

ESSAY

Geopiracy as an Emerging Issue in Intellectual Property Rights: The Rationale for Leadership by Small States*

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I. INTRODUCTION

The word “geopiracy” first appeared in the proceedings for the Latin American Studies Association 2006 Congress.¹ Defined as “the false attribution of location in the visual arts,” the neologism obeys the rules of logic for crafting new words: that it be broad enough to capture

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1. See Joseph Henry Vogel, Univ. of P.R.-Rio Piedras, Presentation at the 2006 Meeting of the Latin American Studies Association: Ecocriticism in Theory and Practice in Latin America and the Caribbean (Mar. 16, 2006).

the attributes of the phenomenon described yet narrow enough to discriminate among phenomena.² Nevertheless, one can imagine alternative neologisms which would have achieved the same breadth and narrowness but without all the emotional baggage (e.g., “locus-misattribution”). To the uninitiated in North-South disputes, geopiracy conjures up the image of looting and plundering. To the savvy, it is analogized immediately with “biopiracy,” which has become the rallying call of Southern grievances on access to genetic resources and the fair and equitable sharing of benefits, known in policy circles by its acronym, ABS.³ In the less emotionally charged language of a lawyer, biopiracy is simply “the removal of genetic resources without consent or compensation.”⁴ Comparing these definitions provokes a series of questions: Is false attribution of location in the visual arts really looting and plundering? Is the geopiracy—biopiracy analogy a good one? Or are the differences between “false attribution in the visual arts” and “the removal of genetic resources without consent or compensation” more important than the similarities? We shall compare the similarities and the differences between the two concepts, while also putting ourselves in the well-heeled shoes of the defendants of the status quo. We shall explain how the free association of geopiracy with biopiracy is an effective entrée into the evolving debate of Geographic Indications in the Trade Related Intellectual Property Rights (TRIPs) forums.

To evaluate the economic case for *sui generis* legislation of Geographic Indications in the realm of visual arts, the economist needs data which presently do not exist. To make the case for conducting the surveys that would generate the data, we unabashedly use the word “geopiracy.” Our intent is to inflame. Without some degree of public indignation, no entity will want to foot the cost of data collection and subsequent analysis. We recall that economics is a rhetorical enterprise and note that biopiracy has been very effective rhetoric in the eight Conferences to the Parties to The Convention on Biological Diversity (COP to CBD) where ABS is now central stage.⁵ In stunning contrast, “false attribution in the visual arts” eludes the agendas of the World

2. See IRVING M. COPI, INTRODUCTION TO LOGIC (1968) (discussing rules for defining terms).

3. VANDANA SHIVA, BIOPIRACY: THE PLUNDER OF NATURE AND KNOWLEDGE (1998).

4. Michael I. Jeffry, *Intellectual Property Rights and Biodiversity Conservation: Reconciling the Incompatibilities of the TRIPS Agreement and the Convention on Biological Diversity*, in INTELLECTUAL PROPERTY AND BIOLOGICAL RESOURCES 185, 201 (Burt Ong ed., 2004).

5. DEIRDRE N. MCCLOSKEY, ECONOMIC WRITING 17-19 (Waveland Press Inc., 2d ed. 2000) (1987).

Intellectual Property Organization Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications and the reason why is not just the absence of an inflammatory neologism. It has to do with systematization. Whereas several international nongovernmental organizations (e.g., ETC, Centre for Economic and Social Aspects of Genomics, and GRAIN) are dedicated to tracking and monitoring the movements of genetic resources on a case-by-case basis, no one has even culled the existing databases to map the occurrence of geopiracy much less measured the harm inflicted. We believe that “geopiracy” can become a *cri de coeur* of small states facing the magnified consequences of false attribution. As we shall argue, the leading harm inflicted by geopiracy is psychological: the insidious erosion of identity and culture that underpins all community management of resources. Inasmuch as our approach goes beyond the typical fare of policy analysis, we have grouped our diverse efforts, from the fields of economics, literary criticism, and education, under the umbrella “The Geopiracy Project.”

II. ECONOMICS-AS-USUAL: THE FALLACY OF MISPLACED CONCRETENESS

To the surfer savant of the Internet, missing data on movies seems to be a false problem. The Internet Movie Database (IMDb) is a treasure trove of information about millions of movies and television productions. Freely available at <http://www.imdb.org>, the fidelity of the data can be vetted by “52 million movie and TV lovers [who visit] each month!”⁶ Like the free online encyclopedia Wikipedia or the operating system Linux, the IMDb is testimony to the success of open access resources. Each deep link offers an option for the visitor to “report errors and omissions on this page to the IMDb database managers. They will be examined and if approved will be included in a future update. Clicking the ‘Update’ button will take you through a step-by-step process.”⁷ For the purposes of testing the economic implications of geopiracy, two of the fifty-two links on the left-hand side navigation board are especially useful, viz., box office/business and filming locations.⁸ The box office/business gives us, *inter alia*, the movie budget and a week-by-week report of cumulative gross sales and admissions since the opening

6. The Internet Movie Database (IMDb), <http://www.imdb.com/> (last visited Jan. 28, 2008).

7. *E.g.*, *Cloverfield* (2008), <http://www.imdb.com/title/tt1060277/> (last visited Mar. 11, 2008).

