the Bikram case because he thought the registration of the intellectual property rights, "[was] good business practice," and, similar to, "the advice [he] would give to a client" (personal contact). Moreover, he had already registered trademarks to phrases and images associated with *The ABCD Method* and had copyright in his book – a creative work through which he demonstrated the knowledge given to him by his guru. A bit stunned, I felt as if I had met, in Mr Ganapathy, the Bikram Choudhury of India! Not quite knowing how to respond, I moved forward to address the other questions I had prepared for our interview.

These two interviews highlighted for me one of my most surprising research findings, namely, that the controversy over intellectual property rights in yoga that I had set out to find and document might not actually exist. I also had to ask myself whether or not I was dramatizing the implications of the California Yoga Wars. For, if the experts themselves, the holders and teachers of yogic knowledge, were unperturbed by and even participating in this trend, then who was I to argue otherwise? It was not until I learned more about the yogic path and the primary relationship involved in the practice, the *guru-shishya* (hereafter, guru-disciple) relationship, that I understood not only the responses of my informants, but also how yogic knowledge transference was not necessarily inhibited by, but might even facilitate, the use of intellectual property rights.

Remember that the "Natives" Might Be Wrong: A2K Response to Yogis' Use of Intellectual Property

A third situation where my ethnographic research both challenged and surprised me was in my interactions with the Access to Knowledge (A2K) community. Prior to fieldwork I had assumed I would share certain commitments regarding both intellectual property and cultural rights with this group of "natives," in part because we shared a similar cultural and political background. In this instance, however, my findings emphasized that though I should listen to my informants carefully, I should realize that the "natives" might also be wrong. In this particular instance, this realization also led me to question and reconsider some of the underlying ideas about the public domain and the knowledge commons that the "natives" [A2K activists] espoused.

In the contemporary moment, dubbed by many the Information Age, the promise of rendering knowledge into a portable informational form so that it can accrue greater worth has accelerated the pace of efforts to capture the value of intangibles through the use of intellectual property (Coombe 2009; Sunder Rajan 2006). This has fostered a broad sense of crisis amongst those who suggest that the very foundations of creativity, culture, and even humanity are increasingly subject to privatization (Boyle 2008; Brown 2004; Coombe 1998; Lessig 2001; Sunder 2012; Vaidhyanathan 2001). This sentiment has prompted the organization of alternatives, largely through the assertion of the cultural commons (Krikorian and Kapczynski 2010; Liang, Iyengar, and Nitchani 2008).

How to best craft a cultural commons that is a viable alternative to intellectual property is a question of much debate within A2K. Proponents of what I term "mainstream" A2K primarily tend to focus their efforts on an active and conscious effort to turn private proprietary forms, such as copyright, back onto themselves. Creative Commons (CC), one of the A2K organizations associated with the *Open Source Yoga Unity* lawsuit described earlier, is a well-known face of this type of mainstream activism. However, A2K activists from the developing world and indigenous communities are concerned that alternative intellectual property forms, such as CC's copyleft licensing suite, and their underlying moral discourses do not fit seamlessly with their experience of the world. They argue CC practices are formed in the context of daily life in Euro-American countries and require significant revision lest they replicate imperial legacies that the regime of modern property introduced to the global world system centuries earlier. Central to these concerns are the ways in which key ideas, like openness and creativity, are defined to produce a singular, as opposed to a diverse, conceptualization of the cultural commons (Copy/South Research Group 2006; Liang et al. 2008).

These concerns were highlighted when I participated in various activities sponsored by the international CC umbrella organization from 2007 to 2008. During fieldwork I was affiliated with a south Indian organization actively engaged with the CC community and had the opportunity to meet affiliated activists from all over the world. At a conference in South Africa I spent time with two members of

CC Europe whose work is discussion led to an interest in yoga. During fieldwork I had been practicing yoga in discussing claims to the practice were stood the concepts, since research. In fact, many ki powerful. In fact, many ki research. However, when t as a practice that could benefit other topics, usually attempted relationship took shape.

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Wrong: A2K Response

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ted in various activities sponsored from 2007 to 2008. During the commons actively engaged with commons affiliated activists from all commons time with two members of

CC Europe whose work is well received in the A2K community. At one point our discussion led to an interesting issue that was emerging in my research on yoga. During fieldwork I had been having trouble engaging *sanyasi* (spiritual ascetics) practicing yoga in discussing their thoughts on whether or not intellectual property claims to the practice were "appropriate." I was confident that the *sanyasi* understood the concepts, since most were highly educated, well-traveled, and socially powerful. In fact, many knew of the California lawsuits that catalyzed the core research. However, when the topic was broached, most began by describing yoga as a practice that could benefit all, but then immediately switched the conversation to other topics, usually attempting to describe yogic thought and how the guru-disciple relationship took shape.

It had taken several months for me to realize that, by changing the conversation, these *sanyasi* were indicating that my question of whether yoga naturally resided in the public domain was fundamentally flawed. The question, in fact, failed to get at the significance of the practice, as well as the social relationships that it produced. Instead, my informants stressed that the central goal of yoga is the liberation of the individual self. Furthermore, a practitioner approached this goal through a commitment to a daily practice of living explicitly structured through his or her hierarchical relationship with an expert guru who acts as a gatekeeper over spiritually powerful knowledge.