8. *E.g.*, *id.*

weekend in markets classified by countries.⁹ The link for filming locations is equally impressive: the town, state/province, and country of each filming location are cited in the alphabetical order.¹⁰ When one clicks on the intralink of the town, one enters into another page with “Titles including locations with the name of that town, state/province, and country” and an exhaustive listing of the matching titles.¹¹ Alternatively, one can begin with the “Filming Locations Browser” and search for all movies filmed in a location, be it a town, state or country.¹² Combining the IMDb with the usual fare for international statistics (e.g., <http://www.worldbank.org>, <http://www.imf.org> and <http://www.oecd.org>), one would seem to have more than enough data to construct a model of the harm caused by false attribution in the visual arts on, say, tourism.

An example can illustrate how the economist would proceed. We consider the adventure/romance movie *Pirates of the Caribbean: The Curse of the Black Pearl* filmed in the small island nation of Dominica and released in 2003.¹³ The box office in just the United States (\$305 million) reveals its status as blockbuster.¹⁴ The success of *Pirates* generated two sequels under the subtitles *Dead Man’s Chest* (2006) and *At World’s End* (2007).¹⁵ Both were also filmed in Dominica.¹⁶ To appreciate the magnified effect that *Pirates* has had on Dominica, consider this fact: of the twenty-one films ever filmed in Dominica, all but four were produced since the release of the original *The Curse of the Black Pearl*.¹⁷ The defender of the status quo asks: is “geopiracy,” like the missing data, also a false problem? Although no one in the movie industry was fooled regarding the filming location of *Pirates*, audiences may very much have been fooled in their choice for tourist destinations. In the same box office link are data for admissions broken down to nine

9. E.g., *Cloverfield* (2008)—Box Office/Business, <http://www.imdb.com/title/tt1060277/business> (last visited Mar. 11, 2008).

10. E.g., *Cloverfield* (2008)—Filming Locations, <http://www.imdb.com/title/tt1060277/locations> (last visited Jan. 28, 2008).

11. E.g., *id.*

12. The Internet Movie Database (IMDb), *supra* note 6.

13. *Pirates of the Caribbean: The Curse of the Black Pearl* (2003)—Filming Locations, <http://www.imdb.com/title/tt0325980/locations> (last visited Mar. 11, 2008).

14. *Pirates of the Caribbean: The Curse of the Black Pearl* (2003)—Box Office/Business, <http://www.imdb.com/title/tt0325980/business> (last visited Mar. 11, 2008).

15. *PIRATES OF THE CARIBBEAN: DEAD MAN’S CHEST* (Jerry Bruckheimer Films 2006); *PIRATES OF THE CARIBBEAN: AT WORLD’S END* (Jerry Bruckheimer Films 2007).

16. Titles with Locations Including Dominica, <http://www.imdb.com/List?endings=on&&locations=Dominica&&heading=18;with+locations+including;Dominica> (last visited Mar. 11, 2008).

17. *Id.*

countries and week of showing.¹⁸ Toggling between that Web page and the economic data from The World Tourism Organization (<http://www.unwto.org>), one can begin to specify a model of tourist destinations chosen by country of origin with a time series analysis run on the International Tourist Arrivals and the International Tourist Receipts before and after the international release of the film. In the case of *Pirates*, how much tourism would have been generated had there been faithful attribution of location (Dominica) rather than use of fictitious names (e.g., Isla de Muerta [sic])? Geographic literacy may shed some light on this seemingly impossible question.¹⁹ For example, one could disaggregate the Arrivals and Receipts data by the countries listed in the IMDb link for *Pirates* (Argentina, Brazil, France, Germany, Italy, The Netherlands, Norway, Spain, and the United States) and then test the before and after visits with the variable “geographic literacy” for each of the nine countries listed.²⁰ From the variance in geographic literacy, one could infer how much more tourism would have been generated from faithful attribution.

After traveling a fair way down that road, we now embrace the wisdom of the Turkish proverb: “no matter how far you have gone on a wrong road, turn back.” We have come to the humbling conclusion that the data of the IMDb can too easily determine the model of the harm inflicted by geopiracy. An economics-as-usual approach to geopiracy would be another expression of “the fallacy of misplaced concreteness,” which the philosopher Alfred North Whitehead recognized long ago as the “sin of economics”: “A one-sentence definition of the fallacy is ‘neglecting the degree of abstraction involved when an actual entity is considered merely so far as it exemplifies certain categories of thought.’”²¹ This Article will make the case that geopiracy is occurring on a vast and almost unimaginable scale. The damages extend well beyond tourism which is the only indirect opportunity cost that lends itself to econometric analysis with the existing data (Figure 1). In other words, it would be an egregious fallacy of misplaced concreteness to ignore the foregone nonuse values of legacy and existence.

18. *Pirates of the Caribbean: The Curse of the Black Pearl* (2003)—Box Office/Business, *supra* note 14.

19. GFK ROPER PUBLIC AFFAIRS AND NATIONAL GEOGRAPHIC EDUCATION FOUNDATION, 2006 GEOGRAPHIC LITERACY STUDY 9-11 (2006), <http://www.nationalgeographic.com/roper2006/pdf/FINALReport2006GeogLitsurvey.pdf>.

20. *Pirates of the Caribbean: The Curse of the Black Pearl* (2003)—Filming Locations, *supra* note 13.

21. HERMAN E. DALY, *STEADY STATE ECONOMICS* 280 (2d ed., Island Press 1991) (1977).

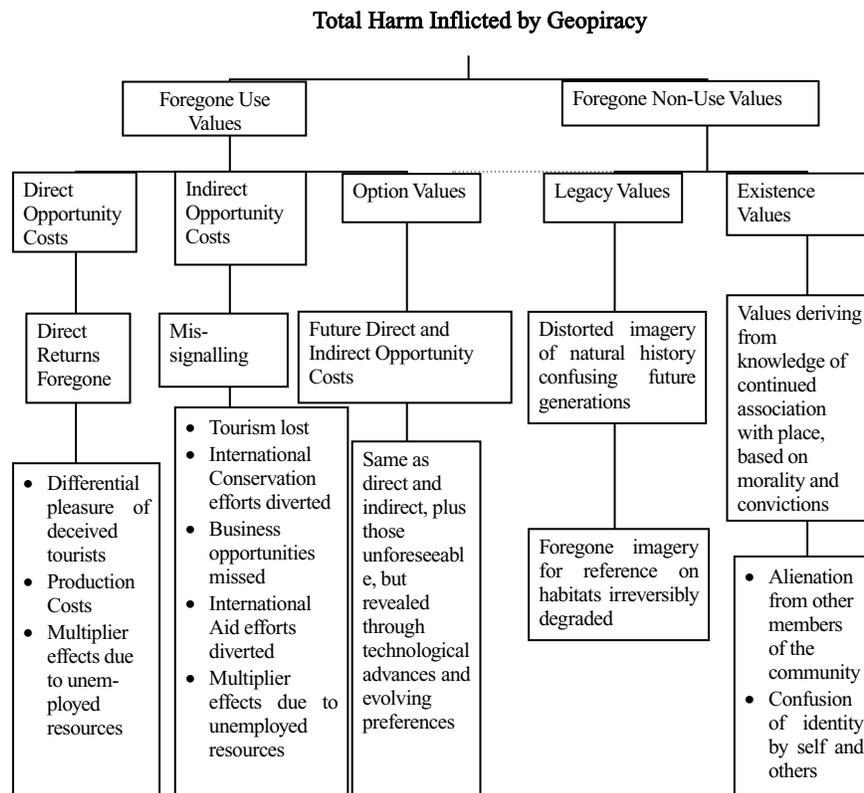


Figure 1: Total Harm of Geopiracy²²

A. *The Geopiracy Project*

“Geopiracy” must be a portmanteau in both meanings of the word “portmanteau”: (1) as a fusion of words or parts of words (viz., “geo” and “piracy”) with a combined and loaded meaning and (2) as a metaphorical briefcase that opens into compartments.²³ To understand where The Geopiracy Project is going, we must understand where “false attribution in location” has been. Academic economists would do well to converse with their counterparts in the schools of humanities and fine arts. Antecedents to geopiracy are well known and predate the motion pictures. For example, professors of literature will cite the then contemporary critics of *Uncle Tom’s Cabin*, *Green Mansions*, and *Tarzan*, who pointed out that the respective authors (Harriet Beecher

22. See generally Mohan Munasinghe, *Biodiversity Protection Policy: Environmental Valuation and Distribution Issues*, 21 *AMBIO* 227, 229 (1992).

23. RANDOM HOUSE UNABRIDGED DICTIONARY 1507-08 (2d ed. 1993).

Stowe, William Henry Hudson, and Edgar Rice Burroughs) did not know first-hand the places which figured so prominently in their *oeuvres*.²⁴ Such criticism stings as verisimilitude is a primary demand that audiences put on a work of art.²⁵ With hindsight, one can say that the lack of fidelity with respect to geography did not sufficiently undermine verisimilitude to exclude any of those works from the canon of world literature. Can one similarly dismiss the importance of geopiracy in twentieth and twenty-first century films?