In response to my story, one CC leader scoffed at the "ridiculous" implication that yogic knowledge could be powerful, telling me it was "only information." The other suggested that this explanation was probably just "an excuse" and that some of these *sanyasi* might be authoritarian figures unwilling to relinquish the possibility of power or wealth. For these two A2K activists the idea of a stratified commons for yoga was either, at best, the product of naïve spirituality or, at worst, the product of personal greed. Reactions of both CC leaders are similar to the majority of feedback I received from mainstream A2K activists and are of concern because such perspectives fail to take the viewpoints of cultural heritage stewards seriously – an orientation that requires sincerely listening to and engaging with other stakeholders.

These surprising reactions not only led me to consider that the "natives," in this case A2K activists, might be wrong, but also led me to question and reconsider some of the ideas that the "natives" espoused. In particular it led me to reflect on the fact that in discussing intellectual property within mainstream A2K discourses there is a tendency to use the terms public domain and the commons as though they are synonymous. However, two separate histories inform these concepts with "the public" being those exceptions carved out of the private domain by law and open to all. In contrast, "the commons" references a multiplicity of systems located outside of modern property regimes where alternative social projects take shape. The CC organization seeks to reverse trends in contemporary intellectual property by re-creating the commons through such instruments as "open" and "copyleft" licenses. The thinking is that if property can enclose the commons, then property can also be used to re-create the commons. The problem with these legal

techniques and their underlying logics is that they end up creating something very different – they resurrect an aspiration of the commons, but produce a space that is barren of social relationships and where informational objects are abandoned by creators. In contrast, a pre-property notion of the commons is a realm of communal caretaking and development – a space that is socially significant and quite possibly stratified.

As well as calling into question my understanding of the way that I thought about the public domain and the commons, my ethnographic research also offered some potential ways of rethinking these concepts. In particular, my experience in the way that yogis interacted with intellectual property offered a way of thinking about the commons that was not barren of social relationships. Yogic knowledge exchange is, I suggest, a way in which we can theorize a more vibrant and diverse cultural commons, as differentiated from the public domain. To do this I find the work of Lawrence Liang, Prahsant Iyengar, and Jiti Nitchani (Liang et al. 2008) helpful as they argue for a theorization of an Asian commons that isn't simply a crude cultural relativist framework with Asian-ness emerging only as "a different [and often fundamentally flawed] way of doing things." Instead, these scholars argue that both Asia and the commons should be seen as "categories in the making" that are neither stable nor singular, but diverse and always transforming (Liang et al. 2008, 30). It is with this sensibility that I suggest taking seriously the guru-disciple relationship, structured as it is around the transfer of yogic knowledge. This approach requires a refusal to discount the idea of spiritually dangerous knowledge as solely a construct of naïve or power-hungry gurus, but as indicative of a broader social project meriting consideration.

Conclusion: Bringing Us into Touch with the Lives of Strangers

A female *sanyasi* with whom I met regularly in Bangalore over several months, made an interesting comment when she described how she became a conduit through which the presence of her guru manifested during the course of instruction. Pressing her to explain, I asked Swami Saraswati where her guru, who was a disciple himself, obtained that knowledge which passed through her and she responded, "from his guru." Repeating my question again I asked Swami Saraswati's thoughts on the ultimate source of the knowledge, since this is the key figure to whom copyright is bestowed according to modern law. The swami paused and, in response to my question, said with a thoughtful chuckle, "why I think ... it is gurus all the way back."

Swami Saraswati's words recall the story in which an Englishman meets an Indian ascetic who tells him that the world rests upon a platform that rests upon an elephant that is standing on the back of two turtles. The Englishman asks the ascetic what the second turtle is standing upon and the sage responds, "Ah, Sahib, after that it is turtles all the way down." Geertz's use of this story alludes to his understanding of the incomplete nature of socio-cultural analysis and his conviction that the purpose of ethnography is to "bring us into touch with the lives of

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strangers" and gain access to their conceptual worlds (Geertz 1973, 28–29). My experience during fieldwork shows that gaining access to the conceptual world of a practicing yogi does not necessarily require that I "turn native" and accept the mystical, almost telepathic, connection between gurus and disciples described to me by the *sanyasi* with whom I conducted fieldwork as absolute truth. Similarly, I do not need to maintain identical political investments with those informants hailing from the A2K movement. Instead, I must subject these commitments, some of which I share, to a process of defamiliarization and sustained critical analysis. However, as an anthropologist I am invested in sympathetically listening to and critically questioning these perspectives – in short, taking these perspectives seriously. Furthermore, I do this as a supporter of both A2K and cultural rights and in the hope that an enriched understanding of the commons might emerge.

This chapter is an attempt to take seriously the social and symbolic relationships that hold the world of the practicing yogis and A2K activists together in the same space. Through doing this research I hoped to foster a conception of "openness" that was more than a technical descriptor of accessibility – though that too merits consideration. By thinking with *sanyasi* as an A2K activist, "openness" emerged as a sensibility through which engagement with other people and diverse ways of being in the world became possible. Through ethnographic research expert yogis demonstrated to me how knowledge exchange has the potential to draw people together in enduring bonds of reciprocity characterized by love, faith, and devotion strengthened by everyday practice – all in spite of yoga's exposure to modern proprietary logics that emphasize individuation and alienation. In a sense, then, fostering "openness" and "creativity" with the ultimate goal of fashioning a vibrant and diverse cultural commons may be as much a daily practice as is the goal of attaining *samadhi* (enlightenment) through the practice of yoga.

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