Before hastily agreeing, we would do well to converse with our counterparts in the natural and physical sciences. The issue of verisimilitude in the arts takes on new dimensions when one shifts the medium from word to film. A frame in a movie conveys a quantity of information which dwarfs the information contained in a word, phrase, or paragraph. The astrophysicist Carl Sagan quipped that a picture, i.e., one frame, is worth not 1,000 words as proverbial wisdom would have it, but the equivalent of 10,000 words or “bytes” of information.²⁶ Our contention is that lack of geographical fidelity in films generates harm which is of a magnitude greater than a similar lack of fidelity in a novel. To what extent is the audience ignorant that the place witnessed in the film is not the place attributed in the dialog? Simple survey instruments can flesh out the response to this most basic of questions as well as the responses to more subtle ones. Because so many questions exist, we find ourselves back to square one: “where to begin?”

In a number of popular works, E.O. Wilson tells his readership that “[t]he first step to wisdom, as the Chinese say, is getting things by their right names.”²⁷ The Geopiracy Project must begin by identifying distinct classes of geopiracy in commercial films. Geopiracy is no longer the crisp one-line definition found in the first paragraph to this Article. It must be further classified into types. At least four occur to us by which one can classify the phenomenon for subsequent analysis:

Type I: movies which claim to be based on a “true story” but cite a different location from where filmed

Type II: movies which are fictional and cite a different location from where filmed

24. JOAN D. HEDRICK, *HARRIET BEECHER STOWE: A LIFE* 222 (1994).

25. RUTH SCODEL, *CREDIBLE IMPOSSIBILITIES: CONVENTIONS AND STRATEGIES OF VERISIMILITUDE IN HOMER AND GREEK TRAGEDY* 2 (1999).

26. CARL SAGAN, *THE COSMIC CONNECTION: AN EXTRATERRESTRIAL PERSPECTIVE* 237-38 (1973).

27. EDWARD O. WILSON, *CONSILIENCE: THE UNITY OF KNOWLEDGE* 4 (1998).

Type III: movies which are fictional and invent a fictional name for the location

Type IV: movies which are either fictional or based on a “true story,” filmed on location, but through splicing mix locations as if they were one place.

Some examples may prove illustrative. The blockbuster *Brokeback Mountain* supposedly takes place in Wyoming but all the pan shots are of Alberta, Canada.²⁸ By our typology, *Brokeback* commits Type II Geopiracy and cynically fools its audiences by interspersing a few frames actually shot on location (e.g., a brick U.S. Post Office with the name of a Wyoming town).²⁹ To assess the impact of the Type II geopiracy in *Brokeback*, one would want to know (1) in what segments was Wyoming mentioned in the script?, (2) what percentage of the audience remembered Wyoming as the *mise-en-scène*?, (3) over how many minutes is the landscape notable?, (4) how appealing were those pan shots to the audience?, (5) did they (encourage/discourage/have no effect) on a desire to visit Wyoming?, (6) how do people from Wyoming feel about the falsification of location? The answers to questions (1) and (3) are verifiable facts and lend themselves to “open access” research (i.e., identifying specific footage or audio segments). They form the skeleton of the wiki data set for The Geopiracy Project and would in and of themselves constitute a significant contribution to the emerging discipline of Film and Media Studies.³⁰ Questions (2), (4), (5), and (6) are the flesh that one hangs on that skeleton. They require the judicious design and execution of a survey instrument. Inasmuch as much fanfare accompanies the release of big budget films, The Geopiracy Project could identify civic groups that wish to collaborate in the collection of such data. We cannot emphasize enough the necessity of the surveys in assessing the total harm inflicted by geopiracy. As Michael Spence comments in his acceptance speech for the 2001 Nobel Memorial Prize in Economics “there are markets in which certain participants don’t know certain things that others in the market do know. . . . [W]e noticed that there are many markets with informational gaps.”³¹ Indeed, “certain participants don’t know” that a movie was not filmed on the location

28. BROKEBACK MOUNTAIN (Paramount Pictures 2005); *Brokeback Mountain* (2005)—Filming Locations, <http://www.imdb.com/title/tt0388795/locations> (last visited Mar. 11, 2008).

29. *Brokeback Mountain* (2005)—Filming Locations, *supra* note 28.

30. See Krin Gabbard, *Cinema and Media Studies: Snapshot of an “Emerging Discipline,”* THE CHRONICLE OF HIGHER EDUCATION, Feb. 17, 2006, at B14.

31. A. Michael Spence, Prize Lecture: Signaling in Retrospect and the Informational Structures of Markets 408 (Dec. 8, 2001) (transcript available at http://nobelprize.org/nobel_prizes/economics/laureates/2001/spence-lecture.pdf).

cited in the script and how many “don’t know” is the fundamental question that only surveying can answer. To the extent that future moviegoers-cum-tourists are disappointed, false attribution generates a measurable harm in the rubric “differential pleasure of deceived tourists” in the “Direct Returns Foregone” category of Figure 1. The harm inflicted reverberates on the economy of the place falsely attributed. In our example, visitors to Wyoming may be disappointed that the landscape they visit does not match the pan shots of *Brokeback* while residents of Alberta have lost the income associated with those deceived tourists.

The estimation of foregone tourism in Type II geopirated films is easier than that described in the previous section with Type III geopiracy (*Pirates*). *In grosso modo*, one examines the tourism revenue generated from “shot-on-location” films of the same genre as the Type II geopirated film and then simply scale according to box office performance. For example, *The Bridges of Madison County* is classified as a drama and romance and was nominated for twelve distinct awards, winning half of them.³² A quick Google search done on 12 October 2007 of the “‘Bridges of Madison County’ Tourism” yields some 24,100 hits, and the leading hit, www.madisoncounty.com, boasts some 544,241 online visits.³³ Its box office was approximately \$176 million.³⁴ *Brokeback Mountain* is classified in the same genre (drama and romance) and was nominated for over forty awards, winning half of them.³⁵ At the box office, *Brokeback* grossed about three-fifths of *The Bridges of Madison County* (www.imdb.org) as of April 2006.³⁶ If proportionality holds in the rubric “tourism foregone,” then a conservative estimate of the tourism denied Alberta, Canada due to the geopiracy in *Brokeback* is a third of whatever is the film tourism generated by the faithful attribution in *The Bridges of Madison County*. A similar approach may work for the other foregone indirect opportunity costs of conservation efforts, business opportunities, etc. The wiki format of the IMDb allows stakeholders of the places geopirated by the Type II classification to alert potential

32. THE BRIDGES OF MADISON COUNTY (Amblin Entertainment 1995); The Bridges of Madison County (1995)—Awards, <http://www.imdb.com/title/tt0112579/awards> (last visited Mar. 11, 2008).

33. “‘Bridges of Madison County’ Tourism”—Google Search, <http://www.google.com/search?hl=en&q=bridges+of+madison+county+tourism> (last visited Mar. 11, 2008).

34. The Bridges of Madison County (1995)—Box Office/Business, <http://www.imdb.com/title/tt0112579/business> (last visited Mar. 11, 2008).

35. Brokeback Mountain (2005)—Awards, <http://www.imdb.com/title/tt0388795/awards> (last visited Mar. 11, 2008) (58 nominations and 34 wins).

36. Brokeback Mountain (2005)—Box Office/Business, <http://www.imdb.com/title/tt0388795/business> (last visited Mar. 11, 2008).

victims, viz., moviegoers, and thereby avert the full impact of indirect harm.

It would be easy to imagine an interactive map where one clicks on town, state/province, or country to see what movies were shot on location and which ones were geopirated (Fig. 2). If no data appeared, then the visitor could enter the data which would carry the IMDb appeal: “report errors and omissions on this page to the IMDb database managers. They will be examined and if approved will be included in a future update. Clicking the ‘Update’ button will take you through a step-by-step process.”³⁷

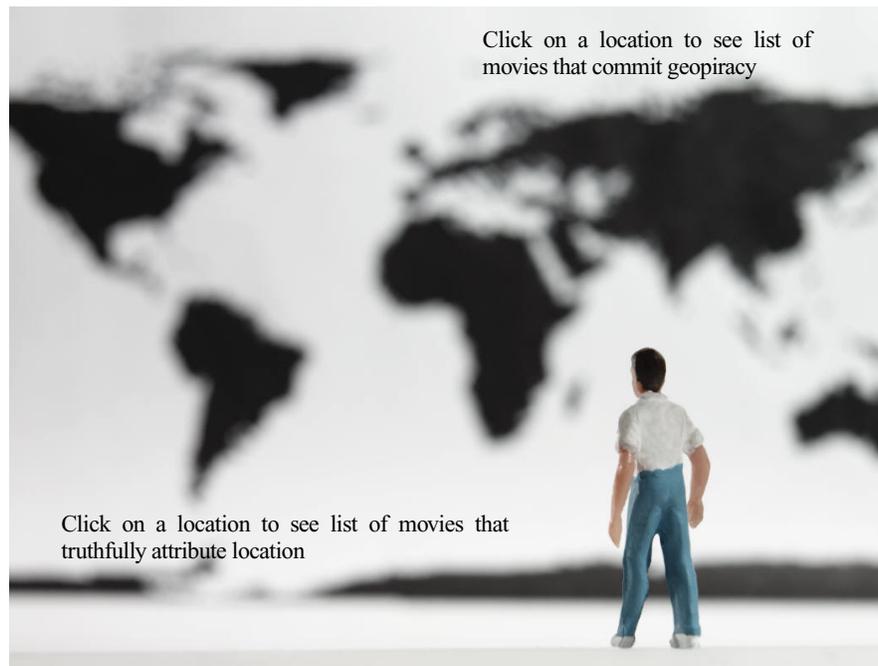


Figure 2: Suggested Appearance of International Geopiracy Map.³⁸

Data sets in wiki formats could invite visitors to classify movies by the four types of geopiracy. Because each movie can commit multiple types of geopiracy, as well as faithful attribution, the data must include the timing of the occurrence of the false attribution from the start of the

37. *E.g.*, *Brokeback Mountain* (2005), <http://www.imdb.com/title/tt0388795/> (last visited Jan. 28, 2008).

38. Interactive Map of Geopiracy based on Microsoft clip art.

title frame (e.g., 1:08:45, i.e., one hour eight minutes and forty-five seconds from the start of the title frame).

Again, we must be careful not to commit the fallacy of misplaced concreteness. The other harms inflicted by Type II Geopiracy are less commensurable than the tourism foregone but nonetheless every bit as real. For example, the film classic *Gone with the Wind* cultivated a benign portrayal of slavery which led to what literary theorists call “percepticide”—a killing of perception that is socially constructed.³⁹ Had *Gone with the Wind* been filmed on historic plantations in Georgia, with their artifacts of bells and whistles, whips and chains, the directors and scriptwriters could have more realistically captured a verisimilar *mise-en-scène*. Who knows? Perhaps they could have assimilated insights from conversations with elderly former slaves whose oral histories were being recorded in Georgia at roughly the same time (e.g., *Unchained Memories: Readings from the Slave Narratives*)⁴⁰. The unfaithful depiction of the antebellum South helped perpetuate de facto slavery through Jim Crow laws which were not fully dismantled until the Civil Rights Act of 1964, a full generation after the release of *Gone with the Wind*. It is no hyperbole to say that the geopiracy of *Gone with the Wind* both alienated and confused audiences inflicting a harm which far outweighs the foregone admission revenue of visits to house museums like the ersatz “Tara.”

Such a grievance is not peculiar to African Americans or the first half of the twentieth century. *The Last of the Mohicans* is the film adaptation of the American classic by James Fenimore Cooper.⁴¹ The story is about the demise of an ethnic group from what is now upstate New York. Although the film could have been filmed in upstate New York where the Mohicans once flourished, the producers chose the Smoky Mountains of North Carolina, home to the Cherokees.⁴² Inasmuch as place is integral to cultural identity, geopiracy harms the living descendants of both the Mohicans and the Cherokees. Such harm is not peculiar to the indigenous communities of the Americas. Tribal Elder Iris Lovett-Gardiner of Australia notes, “With Aboriginal people,

39. GONE WITH THE WIND (Selznick International Pictures 1939); see Diana Taylor, Percepticide URL: Abstracted from the Dirty War, <http://hemi.nyu.edu/cuaderno/political-performance2004/totalitarianism/WEBSITE/texts/percepticide.htm> (last visited Mar. 11, 2008) (explaining the meaning of “percepticide”).

40. UNCHAINED MEMORIES: READINGS FROM THE SLAVE NARRATIVES (Home Box Office 2003).

41. THE LAST OF THE MOHICANS (Morgan Creek Productions 1992).

42. The Last of the Mohicans (1992), <http://www.imdb.com/title/tt0104691/> (last visited Mar. 11, 2008).

and I believe all human beings, where they were born is the source of their being through their culture, spirituality, and customs.”⁴³ She goes on to say, “Identity is shaped by the land and affirmed through ways of life.”⁴⁴ The importance of the abstract economic concept of “existence values” is also beautifully (and probably unknowingly) expressed in the closing line of the chapter “Accidental Conquerors” in the award-winning *The Third Chimpanzee* by Jared Diamond: “In the long run, and on a broad scale, where we live has contributed heavily to making us who we are.”⁴⁵

B. Stepping into the Well-Heeled Shoes of Hollywood Moguls

The reaction by Hollywood (or Bollywood) moguls to The Geopiracy Project is predictable: dismissal. If the twenty-year trajectory of biopiracy is any indication of what awaits geopiracy, then dismissal will morph into derision as the neologism gains currency. At that moment, the word “piracy” will be challenged as wrong, wrong, wrong. Nothing was looted or plundered. Nothing was even “passed off.” Such defendants of the status quo will point out that the location was disclosed in the ending credits of the film and that caveat emptor prevails. Ironically, to make such an argument persuasive requires exactly the type of surveying for which The Geopiracy Project seeks funding:

1. what percentage of moviegoers know that the location is disclosed in the ending credits of a film
2. what percentage of films are shown until the ending credits and not truncated by the projectionist
3. what must be the visual acuity of a moviegoer to decipher the credit from his or her seat
4. what level of speed-reading must the moviegoer command in order to comprehend the fleeting projection of the credited location
5. how are the filming locations distinguished in the credits when there are multiple scenes with multiple locations.

Because the results of the survey data may support the claim of geopiracy, the cagey mogul will avoid any such surveying. Better to challenge the legitimacy of geopiracy by challenging the legitimacy of biopiracy. Yes, refuse the analogy! Much legal scholarship will back him up: Indeed, Charles R. McManis, Professor of Law at Washington

43. VICTORIA MUSEUM, BUNJILAKA 29 (2000).

44. *Id.* at 30.

45. JARED DIAMOND, *THE RISE AND FALL OF THE THIRD CHIMPANZEE* 224 (1991).

University, eloquently explains that “[a]t the heart of much of the rhetoric of biopiracy is the logical fallacy of equivocation.”⁴⁶ Simply put, one cannot appropriate that which is not owned, viz., genetic resources as they occur in nature. Professor McManis meticulously dismantles, case by case, the most publicized allegations of biopiracy.⁴⁷ He also points out that just as there was *legally* no intellectual property piracy before the ratification of TRIPS in 1994, there was also no meaningful biopiracy before the ratification of the Convention on Biological Diversity (incidentally, one year before TRIPS).⁴⁸ All that is true, nevertheless, we counter: the rhetoric of piracy worked in both instances. A Google search of “biopiracy” on October 12, 2007, yields some 276,000 hits and a search of “intellectual piracy,” some 27,700.⁴⁹ Although the phenomenon of geopiracy could be more accurately conveyed with the cumbersome phrase “false attribution of location in the visual arts” and classified as “unfair competition,” such accuracy will not stir emotions sufficiently to muster the resources needed to conduct the surveys and resolve the empirical question of damages. Piracy does.

We must give our hypothetical mogul his due. Attenuating circumstances do exist to justify false attribution of location in the visual arts. Analysis of those circumstances is a very good place to conclude this introductory article on geopiracy as an emerging issue in intellectual property rights.

C. Conclusion: Fortifying the Neologism by Qualifying the Definition

Wiggle words are those which permit a capacious interpretation of a statement. As originally defined, “false attribution of place in the visual arts” leaves no room to wiggle. The well-heeled mogul can direct his staff to come up with counterexamples that expose the inherent absurdities in the proffered definition. His goal will be to throw out the baby (proposals for *sui generis* legislation) with the bathwater (the exceptions).

46. Charles R. McManis, *Fitting Traditional Knowledge Protection and Biopiracy Claims into the Existing Intellectual Property and Unfair Competition Framework*, in INTELLECTUAL PROPERTY AND BIOLOGICAL RESOURCES 425, 448 (Burton Ong, ed., 2004).

47. *Id.* at 425-510.

48. *Id.*

49. “Biopiracy”—Google Search, <http://www.google.com/search?hl=en&q=biopiracy> (last visited Oct. 12, 2007); “Intellectual Piracy”—Google Search, <http://www.google.com/search?hl=en&q=intellectual+piracy> (last visited Oct. 12 2007).

Combing the expansive IMDb, one can find some notable films that bolster the argument against *sui generis* legislation for the faithful attribution of location in the visual arts:

Prohibition, legal or regulatory: Photography *of* or *in* certain locations is sometimes prohibited. The director of *No Way Out* was denied permission to film any station of the Washington, D.C., Metro System.⁵⁰ He shot a Baltimore station instead and attributed it to the “Georgetown station” which, incidentally, does not exist!⁵¹ Because of the regulatory prohibition, no geopiracy was committed. Similarly, the U.S. trade embargo against Cuba would disqualify *Dirty Dancing: Havana Nights* as geopiracy even though it was filmed entirely in Puerto Rico.⁵²

De facto censorship: Thinking about the political ramifications of the content, many *democratic* countries will deny permits to film. Due to the bureaucratic hurdles imposed in India on the director of *Water* (Mehta, 2005), the movie was filmed in neighboring Sri Lanka.⁵³

Satire: *Borat* (Cohen, 2005) defines a new genre called the “mockumentary.”⁵⁴ The film supposedly opens and closes in Kazakhstan but was actually filmed in Romania.⁵⁵ The Russian Federal Agency for Culture and Cinematography banned the movie because “there are moments in the film which could offend some viewers’ religious or national sensibilities.”⁵⁶ Can we not draw an analogy with Alice Randall’s *The Wind Done Gone*?⁵⁷ The status of that book as parody is all that protected it from the legal onslaught of Margaret Mitchell’s heirs.⁵⁸

Accuracy: Filming on location is not always the most accurate depiction of the landscape described in the script. No one has a time

50. NO WAY OUT (Orion Pictures Corp. 1987); The 80s Movies Rewind, No Way Out, www.fast-rewind.com/nowayout.htm (last visited Mar. 11, 2008).

51. The 80s Movies Rewind, No Way Out, *supra* note 50.

52. DIRTY DANCING: HAVANA NIGHTS (Lions Gate Film 2004); Dirty Dancing: Havana Nights (2004)—Filming Locations, <http://www.imdb.com/title/tt0338096/locations> (last visited Mar. 11, 2008).

53. WATER (Deepa Mehta Films 2005); Water (2005)—Filming Locations, <http://www.imdb.com/title/tt0240200/locations> (last visited Mar. 11, 2008).

54. BORAT: CULTURAL LEARNING OF AMERICA FOR MAKE BENEFIT GLORIOUS NATION OF KAZAKHSTAN (Twentieth Century Fox 2006).

55. Borat (2006), <http://www.imdb.com/title/tt0443453/locations> (last visited Mar. 11, 2008).

56. Borat Banned in Russia, Kazakhstan Infuriated and Humiliated, <http://english.pravda.ru/russia/history/09-11-2006/85443-Borat-0> (last visited Mar. 11, 2008).

57. ALICE RANDALL, *THE WIND DONE GONE* (2001).

58. David D. Kirkpatrick, *Mitchell Estates Settles ‘Gone With the Wind’ Suit*, N.Y. TIMES, May 10, 2002, at C6.

machine which can transport the cast and crew to the original landscape of historic settings. For example, the archipelago of St. Pierre and Miquelon lies some twenty-five kilometers off the coast of Newfoundland.⁵⁹ Only six movies have ever been filmed on the archipelago and the most famous is *La Veuve de Saint Pierre* (The Widow of Saint Pierre), a true story of romance and drama in mid-nineteenth-century colony.⁶⁰ Although some scenes are indeed filmed on the archipelago, the bulk of the movie is filmed at the Fortress of Louisburg in Nova Scotia.⁶¹ The Fortress best captures the setting of colonial life on St. Pierre than would any setting on St. Pierre today.

Reckless endangerment: Well beyond the risks of on-location filming are physical threats directed to cast and crew. The film *The Burning Season* about the life and assassination of the union leader and rubber tapper Chico Mendes is “Based on a True Story,” as conveyed in an opening frame.⁶² However, the director prudently did not film in Xapuri, Brazil but in Veracruz, Mexico even though the verisimilitude of the production was greatly compromised.⁶³

Phantasmagoria: Films like *King Kong* are unmistakably fantasy and any faithful attribution would even diminish the joy in the flight of fantasy.⁶⁴ One may also say the same for *Lord of the Rings: The Fellowship of the Ring*.⁶⁵ However, phantasmagoria can also be rooted in very real places. For example, the surreal *The House of the Spirits* supposedly takes place in Chile but was filmed in Denmark and Portugal.⁶⁶

Each of the above counterexamples is powerful, legitimate, and *above all*, atypical. The usual justification for geopiracy is profits: it is cheaper to film off location and directors can do so with impunity as the third parties harmed are unorganized.⁶⁷ So, we end this Article where we began: definitions. The original definition of geopiracy must be amended in order to accommodate the exceptions.

59. Encyclopedia Britannica Online, Saint-Pierre and Miquelon, <http://www.britannica.com/eb/article-9064943/Saint-Pierre-and-Miquelon> (last visited Mar. 11, 2008).

60. VEUVE DE SAINT PIERRE (Cinemaginarie Inc. 2000).

61. *Veuve de Saint-Pierre, La* (2000)—Filming Locations, <http://www.imdb.com/title/tt0191636/locations> (last visited Mar. 11, 2008).

62. *THE BURNING SEASON* (Home Box Office 1994).

63. *The Burning Season* (1994) (IV)—Filming Locations, <https://www.imdb.com/title/tt0109351/locations> (last visited Mar. 11, 2008).

64. *KING KONG* (Big Primate Pictures 2005).

65. *LORD OF THE RINGS: THE FELLOWSHIP OF THE RING* (New Line Cinema 2001).

66. *THE HOUSE OF THE SPIRITS* (Costa do Castelo Filmes 1993).

67. See generally MANCUR OLSON JR., *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 165-67 (1965) (discussing organization of migrant farmers).

Geopiracy: the *unjustifiably* false attribution of location in the visual arts.

With the new and improved definition, the total harm inflicted awaits the generation of survey data and its analysis. The rationale for small states assuming leadership in the various forums on Geographic Indications lies in the magnification effect. Proportionally speaking, small states have the most to lose by not organizing against geopiracy.